



August 28, 2019

Mr. Christian Keiner
Dannis Woliver Kelley
555 Capitol Mall, Suite 645
Sacramento, CA 95814

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and
Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Graduation Requirements, 16-4435-I-56
Education Code Section 51225.3; Statutes 1983, Chapter 498
Fiscal Years: 2008-2009 and 2009-2010
Grossmont Union High School District, Claimant

Dear Mr. Keiner and Ms. Sidarous:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **September 18, 2019**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

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. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (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.

¹ 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.

Mr. Keiner and Ms. Sidarous

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Hearing

This matter is set for hearing on **Friday, November 22, 2019**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about November 8, 2019.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM ____
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Education Code Section 51225.3

Statutes 1983, Chapter 498

Graduation Requirements

Fiscal Years 2008-2009 and 2009-2010

16-4435-I-56

Grossmont Union High School District, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of amended reimbursement claims filed by the Grossmont Union High School District (claimant) for the *Graduation Requirements* program for fiscal years 2008-2009 and 2009-2010 (audit period). The *Graduation Requirements* program increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences.

The Controller found that of the \$21,221,594 of increased costs incurred during the audit period, only \$5,645,762 is allowable (minus a \$10,000 late-filing penalty).¹ The claimant challenges the reduction of costs claimed for acquisition of additional space for new science classrooms and laboratories (Finding 1), and for materials and supplies relating to the additional science course (Finding 2). The claimant also disputes the Controller's finding that local school-construction bond funds should have been identified and deducted from the claims as offsetting revenues (Finding 4).

Staff recommends that the Commission deny this IRC.

¹ Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). Although only \$14,816,975 was claimed in the reimbursement claims, the Controller, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, first identified total costs for science and laboratory construction costs. The Controller found that gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, for a net of \$21,221,594 in costs incurred. See Exhibit A, page 48.

Procedural History

The Legislature appropriated \$1,000 in the Budget Act for the *Graduation Requirements* program on July 28, 2009.² The claimant signed the reimbursement claim for fiscal year 2008-2009 on February 2, 2010.³ The claimant signed the amended reimbursement claim for fiscal year 2008-2009 on January 11, 2011.⁴ The claimant signed the reimbursement claim for fiscal year 2009-2010 on January 19, 2011.⁵ The Controller paid the claimant \$10 toward its fiscal year 2009-2010 claim on November 29, 2011.⁶ The claimant signed the amended reimbursement claim for fiscal year 2009-2010 on January 9, 2012.⁷ The Controller's audit entrance conference letter was dated January 6, 2015.⁸ The Final Audit Report cover letter was dated June 21, 2016.⁹ The claimant filed the IRC on June 8, 2017.¹⁰ The Controller filed late comments on the IRC on September 20, 2017.¹¹ The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on August 28, 2019.¹²

Commission Responsibilities

Government Code section 17561(d) 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 if the Controller determines that the claim 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.

² Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5).

³ Exhibit A, IRC, page 1404 (2008-2009 Reimbursement Claim).

⁴ Exhibit A, IRC, page 1485 (2008-2009 Amended Reimbursement Claim).

⁵ Exhibit A, IRC, page 2592 (2009-2010 Reimbursement Claim).

⁶ Exhibit A, IRC, page 83 (payment check).

⁷ Exhibit A, IRC, page 2601 (2009-2010 amended claim).

⁸ Exhibit A, IRC, pages 11, 77 (Audit Entrance Conference Letter).

⁹ Exhibit A, IRC, page 41 (Final Audit Report).

¹⁰ Exhibit A, IRC, page 1.

¹¹ Exhibit B, Controller's Late Comments on the IRC, page 1. Note that Government Code section 17553(d) states "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Draft Proposed Decision.

¹² Exhibit C, Draft Proposed Decision.

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 of the California Constitution.¹³ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution 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.”¹⁴

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.¹⁵

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 the claimant.¹⁶ In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations requires 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.¹⁷

Claims

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

Issue	Description	Staff Recommendation
Did the claimant timely file the IRC?	At the time the Final Audit Report was issued, section 1185.1 of the Commission’s regulations required IRCs to be filed no later than three years after the Controller’s	<i>The IRC was timely filed – The Final Audit Report of June 21, 2016, complies with the notice provision in Government Code section 17558.5(c). The IRC was</i>

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁴ *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁵ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁷ 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.

Issue	Description	Staff Recommendation
	final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c).	filed on June 8, 2017, less than three years from the date of the Final Audit Report, and is therefore timely filed.
Did the Controller timely initiate the audit of the fiscal year 2009-2010 reimbursement claim, and timely complete the audit of all claims by meeting the statutory deadlines imposed by Government Code section 17558.5?	<p>Government Code section 17558.5(a) requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, whichever is later, but if no funds are appropriated or no payment is made to a claimant for the fiscal year's claim, the Controller has three years from the date of initial payment of the claim.¹⁸ Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.</p> <p>The claimant argues that the audit of the fiscal year 2009-2010 reimbursement claim was not timely initiated because the Controller paid \$10 to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, on January 6, 2015.¹⁹</p> <p>The Controller argues that the audit was timely because it was commenced within three</p>	<p><i>The audit was timely initiated and completed</i> – The Legislature deferred payment for the <i>Graduation Requirements</i> program in fiscal year 2009-2010 by making a nominal appropriation of \$1,000 in the State Budget Act for the program.²¹ From that appropriation, the Controller paid the claimant \$10 for the <i>Graduation Requirements</i> program for fiscal year 2009-2010 on November 29, 2011.²² The Courts have held that a nominal \$1,000 appropriation is not constitutionally sufficient to fund the program and essentially amounts to a \$0 payment.²³ Thus, a \$10 payment made under the authority of a nominal \$1,000 appropriation also amounts to no payment at all and thus, the sentence in section 17558.5, regarding the time to initiate an audit starting to run from the date of initial payment, does not apply.</p>

¹⁸ Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

¹⁹ Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

²¹ Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5), effective July 28, 2009.

²² Exhibit A, IRC, page 83 (Payment Check).

²³ *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791.

Issue	Description	Staff Recommendation
	years of the amended claim filing on January 26, 2012, and the audit notification letter was dated January 6, 2015. ²⁰	<p>Rather, the first sentence in Government Code section 17558.5(a) controls and requires the Controller to initiate the audit no later than three years from the date the reimbursement claim is filed <i>or last amended</i>.</p> <p>The audit notification letter was dated January 6, 2015, and acknowledged claimant contact about the audit on December 18, 2014.²⁴ Regardless of whether the audit was initiated on December 18, 2014, or January 6, 2015, the claimant received notice of the audit within three years of filing the amended reimbursement claim on January 24, 2012, so the audit was timely initiated for the 2009-2010 reimbursement claim.</p> <p>The audit was completed for all fiscal years' reimbursement claims when the final audit report was issued June 21, 2016,²⁵ well before the two-year deadline of either December 18, 2016 or January 6, 2017.</p>
Is the Controller's reduction in Finding 1 of costs incurred to construct science classrooms and laboratories correct?	To claim costs for acquisition of additional space or construction of new science classrooms and laboratories, the Parameters and Guidelines require	<i>Correct as a matter of law</i> – The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law

²⁰ Exhibit B, Controller's Late Comments on the IRC, page 12.

²⁴ Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

²⁵ Exhibit A, IRC, page 41 (Final Audit Report).

Issue	Description	Staff Recommendation
	<p>documentation showing the increased units of science course enrollments due to the mandate, certification by the Board finding that “no facilities existed to reasonably accommodate the increased enrollment for the additional science course required” by the test claim statute, and documents to show that “that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.”²⁶</p> <p>The Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required as a result of the test claim statute. This resulted in a reduction of all direct and related indirect costs for construction (\$29,633,952, plus related indirect costs).</p>	<p>to file reimbursement claims in accordance with them.²⁷</p> <p>The claimant did not comply with the documentation requirements of the Parameters and Guidelines to show that the space would <i>not</i> have been otherwise acquired due to increases in the number of students enrolling in high school, or to show the increased units of science course enrollments due to the mandate.²⁸</p> <p>Instead, the documentation in the record shows that the claimant’s governing board decided to construct new science classrooms and laboratories in order to modernize school facilities in accordance with its deferred maintenance plan and to address overall, increased high school enrollment growth.</p> <p>Moreover, the resolutions adopted by the claimant’s governing board in 2008 (about five years <i>after</i> the board approved the renovation and construction of science classrooms and laboratories) in an attempt to connect the construction costs to the <i>Graduation</i></p>

²⁶ Exhibit A, IRC, page 92 (Parameters and Guidelines).

²⁷ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

²⁸ Exhibit A, IRC, pages 87-88 (Parameters and Guidelines).

Issue	Description	Staff Recommendation
		<p><i>Requirements</i> mandate, do not comply with the documentation requirements of the Parameters and Guidelines, and conflict with the original reasons stated for the construction. The Sacramento County Superior Court held that the Parameters and Guidelines for the <i>Graduation Requirements</i> program require that the claimant’s documentation “support a finding that, <i>before approving</i> the science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont science facilities and a determination that the facilities could not reasonably accommodate increased enrollment <i>for the additional science course required by Education Code section 51225.3.</i>”²⁹ The claimant was a party to the <i>Graduation Requirements</i> case and under principles of collateral estoppel, the court’s decision is binding on the parties for this IRC.³⁰</p>
<p>Is the Controller’s reduction and recalculation of costs incurred for materials and supplies in Finding 2 correct?</p>	<p>The Parameters and Guidelines authorize reimbursement for materials and supplies if the costs are</p>	<p><i>Correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support</i> – The</p>

²⁹ Exhibit X, page 24. (*San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter). Emphasis added.

³⁰ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

Issue	Description	Staff Recommendation
	<p>supported by documentation of increased units of science course enrollments as a result of the mandate.³¹</p> <p>\$860,978 plus related indirect costs for materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 were incurred as part of the science construction costs described in Finding 1. These costs were funded and claimed in the same manner as the construction costs.³² The Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable because the claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines.</p> <p>The Controller also reduced \$56,208 for materials and supplies incurred for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50%, without providing any documentation to support the 50% figure as required by the Parameters and Guidelines.</p>	<p>reduction of \$860,978 plus related indirect costs for materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 as part of the construction costs is correct as a matter of law. The claimant did not comply with the documentation requirements in the Parameters and Guidelines because no documentation of increased units of science course enrollments was provided.</p> <p>Moreover, the reduction of \$56,208 for materials and supplies incurred for the audit period is correct as a matter of law. The Parameters and Guidelines do not authorize the use of a 50% increase in costs as a result of the mandate with no documentation to support the 50% figure, or documentation to show that its costs resulted from increased science course enrollments as a result of the mandate.</p> <p>Finally, the claimant has submitted no evidence that the Controller's formula to calculate the increased costs to acquire materials and supplies for the additional science course is arbitrary,</p>

³¹ Exhibit A, IRC, pages 87, 88, 92 (Parameters and Guidelines).

³² Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

Issue	Description	Staff Recommendation
	<p>Since the claimant provided no documentation to support the 50% incremental increase in enrollment, the Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction. The recalculation divides the increased number of science classes identified by the total number of science class offerings for the fiscal year, which resulted in an incremental increase of 40.14% for 2008-2009 and 47% for 2009-2010.³³</p>	<p>capricious, or entirely lacking in evidentiary support.</p>
<p>Is the Controller's Finding 4, that the local bond funds used to construct the science classrooms are offsetting revenue that should have been identified and deducted from the reimbursement claims, correct?</p>	<p>Section IX. of the Parameters and Guidelines addresses offsetting revenues and states that "reimbursement for this mandate from any source, including but not limited to... shall be identified and deducted from this claim."³⁴</p> <p>The Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H, which funded 50% of the total cost of construction and construction-related materials and supplies discussed in Findings 1 and 2. The other</p>	<p><i>Correct as a matter of law</i> - Local bond funds used by the claimant are offsetting revenues that should have been identified and deducted from the reimbursement claims. Article XIII B, section 6 must be read in light of articles XIII A and B of the California Constitution, and requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.³⁵ Article XIII B, sections 7, 8, and 9,</p>

³³ Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

³⁴ Exhibit A, IRC, page 93 (Parameters and Guidelines).

³⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

Issue	Description	Staff Recommendation
	50% was funded by state matching funds. Thus, this finding provides an alternative ground for the reduction of the construction-related costs.	and Government Code section 53715 make it clear that local bond funds are not “proceeds of taxes” as alleged by the claimant, and the repayment of those bond funds are not considered “appropriations subject to limitation.” School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6. ³⁶

Staff Analysis

A. The claimant timely filed the IRC within three years from the date the claimant received from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim.

At the time the Final Audit Report was issued, section 1185.1 of the Commission’s regulations required IRCs to be filed no later than three years after the Controller’s final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c). The Final Audit Report, dated June 21, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments,³⁷ and thereby complies with the notice requirements in section 17558.5(c). Because the claimant filed the IRC on June 8, 2017,³⁸ within three years of date of the Final Audit Report, staff finds that the IRC was timely filed.

B. The Controller timely initiated the audit of the 2009-2010 reimbursement claim and timely completed the audit of all claims by meeting the statutory deadlines imposed by Government Code section 17558.5.

Government Code section 17558.5(a) requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, whichever is later, but if no funds are appropriated or no payment is made “to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run

³⁶ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

³⁷ Exhibit A, IRC, page 41 (Final Audit Report).

³⁸ Exhibit A, IRC, page 1.

from the date of initial payment of the claim.”³⁹ Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.⁴⁰

The claimant argues that the audit of the 2009-2010 reimbursement claim was not timely initiated because the Controller made a \$10 payment to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, on January 6, 2015.⁴¹ The Controller argues that the audit was timely because it was commenced within three years of the amended claim filing on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the audit was initiated within the three-year deadline of Government Code section 17558.5.⁴²

Government Code section 17558.5(a) requires an audit to be initiated no later than three years after the date the reimbursement claim is filed or last amended, *whichever is later*. Therefore, staff finds that the audit was timely initiated for 2009-2010 because it was commenced within three years of the claimant’s filing of an amended claim. In addition, the nominal \$1,000 appropriation for fiscal year 2009-2010, and the \$10 payment made under the authority of that nominal appropriation, was not a constitutionally sufficient appropriation or payment to fund the program and essentially amounts to no appropriation or payment at all.⁴³

The audit notification letter was dated January 6, 2015, and acknowledged that the claimant was contacted about the audit on December 18, 2014.⁴⁴ Regardless of whether the audit initiation date was December 18, 2014, or January 6, 2015, the claimant received notice of the audit within three years of filing the amended claim on January 24, 2012, so staff finds that the audit was timely initiated for the fiscal year 2009-2010 reimbursement claim.

The audit was completed when the Final Audit Report was issued on June 21, 2016,⁴⁵ well before the two-year deadline of either December 18, 2016, or January 6, 2017, so staff also finds that the audit was timely completed.

C. The Controller’s reduction in Finding 1 of costs incurred to construct science classrooms and laboratories is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines.

To claim costs for acquisition of additional space or construction of new science classrooms and laboratories, the Parameters and Guidelines require a claimant to submit documentation showing the increased units of science course enrollments due to the mandate, certification by the Board finding that “no facilities existed to reasonably accommodate the increased enrollment for the additional science course required” by the test claim statute, and documents to show that “that

³⁹ Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

⁴⁰ Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

⁴¹ Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

⁴² Exhibit B, Controller’s Late Comments on the IRC, page 12.

⁴³ *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791.

⁴⁴ Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

⁴⁵ Exhibit A, IRC, page 41 (Final Audit Report).

this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.”⁴⁶

The Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required as a result of the test claim statute. This resulted in a total reduction of all direct and related indirect costs for construction (\$29,633,952, plus related indirect costs).⁴⁷

Staff finds that the reduction is correct as a matter of law. The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.⁴⁸ The claimant did not comply with the documentation requirements of the Parameters and Guidelines to show that the space would *not* have been otherwise acquired due to increases in the number of students enrolling in high school, or to show the increased units of science course enrollments due to the mandate.⁴⁹ Instead, the documentation in the record shows that the claimant’s governing board decided to construct new science classrooms and laboratories in order to modernize school facilities in accordance with its deferred maintenance plan and to address overall, increased high school enrollment growth.⁵⁰

Moreover, the resolutions adopted by the claimant’s governing board in 2008 (about five years *after* the board approved the renovation and construction of science classrooms and laboratories) in an attempt to connect the construction costs to the *Graduation Requirements* mandate, do not comply with the documentation requirements of the Parameters and Guidelines, and conflict with the original reasons stated for the construction.⁵¹ In 2005, the Sacramento County Superior Court, ruling on claimant, Grossmont Union High School’s reimbursement claims at issue in another IRC, held that the Parameters and Guidelines for the *Graduation Requirements* program require that the claimant’s documentation “support a finding that, *before approving* the science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont science facilities and a determination that the facilities could not reasonably accommodate increased enrollment *for the additional science course required by Education*

⁴⁶ Exhibit A, IRC, page 92 (Parameters and Guidelines).

⁴⁷ Exhibit A, IRC, page 49 (Final Audit Report).

⁴⁸ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

⁴⁹ Exhibit A, IRC, pages 87-88 (Parameters and Guidelines).

⁵⁰ Exhibit A, IRC, page 156-160 (Master Plan), 1141-1142 (District Resolution 2003-148); Exhibit B, Controller’s Late Comments on the IRC, page 31 (“Yes on H For Our Local High Schools”); Exhibit B, Controller’s Late Comments on the IRC, pages 171, 173-174 (Bond Advisory Commission Final Report).

⁵¹ Exhibit B, Controller’s Late Comments on the IRC, pages 614-615 (District Resolution 2009-14), 618 (District Resolution 2009-17).

Code section 51225.3.”⁵² The claimant, the Controller, and the Commission, as parties to the *Graduation Requirements* case and under principles of collateral estoppel, are bound by the court’s decision for this IRC.⁵³

D. The Controller’s reduction of costs incurred for materials and supplies in Finding 2 is correct as a matter of law, and the Controller’s recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support because the claimant did not comply with the documentation requirements in the Parameters and Guidelines.

The Parameters and Guidelines authorize reimbursement for “the increased cost for supplying the new science class with science instructional materials (textbooks, materials, and supplies),” that the claimant is required to incur as a result of the mandate. The claimant must provide documentation of increased units of science course enrollments due to the test claim statute.⁵⁴ The claimant sought \$860,978 plus related indirect costs for materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 as part of the science construction costs described in Finding 1. These costs were funded and claimed in the same manner as the construction costs.⁵⁵ The Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable because the claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines.

The Controller also reduced an additional \$56,208 for costs incurred for materials and supplies for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure as required by the Parameters and Guidelines. The claimant argues that because the mandate doubled the number of science courses by law, it calculated the increased costs for materials and supplies by reducing the unmatched cost by 50 percent to account for the preexisting requirement for science courses.⁵⁶

Since the claimant provided no documentation to support the 50 percent incremental increase in enrollment, the Controller recalculated the claimant’s increased costs using a formula to isolate costs for the mandated additional year of science instruction. The recalculation divides the increased number of science classes identified by the total number of science class offerings for the fiscal year, which resulted in an incremental increase of 40.14 percent for 2008-2009 and 47 percent for 2009-2010.⁵⁷

⁵² Exhibit X, page 24 (*San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter). Emphasis added.

⁵³ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

⁵⁴ Exhibit A, IRC, pages 87, 88, 92 (Parameters and Guidelines).

⁵⁵ Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

⁵⁶ Exhibit A, IRC, pages 26-27, 50 and 58 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, page 19.

⁵⁷ Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

Staff finds that the Controller's reduction of allowable increased costs for materials and supplies is correct as a matter of law and the Controller's recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support.

The reduction of materials and supplies to furnish and equip the new science classrooms in fiscal year 2009-2010 as part of the construction costs is correct as a matter of law. The claimant did not comply with the documentation requirements in the Parameters and Guidelines because no documentation of increased units of science course enrollments was provided.

Moreover, the additional reduction of \$56,208 for costs incurred for materials and supplies for the audit period is correct as a matter of law. The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate, without any evidence to support that number. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

Finally, the claimant has submitted no evidence that the Controller's formula to calculate the increased costs to acquire materials and supplies for the additional science course is arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Finding 4, that the local bond funds used to construct the science classrooms are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law because reimbursement under article XIII B, section 6 of the California Constitution is not required for the expenditure of local bond proceeds.

Section IX. of the Parameters and Guidelines addresses offsetting revenues and states that "reimbursement for this mandate from any source, including but not limited to... shall be identified and deducted from this claim."⁵⁸

The Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H, which funded 50 percent of the total cost of construction and construction-related materials and supplies discussed in Findings 1 and 2. The other 50 percent was funded by state matching funds.⁵⁹ Thus, this finding provides an alternative ground for the reduction of the construction-related costs.

Staff finds that the reduction is correct as a matter of law. Local bond funds used by the claimant are offsetting revenues that should have been identified and deducted from the reimbursement claims. Article XIII B, section 6 must be read in light of articles XIII A and B of the California Constitution, and requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.⁶⁰ Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes" as alleged by the claimant, and the repayment

⁵⁸ Exhibit A, IRC, page 93 (Parameters and Guidelines).

⁵⁹ Exhibit A, IRC, pages 15, 30, 58 (Final Audit Report), and 64 (Final Audit Report).

⁶⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

of those bond funds are not considered “appropriations subject to limitation.” School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.⁶¹

Conclusion

Staff finds that the audit reductions are correct as a matter of law and the Controller’s recalculations not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

⁶¹ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

<p>IN RE INCORRECT REDUCTION CLAIM</p> <p>Education Code Section 51225.3</p> <p>Statutes 1983, Chapter 498</p> <p>Fiscal Years 2008-2009 and 2009-2010</p> <p>Filed on June 8, 2017</p> <p>Grossmont Union High School District, Claimant</p>	<p>Case No: 16-4435-I-56</p> <p><i>Graduation Requirements</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted November 22, 2019)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on November 22, 2019. [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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of amended reimbursement claims filed by the Grossmont Union High School District (claimant) for the *Graduation Requirements* program for fiscal years 2008-2009 and 2009-2010 (audit period). The *Graduation Requirements* program increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences. The Controller found that of the \$21,221,594 of costs incurred during the audit period, only \$5,635,762 is allowable (minus a \$10,000 late-filing penalty).⁶²

The Commission finds that the IRC was timely filed pursuant to the Commission's regulations, and that the Controller timely initiated the audit for the fiscal year 2009-2010 claim and timely completed the audit for all fiscal years pursuant to Government Code section 17558.5.

The Commission finds that the Controller's reduction of all costs for construction and renovation of science classrooms and laboratories in Finding 1 (totaling \$29,633,952 plus related indirect costs) is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.⁶³ Acquisition of additional space and conducting new science classes, providing that space is lacking in existing facilities is reimbursable but "only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities."⁶⁴ To claim costs for any acquisition of additional space or construction of new science classrooms and laboratories, the Parameters and Guidelines require a claimant to retain documentation showing the increased units of science course enrollments due to the mandate, certification by the Board finding that "no facilities existed to reasonably accommodate the increased enrollment for the additional science course required" by the test claim statute, and documents to show that "additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment."⁶⁵ The claimant did not comply with these requirements. Instead, the documentation in the record shows that the claimant's governing board decided to construct new science classrooms and laboratories in order to modernize school facilities in accordance with its deferred maintenance plan and to address

⁶² Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). Although only \$14,816,975 was claimed in the reimbursement claims, the Controller, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, first identified total costs for science and laboratory construction costs. The Controller found that gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, for a net of \$21,221,594 costs incurred. See Exhibit A, page 48.

⁶³ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

⁶⁴ Exhibit A, IRC, pages 88 (Parameters and Guidelines).

⁶⁵ Exhibit A, IRC, page 92 (Parameters and Guidelines).

overall, increased high school enrollment growth. Moreover, the resolutions adopted by the claimant's governing board in 2008 (about five years *after* the board approved the renovation and construction of science classrooms and laboratories) in an attempt to connect the construction costs to the *Graduation Requirements* mandate, do not comply with the documentation requirements in the Parameters and Guidelines, and conflict with the original reasons stated for the construction. The Sacramento County Superior Court held that the Parameters and Guidelines for the *Graduation Requirements* program require that the claimant's documentation "support a finding that, *before approving* the science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont science facilities and a determination that the facilities could not reasonably accommodate increased enrollment *for the additional science course required by Education Code section 51225.3.*"⁶⁶ The claimant, the Commission and the Controller were parties to the *Graduation Requirements* case and under principles of collateral estoppel, are bound by the court's decision for this IRC.⁶⁷

With respect to Finding 2, the Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable. The Commission finds that this reduction is correct as a matter of law. The claimant did not provide supporting documentation to show the increased units of science course enrollments due to the test claim statute, as required by the Parameters and Guidelines for these purchases.

The Controller also reduced \$56,208 of costs incurred for materials and supplies for the audit period because the claimant overstated costs by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure as required by the Parameters and Guidelines. Section VIII. of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the claimant has documentation of increased units of science course enrollments due to the mandated additional science course.⁶⁸ The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate without evidence to support that number. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

The Commission further finds that the Controller's recalculation of costs for materials and supplies is not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support the 50 percent incremental increase in enrollment, the Controller

⁶⁶ Exhibit X, page 24. (*San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter). Emphasis added.

⁶⁷ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880. Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.

⁶⁸ Exhibit A, IRC, page 92 (Parameters and Guidelines).

recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction. The recalculation divides the increased number of science classes identified by the total number of science class offerings for the fiscal year, which resulted in an incremental increase of 40.14 percent for 2008-2009 and 47 percent for 2009-2010.⁶⁹ The claimant provides no evidence or documentation to show that the Controller's recalculation of increased costs is incorrect or arbitrary, capricious, or entirely lacking in evidentiary support.

Finally, in Finding 4, the Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H, which funded 50 percent of the total cost of construction and related materials and supplies discussed in Findings 1 and 2. The other 50 percent was funded by state matching funds. The Commission finds that local bond funds used by the claimant are offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's finding in this respect is correct as a matter of law. Article XIII B, section 6 must be read in light of articles XIII A and B of the California Constitution, and requires the state to provide reimbursement only when a local government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B.⁷⁰ Article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not "proceeds of taxes" as alleged by the claimant, and the repayment of those bond funds are not considered "appropriations subject to limitation." School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.⁷¹

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

07/28/2009 Budget Act appropriation of \$1,000 for the Graduation Requirements Program⁷²

02/02/2010 The claimant signed the reimbursement claim for fiscal year 2008-2009.⁷³

01/11/2011 The claimant signed the amended reimbursement claim for fiscal year 2008-2009.⁷⁴

01/19/2011 The claimant signed the reimbursement claim for fiscal year 2009-2010.⁷⁵

⁶⁹ Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

⁷⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

⁷¹ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

⁷² Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5).

⁷³ Exhibit A, IRC, page 1404.

⁷⁴ Exhibit A, IRC, page 1485.

⁷⁵ Exhibit A, IRC, page 2592 (2009-2010 claim).

- 11/29/2011 The Controller paid the claimant \$10 for its fiscal year 2009-2010 claim.⁷⁶
- 01/09/2012 The claimant signed the amended reimbursement claim for fiscal year 2009-2010.⁷⁷
- 06/21/2016 The Controller issued the Final Audit Report.⁷⁸
- 06/08/2017 The claimant filed the IRC.⁷⁹
- 09/20/2017 The Controller filed late comments on the IRC.⁸⁰
- 08/28/2019 Commission staff issued the Draft Proposed Decision.⁸¹

II. Background

A. The Graduation Requirements Program

On January 22, 1987, the Commission adopted a statement of decision approving the *Graduation Requirements* test claim on Education Code section 51225.3, as added by Statutes 1983, chapter 498. This test claim statute increased the number of science courses required for high school graduation from one course to two courses in biological and physical sciences. The Commission determined that the test claim statute constitutes a reimbursable state-mandated program by requiring students, beginning with the 1986-1987 school year, to complete at least one additional course in biological or physical science before receiving a high school diploma.

The Commission adopted the Parameters and Guidelines in March 1988, and has since amended the Parameters and Guidelines several times. The last amendment was adopted in November 2008 and corrected in December 2008 for costs incurred beginning January 1, 2005.⁸² The Parameters and Guidelines adopted in 2008 govern the reimbursement claims at issue in this case, and authorize reimbursement for the following activities

⁷⁶ Exhibit A, IRC, page 83 (Payment Check).

⁷⁷ Exhibit A, IRC, page 2601 (2009-2010 Amended Claim).

⁷⁸ Exhibit A, IRC, page 41 (Final Audit Report).

⁷⁹ Exhibit A, IRC, page 1.

⁸⁰ Exhibit B, Controller's Late Comments on the IRC, page 1. Note that Government Code section 17553(d) states "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and Draft Proposed Decision.

⁸¹ Exhibit C, Draft Proposed Decision.

⁸² Exhibit A, IRC, page 86 (Parameters and Guidelines). The 2008 Parameters and Guidelines added a reasonable reimbursement methodology for claiming teacher salary costs, clarified the offsetting savings and revenues relating to teacher salary costs (which are not at issue in this IRC); and clarified the activities of supplying the new science class, acquiring and remodeling additional space, and acquiring additional equipment, which may be claimed using the actual cost claiming method.

- A. Acquisition (planning, design, land, demolition, building construction, fixtures, and facility rental) of additional space necessary for the mandated additional year of science instruction, providing that space is lacking in existing facilities. However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that the space would not have been otherwise acquired due to increases in the number of students enrolling in high school and that it was not feasible, or would be more expensive to acquire space by remodeling existing facilities.⁸³
- B. Acquisition (planning, purchasing, and placement) of additional equipment and furniture necessary for the mandated additional year of science instruction.
- C. Remodeling (planning, design, demolition, building construction, fixtures, and interim facility rental) existing space required for the mandated additional year of science instruction essential to maintaining a level of instruction sufficient to meet college admission requirements.
- D. Increased cost to school district for staffing the new science class mandated. Reimbursement for this activity is based on the reasonable reimbursement methodology identified in Section XII of these parameters and guidelines.
Reimbursement is not required for other (non-classroom teacher) science instruction personnel (e.g. laboratory assistants).
- E. Increased costs for supplying the new science class mandated with science instructional materials (textbooks, materials, and supplies).⁸⁴

Component A (acquisition of additional space, which includes building construction) and component E (materials and supplies) are at issue in this IRC.

Except for the increased costs for staffing the new science class (which is reimbursed under a reasonable reimbursement methodology), Section V. of the Parameters and Guidelines requires claimants to support all actual costs claimed with supporting documentation:

⁸³ Statutes 1990, chapter 459, section 4(a) required the Commission to amend the Parameters and Guidelines to add the last sentence in this paragraph, as follows:

The Commission on State Mandates shall amend the parameters and guidelines for Chapter 498 of the Statutes of 1983 (graduation requirements) to specify that costs related to the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.

The Commission amended the Parameters and Guidelines on January 24, 1991.

⁸⁴ Exhibit A, IRC, page 88 (Parameters and Guidelines).

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.⁸⁵

Section VIII. of the Parameters and Guidelines lists the record retention requirements and further defines supporting documentation that claimants are expected to retain when claiming actual costs

For this program, supporting documentation shall include the following

1. Documentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.
2. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.
3. Certification by the Board that an analysis of all appropriate science facilities within the district was conducted, and a determination made that no such facilities existed to reasonably accommodate increased enrollment for the additional science courses required by the enactment of Education Code Section 51225.3. To reasonably accommodate includes
 - a. Adjusting attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the district.
 - b. Taking advantage of other available secondary school science facilities that are within a secure walking distance of the school.
4. Documentation that the additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.
5. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.⁸⁶

Commencing in fiscal year 2012-2013, the claimant elected to participate in the block grant program pursuant to Government Code section 17581.6, instead of filing annual reimbursement

⁸⁵ Exhibit A, IRC, page 87 (Parameters and Guidelines).

⁸⁶ Exhibit A, IRC, page 92 (Parameters and Guidelines). The last two sentences (#4 and #5) were added to comply with Statutes 1990, chapter 459.

claims for mandated programs included in the block grant. The *Graduation Requirements* program was included in the block grant program beginning in fiscal year 2013-2014.⁸⁷

B. The Graduation Requirements Litigation

In September 2003, the claimant and several other school districts filed a petition for a writ of mandate against the Controller and the Commission over disputed IRCs under the *Graduate Requirements* program. The claimant alleged that the Controller erred in reducing reimbursement claims for fiscal years 1994-1995 and 1995-1996 for costs claimed to construct and remodel science laboratory classrooms at four of its schools. The court upheld the Commission's decision, which found that the Controller's reductions were correct because the claimant's documentation did not comply with the Parameters and Guidelines.⁸⁸ The court said

As the Commission found, Grossmont's documentation does not satisfy the certification requirement of Section IX.C of the parameters and guidelines. The documents submitted by Grossmont, other than the declaration of Christina Becker [Grossmont's Director of Facilities Planning], do not support a finding that, before approving science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont's science facilities and a determination that the facilities could not reasonably accommodate increased enrollment for the additional science course required by Education Code section 51225.3. The declaration of Ms. Becker attempts to conduct the required analysis and make the required determination four to five years after the science laboratory classroom construction and remodeling was completed. In addition, if the Grossmont board could properly delegate its certification obligation to Ms. Becker (a matter seriously in doubt), Grossmont has provided no evidence that its board made such a delegation.⁸⁹

C. The Controller's Audit and Summary of the Issues

The Controller states that it commenced the audit of fiscal years 2008-2009 and 2009-2010 (the audit period) on January 6, 2015, the date of the audit notification letter.⁹⁰ The audit concludes that of the \$21,221,594 of costs incurred for the audit period, \$5,645,762 is allowable (minus a \$10,000 late-filing penalty).⁹¹

⁸⁷ Exhibit A, IRC, pages 52, 65 (Final Audit Report). The *Graduation Requirements* mandate was added to the block grant by Statutes 2013, chapter 48.

⁸⁸ Exhibit X, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter).

⁸⁹ Exhibit X, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter, pages 24-25).

⁹⁰ Exhibit B, Controller's Late Comments on the IRC, page 12. Exhibit A, IRC, page 11.

⁹¹ Exhibit A, IRC, pages 41, 44, 46 (Final Audit Report). The gross costs incurred were \$36,469,059, less \$15,247,465 in offsetting revenue, or \$21,221,594 in net costs incurred. See Exhibit A, page 48.

The Final Audit Report consists of four main findings, three of which are contested by the claimant. The dispute involves the Controller’s finding that the claimant claimed unallowable costs for construction of science classrooms and laboratories (Finding 1), did not provide documentation compliant with the Parameters and Guidelines for the costs claimed for textbooks, materials, and supplies (Finding 2), and did not report offsetting revenues from local school-construction bond proceeds (Finding 4).⁹²

1. Finding 1, unallowable costs for acquiring additional space for science classrooms

The District claimed costs to acquire additional space by constructing science classrooms and laboratories under Section V.A. of the Parameters and Guidelines. According to the audit, the acquisition of science classroom and laboratory space was funded by a local school construction bond and state matching funds, totaling \$29,633,952, plus related indirect costs.⁹³ The claimant did not claim all of these costs.⁹⁴ Rather, the claimant first separated for each school site the science-related acquisition costs from the total project costs (that included non-science facilities financed by the same funds). The science classroom and laboratory construction costs were then reduced by 50 percent to account for the state matching funds. According to the claimant, “since the mandate doubled the number of science courses, the district . . . reduced the unmatched amount by another 50% to account for the preexisting requirement for science courses.”⁹⁵ The claimant states that it requested reimbursement for about 25 percent of the total construction costs, which allegedly represents the incremental increase in science course enrollment resulting from the additional year of science mandated by the test claim statute.⁹⁶

The Controller determined that the claimant did not correctly separately identify the total science and laboratory construction costs and the local school construction bond funds (which the Controller found to be offsetting revenue in Finding 4) in its reimbursement claims.⁹⁷ Thus, to clarify the presentation of the findings, and to report total costs and offsetting revenues consistent with the Parameters and Guidelines and claiming instructions, the Controller first identified total costs for science and laboratory construction costs.⁹⁸ The Controller reduced the

⁹² The claimant does not dispute the following findings of the Controller: understated teacher salary costs (Finding 3); ineligible construction costs for non-science classrooms (part of Finding 1); and a reduction of \$1,101 for textbooks, materials and supplies (part of Finding 2). (Exhibit A, IRC, pages 29-30, 32). These findings are not analyzed in this Decision.

⁹³ Exhibit A, IRC, pages 49 (Final Audit Report).

⁹⁴ Exhibit A, IRC, pages 18-19. The claimant states it claimed \$14,816,975 for the audit period and “the audit report doubles the claimed amounts for purposes of applying an ‘incremental increased costs’ calculation”

⁹⁵ Exhibit A, IRC, page 26.

⁹⁶ Exhibit A, IRC, pages 18, 26, 49 (Final Audit Report).

⁹⁷ Exhibit A, IRC, page 55 (Final Audit Report).

⁹⁸ Exhibit A, IRC, page 55 (Final Audit Report).

total costs of \$29,633,952, plus related indirect costs, for science classroom and laboratory construction on several grounds.⁹⁹

First, the Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to demonstrate that additional space was required as a result of the test claim statute. This resulted in a reduction of *all* direct and related indirect costs incurred for construction (\$29,633,952, plus related indirect costs).¹⁰⁰ Specifically, the Controller found that the claimant did not provide documentation “showing that it analyzed all science facilities and determined, based on that analysis, that no facility existed that could reasonably accommodate the increased enrollment for the additional science class.”¹⁰¹ The Controller also found that the claimant did not provide the specific documentation required by the Parameters and Guidelines to support that the costs claimed for new science classroom construction would not have been otherwise acquired due to the increase in high school enrollment.¹⁰²

In addition, the Controller found that the claimant did not provide any documentation to support its calculation of the incremental increase in science course enrollments *as a result* of the mandate. As stated above, the claimant used 50 percent to account for the incremental increase in science course enrollments.¹⁰³ Due to the claimant’s lack of documentation, the Controller recalculated the percentage using the “One-Quarter Class Load” formula, in which the increased number of science classes identified is divided by the total number of science class offerings for the fiscal year. Thus, the Controller calculated the incremental increase related to the mandate at 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010, which, on this basis alone, resulted in a reduction of \$2,959,887 (out of the total costs of \$29,633,952 for construction).¹⁰⁴

Finally, the District incurred almost \$4.8 million for science classroom construction at its Helix Charter High School. The Controller found that these costs are not reimbursable because charter schools are not eligible claimants under the Parameters and Guidelines.¹⁰⁵ This finding alone resulted in a reduction of \$4,798,802 (out of the total costs of \$29,633,952 for construction).¹⁰⁶

2. Finding 2, overstated costs for textbooks, materials and supplies

For fiscal year 2009-2010, \$860,978 of costs were incurred for materials and supplies to furnish and equip the new science classrooms. These costs were incurred as part of the science

⁹⁹ Exhibit A, IRC, page 49 (Final Audit Report).

¹⁰⁰ Exhibit A, IRC, page 49 (Final Audit Report).

¹⁰¹ Exhibit A, IRC, page 50 (Final Audit Report).

¹⁰² Exhibit A, IRC, page 50 (Final Audit Report).

¹⁰³ Exhibit A, IRC, pages 25-26.

¹⁰⁴ Exhibit A, IRC, pages 49, 50, 58 (Final Audit Report).

¹⁰⁵ Exhibit A, IRC, page 51 (Final Audit Report).

¹⁰⁶ The Final Audit Report makes it clear that the total adjustments were limited to the total amount of construction costs incurred; \$29,633,952 (only half of which was actually claimed in the reimbursement claims) plus related indirect costs. (Exhibit A, IRC, page 49, fn. 1.)

construction costs described in Finding 1 and thus, were funded in the same manner as the construction costs.¹⁰⁷ The Controller found that all construction-related costs for materials and supplies totaling \$860,978, plus related indirect costs, is unallowable.¹⁰⁸ Consistent with Finding 1, the Controller found that the claimant did not comply with the documentation requirements in the Parameters and Guidelines to support the science classroom material and supply costs.

In addition, the Controller found that the claimant used an unsupported percentage to represent the incremental increase in enrollment resulting from the mandate (50 percent) to determine the costs for materials and supplies for fiscal years 2008-2009 and 2009-2010. As in Finding 1, the Controller recalculated the incremental increase in enrollment as a result of the mandate by using the “One-Quarter Class Load” formula, in which the increased number of science classes identified is divided by the total number of science class offerings for the fiscal year. Using this formula, the Controller calculated the incremental increase in enrollment related to the mandate at 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010, for an additional reduction of \$56,208.¹⁰⁹

3. Finding 4, unreported offsetting revenues

As indicated in Findings 1 and 2 above, the Controller reduced all costs to construct science classrooms and laboratories (\$29,633,952 plus related indirect costs), and all costs incurred for construction-related materials and supplies in fiscal year 2009-2010 to furnish and equip the new science classrooms (\$860,978), for a total reduction of \$30,494,930 for construction-related expenses, because the claimant did not support its claim with documentation required by the Parameters and Guidelines. Fifty percent of the incurred costs (\$14,816,975 for construction, and \$430,489 for materials and supplies, for a total of \$15,247,465) were funded by local school construction bonds received under Proposition H, approved by the District’s voters in 2004, and 50 percent by state matching funds.¹¹⁰

As a separate ground for reduction of these costs, the Controller found that the claimant failed to report and deduct as offsetting revenues the local school-construction bond revenues received under Proposition H from the total cost of construction and related materials and supplies. The Controller concluded that the 50 percent funded by local restricted bond funds (\$15,247,465) and incurred during the audit period should have been fully offset against the total costs incurred (\$30,494,930).¹¹¹ Thus, “[n]otwithstanding the audit adjustments in Finding 1 and Finding 2, the costs net of State bonds for Component A (\$14,816,975) and a portion of Component E

¹⁰⁷ Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

¹⁰⁸ Exhibit A, IRC, pages 57-58 (Final Audit Report). The total audit reduction for 2009-2010 was \$869,918 (plus indirect costs) because unallowable costs were limited to the costs claimed. Exhibit A, IRC, page 57 (Final Audit Report).

¹⁰⁹ Exhibit A, IRC, page 58 (Final Audit Report).

¹¹⁰ Exhibit A, IRC, pages 18, 30, 32-33, 58 and 64 (Final Audit Report).

¹¹¹ Exhibit A, IRC, page 64 (Final Audit Report).

(\$430,489) are still zero, as the remainder was fully funded with local restricted [Proposition H bond] funds.”¹¹²

III. Positions of the Parties

A. Grossmont Union High School District

The claimant contends that the Controller incorrectly reduced the costs claimed and requests that the Commission direct the Controller to reinstate the costs reduced.

The claimant first asserts that the audit of the reimbursement claim for fiscal year 2009-2010 was not timely because the Controller made a \$10 payment to the claimant on November 29, 2011, and the Controller initiated the audit more than three years later, by an audit conference letter dated January 6, 2015.¹¹³ The claimant argues that “no payment was made for the original or amended FY 2009-10 claim in the fiscal year for which the claim was made” so the audit findings for 2009-2010 are void for lack of jurisdiction.¹¹⁴ And the claimant notes, the application of “initial” payments to both an original and amended claim may be an issue of first impression for the Commission.¹¹⁵

The claimant also argues that the Controller either used the wrong standard for the audit or has misconstrued the actual nature and scope of the audit because the Controller did not conduct a performance audit, and the findings were not based on the legal standard of reasonableness of the costs claimed. Government Code section 17561(d) authorizes the Controller to reduce claims the Controller deems unreasonable or excessive. Adjustments based on lack of documentation are not adjustments based on excessive or unreasonable costs. The standard in Government Code section 12410 describes the Controller’s duties generally and is not specific to audits of mandate reimbursement claims. And the claimant asserts, if Government Code section 12410 is the standard, the Controller has not shown that the audit adjustments were made in accordance with this standard. As to Generally Accepted Government Auditing (or Yellow Book) standards, the Controller does not cite any law, agreement or policy that makes these standards applicable to audits of state-mandated costs, and the audit report makes no findings based on Yellow Book criteria. Rather, the Controller conducted a documentation audit.¹¹⁶

The claimant also states that the Controller should have specified in the audit report the type of corroborated contemporaneous documentation that would have met the evidentiary standard and may be missing here. The audit report does not identify how the specific documentation the district provided does not comply with the Parameters and Guidelines standards, and does not cite any other legally enforceable standards.¹¹⁷

¹¹² Exhibit A, IRC, page 64 (Final Audit Report).

¹¹³ Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

¹¹⁴ Exhibit A, IRC, page 11.

¹¹⁵ Exhibit A, IRC, page 11.

¹¹⁶ Exhibit A, IRC, pages 12-16.

¹¹⁷ Exhibit A, IRC, pages 16-17.

Regarding audit Finding 1, the claimant asserts that the audit report misstates the amounts actually claimed. According to the claimant, its amended claims totaled \$4,307,034 for fiscal year 2008-2009 and \$10,509,941 for fiscal year 2009-2010, but the audit report incorrectly reports about \$15 million never claimed by the District.¹¹⁸ Second, the claimant disputes the finding that the submitted documentation is insufficient to support the costs claimed for constructing or remodeling science classrooms because the “claimed costs are supported by thousands of pages of documentation included in the attached copy of the annual claims ... that meet the requirements for reporting costs of the parameters and guidelines.”¹¹⁹

Regarding the documentation demonstrating the claimant’s outdated facilities, the claimant states that the mandate has been in place since 1984 and it is reasonable to expect the need for upgrades and replacement over time. Even if the costs were perceived to be just for upgrades or replacement, the costs would still be subject to mandate reimbursement because the increased requirement for science courses is a continuing and not a one-time mandate. Further, the documentation relevant to whether the costs are related to the increased science curriculum were submitted in Exhibit E with the IRC, which are corroborated contemporaneous business records required by the Parameters and Guidelines. The claimant also states that whether remodeling existing facilities was feasible or less expensive than constructing additional space is answered in the facility study of each campus. In the absence of government standards regarding its documentation, the claimant must retroactively rely on documents produced in the regular course of business.¹²⁰

The claimant also objects to the Controller’s formula to determine the increased incremental cost of the mandate, which the claimant set at 50 percent. The claimant states that there is no legal requirement to use the Controller’s formula, nor is it in the Parameters and Guidelines or claiming instructions for this mandate. The claimant argues that if the Controller applies this methodology to this audit, it “would constitute a standard of general application without appropriate state agency rulemaking and is therefore unenforceable.”¹²¹ The claimant calls its claiming method a “double reduction to total costs.” Construction costs were funded by a local bond that were matched by state funds. The claimant determined reimbursable costs by first separating in each school site the science-related costs from the total project costs. The costs were then reduced by 50 percent to eliminate the costs that would be matched by state funds. Since the mandate doubled the number of science courses, the claimant reduced the unmatched amount by another 50 percent to account for the preexisting requirement for science courses.¹²² The claimant further states that the formula the Controller used is not supported by fact and is contrary to the Parameters and Guidelines because the annual claims report construction and acquisition costs in the year incurred, but the facilities and equipment are used for many years.¹²³

¹¹⁸ Exhibit A, IRC, pages 18-19.

¹¹⁹ Exhibit A, IRC, page 20.

¹²⁰ Exhibit A, IRC, pages 23-24.

¹²¹ Exhibit A, IRC, page 25.

¹²² Exhibit A, IRC, page 26.

¹²³ Exhibit A, IRC, page 27.

Regarding audit Finding 2, the claimant again objects to the presentation of the claimed amounts, stating that it actually claimed \$20,349 for fiscal year 2008-2009 and \$439,429 for fiscal year 2009-2010, but the audit report doubles the amount claimed for 2009-2010 in order to apply the offsetting savings in audit Finding 4. The claimed costs were for fixtures to equip the additional science classrooms and labs, but were disallowed for the same reasons in Finding 1, because the claimant's documentation does not comply with the Parameters and Guidelines. So the claimant's response is the same as for Finding 1.¹²⁴ And as with Finding 1, the claimant characterizes its claims as a "double reduction to total costs" and argues that there is no legal requirement to use the Controller's formula or incremental rate method, which the claimant calls unnecessary and irrelevant.¹²⁵

For Finding 4, the claimant objects to the Controller's finding of unreported offsetting revenue of over \$15 million because the new science classrooms and labs were constructed or remodeled using local restricted funds, which were from the proceeds of voter-approved Proposition H general obligation bonds for school construction. The claimant states the local bonds were accounted for by the District as required by state school accounting requirements, but the audit report does not indicate how local bond revenue is mandate reimbursement. The claimant argues that local bond funds are proceeds from taxes like other property taxes (that are used for general fund expenses), and that the Draft Audit Report does not state a legal difference.¹²⁶

The claimant also argues that the Controller's finding regarding the full offset funded by local bond revenue is contrary to the Parameters and Guidelines for the following reasons: First, the local bond revenue is not offsetting revenue that results from the law that established the mandate. Second, the Parameters and Guidelines state that claims for construction costs shall be reduced by state bond funds, but not local bond funds. Third, the local bond fund revenue does not fall into the other categories of offsetting revenue enumerated in the Parameters and Guidelines, such as federal or state block grant, a state restricted funding source for science classrooms or labs, etc.. Fourth, local bond fund revenue is not "reimbursement from any source" because it has to be repaid through local property taxes and a reimbursement that must be repaid is not a reimbursement. And the audit report does not state a legal basis that would allow local property tax proceeds to be considered reimbursement of construction costs. Fifth, although bond proceeds are required to be accounted for in restricted accounts, the account code used for bond proceeds is not determinative of the mandate reimbursement issue.¹²⁷

B. State Controller's Office

The Controller maintains that the audit reductions are correct and that the IRC should be denied.

The Controller states that the audit was timely because it was commenced within three years of the claimant's submission of an amended claim on January 24, 2012, that the Controller received on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the

¹²⁴ Exhibit A, IRC, pages 30-31.

¹²⁵ Exhibit A, IRC, pages 31-32.

¹²⁶ Exhibit A, IRC, page 66 (Final Audit Report).

¹²⁷ Exhibit A, IRC, pages 36-37.

Controller argues that the audit was timely initiated within the three-year deadline of Government Code section 17558.5.¹²⁸

The Controller disagrees that it used an incorrect standard or misconstrued the nature and scope of the audit. The Controller conducted a performance audit in accordance with generally accepted government audit standards, and appropriately stated that neither the efficiency or effectiveness of program operations were audited, nor were the claimant's financial statements. The Controller conducted a program audit to assess the eligibility of program costs and whether the costs claimed comply with the program's Parameters and Guidelines.

The Controller also disagrees that specific documentation standards for the program have not been identified. Rather, the Controller asserts, they are found in Section V. and Section VIII. of the Parameters and Guidelines.

Regarding the presentation of the audit findings, the Controller states that the claimant's methodology reverses the order of the claiming instructions by reducing costs by revenues first, and then determining the incremental increase related to the mandate, so that costs funded by state bonds are not reported on the claim forms. The Controller states that the separate identification of costs and revenues has no impact on total claimed costs. "We believe that our revised presentation accurately reflects net costs and does not mislead the public."¹²⁹

The disputed audit findings (Findings 1, 2, and 4) are summarized above in the Background and are more fully analyzed in the Discussion below. The Controller stands by its audit findings.

IV. Discussion

Government Code section 17561(d) 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 if the Controller determines that the claim 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 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 of the California Constitution.¹³⁰ 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

¹²⁸ Exhibit B, Controller's Late Comments on the IRC, page 12.

¹²⁹ Exhibit B, Controller's Late Comments on the IRC, page 13.

¹³⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹³¹

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.¹³² Under this standard, the courts have found that

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support....” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]’ ”¹³³

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹³⁴ In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) 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.¹³⁵

A. The claimant timely filed the IRC within three years from the date the claimant received from the Controller a final audit report, letter, or other written notice of adjustment to a reimbursement claim.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558.5(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The claimant may then file an IRC with the Commission “pursuant to regulations adopted by the Commission” contending that the

¹³¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹³² *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (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.

¹³³ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹³⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹³⁵ 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

Controller's reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.¹³⁶

In this case, the Final Audit Report, dated June 21, 2016, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).¹³⁷

At the time the Final Audit Report was issued, the Commission's regulations required that an IRC be timely filed "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim" in order to be complete.¹³⁸ Because the claimant filed the IRC on June 8, 2017,¹³⁹ within three years of date of the Final Audit Report, the IRC was timely filed.

B. The Controller timely initiated the audit of the 2009-2010 reimbursement claim and timely completed the audit of all claims by meeting the statutory deadlines imposed by Government Code section 17558.5.

Government Code section 17558.5(a) requires the Controller to initiate an audit no later than three years after the date the reimbursement claim is filed or last amended, whichever is later. However, section 17558.5 also provides that if no funds are appropriated or no payment is made "to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."¹⁴⁰ Section 17558.5 also requires the audit to be completed no later than two years after it is commenced.¹⁴¹

1. The audit of the 2009-2010 reimbursement claim was timely initiated.

The claimant argues that the audit of the 2009-2010 reimbursement claim was not timely initiated and is therefore void because the Controller made a \$10 payment to the claimant on

¹³⁶ Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

¹³⁷ Exhibit A, IRC, page 41 (Final Audit Report).

¹³⁸ Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that "All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met."

¹³⁹ Exhibit A, IRC, page 1.

¹⁴⁰ Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

¹⁴¹ Government Code section 17558.5(a) (as amended, Stats. 2004, ch.890).

November 29, 2011, and the Controller initiated the audit more than three years later, by an audit conference letter dated January 6, 2015.¹⁴²

The Controller acknowledges the \$10 payment in the Final Audit Report,¹⁴³ but asserts that the audit was timely because it was commenced within three years of the claimant's submission of an amended claim, which the Controller received on January 26, 2012. Because the audit notification letter was dated January 6, 2015, the Controller argues that the audit of the 2009-2010 amended claim was timely initiated within the three-year deadline of Government Code section 17558.5.¹⁴⁴

The Commission finds that the audit of the 2009-2010 amended reimbursement claim was timely initiated.

Government Code section 17558.5(a) requires the Controller to initiate the audit no later than three years from the date the reimbursement claim is filed or last amended, whichever is later. The statute further states "However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."

In this case, the reimbursement claim for fiscal year 2009-2010 was signed on January 19, 2011,¹⁴⁵ and submitted to the Controller "by the due date in Government Code section 17560," or by February 15, 2011.¹⁴⁶ The claimant states that the reimbursement claim was filed January 26, 2011.¹⁴⁷ The Legislature deferred payment for the *Graduation Requirements* program in fiscal year 2009-2010 by appropriating \$1,000 in the State Budget Act for the program.¹⁴⁸ From that appropriation, the Controller paid the claimant \$10 for the *Graduation Requirements* program for fiscal year 2009-2010 on November 29, 2011, with a "prorated balance due of \$2,560,920.00."¹⁴⁹

In 2011, the Fourth District Court of Appeal in *California School Boards Assoc. v. State of California*, concluded that "the Legislature's practice of nominal funding of state mandates [by

¹⁴² Exhibit A, IRC, pages 11 and 77 (Audit Entrance Conference Letter).

¹⁴³ Exhibit A, IRC, page 41, 44, 46 (Final Audit Report).

¹⁴⁴ Exhibit B, Controller's Late Comments on the IRC, page 12.

¹⁴⁵ Exhibit A, IRC, page 2592 (2009-2010 Claim).

¹⁴⁶ Exhibit A, IRC, page 48 (Final Audit Report, page 5, fn. 3); Exhibit B, Controller's Late Comments on the IRC, page 3, footnote 2. Government Code section 17560(a) states: "Reimbursement for state-mandated costs may be claimed as follows: (a) A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year."

¹⁴⁷ Exhibit A, IRC, page 11.

¹⁴⁸ Statutes 2009, 4th Extraordinary Session, chapter 1, Item 6110-295-0001, schedule (5), effective July 28, 2009.

¹⁴⁹ Exhibit A, IRC, page 83 (Payment Check).

appropriating \$1,000] with the intention to pay the mandate in full with interest at an unspecified time *does not constitute a funded mandate* under the applicable constitutional and statutory provisions.”¹⁵⁰ Thus, the nominal \$1,000 appropriation, and the \$10 payment made under the authority of that nominal appropriation, is not considered a constitutionally sufficient appropriation or payment to fund the program and essentially amounts to no appropriation or payment at all. The Final Audit Report dated June 21, 2016, states that the allowable amount to be reimbursed will be paid “contingent upon available appropriations.”¹⁵¹ Therefore, the sentence in Government Code section 17558.5(a) that states that the time to initiate an audit shall commence to run from the date of initial payment of the claim does not apply in this case.

Rather, the first sentence in Government Code section 17558.5(a) controls and requires the Controller to initiate the audit no later than three years from the date the reimbursement claim is filed *or last amended*. The claimant filed an amended 2009-2010 claim with the Controller’s Office on January 26, 2012.¹⁵² The Controller audited the amended reimbursement claim, and not the original-filed reimbursement claim.¹⁵³ Thus, the Controller had three years from the date the amended 2009-2010 claim was filed, or until January 26, 2015, to initiate the audit of that claim.

The audit notification letter is dated January 6, 2015, and the letter acknowledged that an auditor contacted the claimant regarding the audit on December 18, 2014.¹⁵⁴ Thus, the claimant was on notice of the audit as early as December 18, 2014, although the official audit notification is dated January 6, 2015. Regardless of which date is considered the audit initiation date, the claimant received notice of the audit within three years of filing the amended claim on January 26, 2012.¹⁵⁵

Accordingly, the Commission finds that the audit of the 2009-2010 amended reimbursement claim was timely initiated.

2. The audit of all claims was timely completed.

Government Code section 17558.5(a) also provides that an audit must be completed “not later than two years after the date that the audit is commenced.”¹⁵⁶ As indicated above, the audit was initiated on either December 18, 2014, when the claimant was first contacted regarding the audit,

¹⁵⁰ *California School Boards Assoc. v. State of California* (2011) 192 Cal.App.4th 770, 791. Emphasis added.

¹⁵¹ Exhibit A, IRC, page 44.

¹⁵² Exhibit B, Controller’s Late Comments on the IRC, pages 12, 23 (2009-2010 amended claim, date-stamped “Jan. 26, 2012”).

¹⁵³ Exhibit A, IRC, page 48 (Final Audit Report, page 5, fn. 3).

¹⁵⁴ Exhibit A, IRC, page 77 (Audit Entrance Conference Letter).

¹⁵⁵ Exhibit B, Controller’s Late Comments on the IRC, pages 12, 23 (2009-2010 Amended Claim).

¹⁵⁶ Government Code section 17558.5, (as last amended by Stats. 2004, ch. 890).

or on January 6, 2015, the date of the audit notification letter. Regardless of which is considered the audit initiation date, the audit was timely completed.

An audit is completed when the Controller issues the final audit report to the claimant, which constitutes the Controller's final determination on the claims and provides the claimant with written notice of the claim components adjusted, the amounts adjusted, and the reasons for the adjustment.¹⁵⁷ This notice enables the claimant to file an IRC. Here, the Final Audit Report, which includes these components, is dated June 21, 2016,¹⁵⁸ well before a two-year completion deadline of either December 18, 2016, or January 6, 2017. Therefore, the Commission finds that the Controller's audit of the reimbursement claims in the audit period was timely completed in accordance with Government Code section 17558.5.

C. The Controller's reduction in Finding 1 of costs incurred to construct science classrooms and laboratories is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines.

Before the list of reimbursable activities, Section V. of the Parameters and Guidelines states that a reimbursable "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate," and requires documentation to support the costs claimed.¹⁵⁹ Section V.A. of the Parameters and Guidelines then authorizes reimbursement for the acquisition of additional space, which includes costs to construct classrooms or laboratories necessary for the mandated additional year of science instruction, as follows

Acquisition (planning, design, land, demolition, building construction, fixtures, and facility rental) of additional space necessary for the mandated additional year of science instruction, providing that space is lacking in existing facilities. However, the acquisition of additional space for conducting new science classes are reimbursable only to the extent that districts can document that the space would not have been otherwise acquired due to increases in the number of students enrolling in high school and that it was not feasible, or would be more expensive to acquire space by remodeling existing facilities.¹⁶⁰

Section VIII. of the Parameters and Guidelines lists the record retention requirements and further defines supporting documentation that claimants are required to retain to show that the governing board of the school district analyzed the costs in question to determine that the district's science facilities would not reasonably accommodate the increased enrollment in science courses due to the mandate

For this program, supporting documentation shall include the following

1. Documentation of increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.

¹⁵⁷ Government Code section 17558(c).

¹⁵⁸ Exhibit A, IRC, page 41 (Final Audit Report).

¹⁵⁹ Exhibit A, IRC, page 87 (Parameters and Guidelines).

¹⁶⁰ Exhibit A, IRC, page 88 (Parameters and Guidelines).

2. Documentation of lack of appropriately configured and equipped space in existing facilities for the new courses.
3. Certification by the Board that an analysis of all appropriate science facilities within the district was conducted, and a determination made that no such facilities existed to reasonably accommodate increased enrollment for the additional science courses required by the enactment of Education Code Section 51225.3. To reasonably accommodate includes
 - a. Adjusting attendance boundaries to balance attendance between under-utilized and over-utilized secondary school facilities within the district.
 - b. Taking advantage of other available secondary school science facilities that are within a secure walking distance of the school.
4. Documentation that the additional space for conducting new science classes is required only when the space would not have otherwise been acquired due to an increase in high school enrollment.
5. Documentation that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space.¹⁶¹

According to the audit report, costs of \$29,633,952 were incurred for the audit period to construct new science classrooms and laboratory space.¹⁶² The Controller found the entire amount was unallowable because the claimant did not comply with the documentation requirements in the Parameters and Guidelines. According to the Controller, the claimant did not provide documentation that it analyzed the existing science facilities and determined that no facility existed to reasonably accommodate the increased units of science course enrollments due to the mandate, as required by the Parameters and Guidelines. Instead, the claimant simply asserted that the mandate doubled the number of science courses by law. Thus, the claimant determined the increased construction costs related to the mandate by reducing the total new science building costs by 50 percent (after reducing claims by 50 percent to account for state matching funds). Moreover, the Controller found that the claimant's documentation indicates that the construction was due to the buildings being old, the need for more modern science facilities, and overcrowding at several of the school sites due to new residential areas in the claimant's attendance boundaries.¹⁶³ Based on the claimant's documents, the Controller found that the costs for construction of science classrooms and laboratories were not incurred as a result of the mandate.

According to the claimant, the Controller's reduction is incorrect because

The mandate doubled the requirement for science labs and classrooms, but the audit report findings necessarily presume, without foundation, that at that time of

¹⁶¹ Exhibit A, IRC, page 92 (Parameters and Guidelines).

¹⁶² Exhibit A, IRC, page 50 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 14.

¹⁶³ Exhibit A, IRC, page 50 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, pages 14-15.

the new law the District could have had 200% capacity for all science courses. The audit findings would also assume that other existing (non-science) classrooms at each campus would already have been appropriately configured and equipped space for the new courses. Since the District is high school grades only, all sites are similarly configured and there is no presumption of “under-utilized” facilities. Historical boundaries are based on matching enrollment to existing facilities, so there is no reasonable presumption that any campus is under-utilized in a manner that could be relieved by adjusting attendance borders. Enrollment did not double at the time of the new mandate, or any year since, so normal enrollment growth is not a factor to the need to increase the number of classrooms and labs.¹⁶⁴

The claimant also states “[w]hile it is arguable that the number of science teachers and consumable supplies would vary directly with science classroom enrollment, it is not necessarily logical that one-time construction costs and the cost of equipment would vary directly with science classroom enrollment” since facilities and equipment are used for many years.¹⁶⁵

The claimant further argues that the costs are supported by thousands of pages of documentation included in the annual claims, and that the documentation meets the requirements of the Parameters and Guidelines.¹⁶⁶

Finally, the claimant asserts that costs for upgrades and replacement should be reimbursable because facilities age and deteriorate

The mandate has been in place since 1984 and it is reasonable to expect the need for upgrades and replacement over time either due to deterioration of the facilities or otherwise by the state-defined curriculum. This does not invalidate these costs for mandate reimbursement. Even if it is perceived that the costs are just upgrades to or replacement of existing facilities, these costs would still be subject to mandate reimbursement because of the increased requirement for science courses which is not a one-time requirement, but a continuing mandate. This is the same reason that increased science teacher staffing costs continue to be reimbursable.¹⁶⁷

The Commission finds that the Controller’s reduction of costs for construction is correct as a matter of law.

First, the claimant’s assertion that construction costs for new science classrooms and laboratories are reimbursable simply because the mandate doubled the number of science courses required for graduation, is incorrect as a matter of law. As indicated above, the Parameters and Guidelines require school districts to submit documentation with their claims showing that the governing board conducted an analysis of the existing science facilities within the district and of the increased enrollment for the additional science course to justify the costs incurred for construction. In 1990, the Legislature required the Commission to amend the Parameters and

¹⁶⁴ Exhibit A, IRC, page 23.

¹⁶⁵ Exhibit A, IRC, page 27.

¹⁶⁶ Exhibit A, IRC, page 20.

¹⁶⁷ Exhibit A, IRC, page 21.

Guidelines to reinforce the documentation requirements to show that the acquisition of the space “would not have been otherwise acquired due to increases in the number of students enrolling in high school”¹⁶⁸ Thus, reimbursement for construction costs cannot be based on the assumption that the number of science courses doubled.

Moreover, the Parameters and Guidelines do not expressly authorize reimbursement for upgrades and replacement costs of science classrooms and laboratories, as suggested by the claimant. To claim costs for any acquisition of additional space or construction of new science classrooms and laboratories, the Parameters and Guidelines require a claimant to submit documentation showing the increased units of science course enrollments *due to the mandate*, certification by the Board finding that “no facilities existed to reasonably accommodate the increased enrollment for the additional science course required” by the test claim statute, and documents to show that “that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school, and that it was not feasible, or would be more expensive, to acquire space by remodeling existing facilities.”¹⁶⁹ The Parameters and Guidelines have only ever authorized the construction costs of new classrooms if supported by specified documentation, and there have been no requests to amend the Parameters and Guidelines to clarify the issue of science classroom upgrades and replacement costs. The Parameters and Guidelines are binding and regulatory in nature, and claimants are required by law to file reimbursement claims in accordance with them.¹⁷⁰

Based on this record, and as described below, the Commission finds that the claimant did not provide documentation required by the Parameters and Guidelines. Rather, the documentation in the record shows that the governing board decided to construct new science classrooms and laboratories in order to modernize school facilities in accordance with its deferred maintenance plan and to address overall, increased high school enrollment growth. The relevant documents are summarized or quoted below.

In 2002, the District adopted a Long Range Facilities Master Plan, which indicates that District facilities needed to be modernized and renovated.¹⁷¹ The Master Plan states that most of the District’s schools were built over 40 years ago. “They are old,” “[t]hey are undersized and do not meet CDE minimum essential facilities,” and “[t]hey are out of date for the current educational programs and the needs of the community.”¹⁷² The Master Plan notes that the District’s facilities do not have the room for the overall increased enrollment in the District and that renovations and upgrades are needed for science and technology, as follows

The District will not be able to meet the proposed California state standards for science and technology without some major renovations and upgrades of support

¹⁶⁸ Statutes 1990, chapter 459, section 4(a).

¹⁶⁹ Exhibit A, IRC, page 92 (Parameters and Guidelines).

¹⁷⁰ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

¹⁷¹ Exhibit A, IRC, page 157 (Master Plan).

¹⁷² Exhibit A, IRC, page 156 (Master Plan).

facilities as well as classrooms. Students will have difficulty achieving the same level of academic skill as students who attend schools where they can plug in computers without blowing circuits, where there is running water for science experiments and where the teacher has the ability to enhance the lessons with a variety of teaching materials.

. . . The District's 11 schools were originally built to hold approximately 20,000 students. The current enrollment (October 2001) is 23,639. Not only does the District not have enough permanent classrooms, there are not enough support facilities in toilet rooms, drinking fountains, libraries, science labs or parking for the population at every school. The District also loses valuable outdoor athletic space at each school as existing blacktops and fields are covered with portable classrooms.¹⁷³

The Master Plan further states that the "enrollment increase has resulted in overcrowding at 80% of the schools. As a result, many schools lack . . . science labs, restrooms, classrooms and support facilities."¹⁷⁴ The Master Plan explains that during the recession in the early 1990's, the governing board decided to spend its limited dollars on the immediate needs of the classroom, and that bonds were depleted and state matching funds were limited to keep up with the District's "Deferred Maintenance Program."¹⁷⁵ Thus, "in order to satisfy the facility needs of Grossmont Union High School District's expanding student enrollment along with its aging facilities, the Governing Board has decided to implement a Long Range Facilities Master Plan," which "includes a comprehensive inventory of the repairs, upgrades and future construction needs at all campuses over the next 10 years."¹⁷⁶ The plan states that one of the most critical priorities is new and upgraded science labs.¹⁷⁷ Site surveys were conducted for each campus of the district, and "science lab upgrade or improvements" or "science room renovation" were listed as "priorities" or "typical improvement issues" for Grossmont High School, El Cajon High School, El Capitan High School, Granite Hills High School, Monte Vista High School, Valhalla High School, and Chaparral High School.¹⁷⁸

¹⁷³ Exhibit A, IRC, page 156 (Master Plan).

¹⁷⁴ Exhibit A, IRC, page 157 (Master Plan).

¹⁷⁵ Exhibit A, IRC, page 159 (Master Plan). The Deferred Maintenance Program is a state grant program that allows school districts to seek state matching funds to finance major repair or replacement of plumbing, heating, air conditioning, electrical, roofing and floor systems and the exterior and interior painting of school buildings, or such other items of maintenance as may be approved by the State Allocation Board. As a condition of participating in the program, school districts are required to comply with certain program and accounting requirements. (See, Statement of Decision, *Deferred Maintenance Program*, 02-TC-44, <https://csm.ca.gov/decisions/110211e.pdf>.)

¹⁷⁶ Exhibit A, IRC, page 160 (Master Plan).

¹⁷⁷ Exhibit A, IRC, pages 160, 243 (Master Plan).

¹⁷⁸ Exhibit A, IRC, pages 245, 248, 253, 256, 263-264, 266, 268-269, 271, 273-274, 276, 278, 283, 285, 286, 293 (Master Plan). One new science lab was recommended for Mt. Miguel High

In October 2003, the governing board passed a resolution to call for an election on whether \$297 million in general obligation bonds should be issued and sold for the “improvement, renovation, reconstruction and rehabilitation of the District’s existing schools”¹⁷⁹ The resolution states that school facilities are 40 to 60 years old and have outdated science labs and classrooms; and that the growth in student enrollment in the District increased “resulting in severely overcrowded conditions in the existing school facilities thereby creating the need to construct a new high school to serve students in the Alpine/Blossom Valley region of the District and to thereby relieve overcrowding in the District’s existing school facilities.”¹⁸⁰ The resolution also addresses the accountability requirements of Proposition 39, a voter-approved constitutional amendment passed in 2000 that lowered the voting threshold for school bonds from 2/3 to 55 percent and added school-bond accountability requirements, such as a citizen’s oversight committee, annual financial and performance audits, and identification of construction projects.¹⁸¹ Thus, the resolution includes a list of projects to be funded with the proceeds of the proposed bond, which includes the expansion and upgrade of science labs at the following high schools: Grossmont, Helix Charter, El Cajon, El Capitan, Granite Hills, Monte Vista, Santana, Valhalla, and West Hills.¹⁸² The resolution further states the use of the bond proceeds is restricted to construction, rehabilitation, or replacement of school facilities, including furnishing and equipping school facilities, and not for any other purpose.¹⁸³ In addition, the ballot measure for the bond cited the need to comply with the Americans with Disabilities Act.¹⁸⁴

As a result, a local school bond measure, Proposition H, was put on the ballot in March 2004, to authorize \$274 million “for critically needed repairs and upgrades to our local high schools” and “will allow the High School District to . . . renovate outdated classrooms, science labs and school facilities”¹⁸⁵ The voters were told that bond funds were needed because:

Local high school facilities are aging. After 30-50 years of constant use, most high schools in our community are old and deteriorated, some are overcrowded, and virtually all need repair and renovation. After the unsuccessful attempt to

School on page 261, but it was not listed as a typical improvement or priority. No science-related upgrades were mentioned for Steele Canyon High School (pp. 290-292), the Homestead/Frontier Facility (p. 296), the Viking Center, or the Work Training Center (pp. 299-305).

¹⁷⁹ Exhibit A, IRC, page 1142 (District Resolution 2003-148).

¹⁸⁰ Exhibit A, IRC, pages 1141-1142 (District Resolution 2003-148).

¹⁸¹ California Constitution, article XVI, section 18. Exhibit A, IRC, page 1141 (District Resolution 2003-148).

¹⁸² Exhibit A, IRC, pages 1146-1149 (Ballot Measure for District Resolution 2003-148). Although upgrades were listed for Mount Miguel and Steele Canyon High Schools, there was no mention of science classrooms or laboratories in the Ballot Measure.

¹⁸³ Exhibit A, IRC, page 1143 (District Resolution 2003-148).

¹⁸⁴ Exhibit A, IRC, pages 1146-1149, 1152-1154 (Bond Ballot Measure).

¹⁸⁵ Exhibit B, Controller’s Late Comments on the IRC, page 31 (“Yes on H For Our Local High Schools”).

pass Proposition T in 2002, the High School District reexamined the facility needs of each school. Based on need and the input of parents, teachers, staff and community, a specific plan to rehabilitate aging schools and relieve overcrowding was developed. Proposition H was placed on the ballot to authorize implementation of the plan to renovate and upgrade all of our high schools.¹⁸⁶

The construction and needed repairs are identified in the ballot measure, and include the expansion and upgrade of outdated science labs at Grossmont, El Cajon Valley, El Capitan, Granite Hills, Santana, Valhalla, High Schools; and for Monte Vista High School, the measure states “consolidate and upgrade outdated science classrooms.”¹⁸⁷ Proposition H was passed by the District’s voters in March 2004.¹⁸⁸

In late 2006 and early 2007, members of the Governing Board and the public were dissatisfied with the progress of the improvements, as well as the expenditure of Proposition H funds, and the overall management of Proposition H.¹⁸⁹ In February 2007, the District created a Bond Advisory Commission to make recommendations to the governing board regarding the renovations and repairs to the existing schools in satisfaction of Proposition H.¹⁹⁰ The Bond Advisory Commission reported that available Proposition H money (\$274 million) and state matching funds (\$140 million) fell well-below estimated construction costs of \$600 million for all desired renovations because of the rate of inflation for construction materials soared.¹⁹¹ In addition, the “Repair and Renovation Subcommittee,” one of four subcommittees formed by the Bond Advisory Commission, recommended building new science buildings instead of renovating existing science classrooms

We found that science classrooms are nothing more than a regular classroom with one sink. These classrooms appear beyond renovation to get them up to a modern science facility. We strongly recommend the existing science classrooms be converted to regular classrooms, the antiquated portables be scrapped and classes

¹⁸⁶ Exhibit B, Controller’s Late Comments on the IRC, page 31 (“Yes on H For Our Local High Schools”).

¹⁸⁷ Exhibit B, Controller’s Late Comments on the IRC, pages 36-41 (“Yes on H For Our Local High Schools”). There is no specific mention in the ballot measure of upgrading or expanding science classrooms or laboratories at other facilities, such as Helix Charter, Mount Miguel, West Hills, Steele Canyon, or Chaparral High Schools, or the Viking Center, Homestead/Frontier School, or the Work Training Center.

¹⁸⁸ Exhibit A, IRC, pages 1142 (Governing Board Resolution 2003-148), Exhibit B, Controller’s Late Comments on the IRC, pages 15, 31-43 (Proposition H materials), 617 (Governing Board Agenda Item).

¹⁸⁹ Exhibit B, Controller’s Late Comments on the IRC, page 166 (Bond Advisory Commission Final Report).

¹⁹⁰ Exhibit B, Controller’s Late Comments on the IRC, page 15, 49 (Bond Advisory Commission Final Report).

¹⁹¹ Exhibit B, Controller’s Late Comments on the IRC, page 50 (Bond Advisory Commission Final Report).

moved to the converted science classrooms, and that new science buildings be constructed.¹⁹²

The subcommittee's recommendation further states

We saw portable structures originally intended to be temporary, that were old and deteriorated. Some portables were over 20 years old.

Additionally, we observed "science" classrooms that were no more than a classroom with a sink.

Therefore, we strongly recommend that this three part improvement

- A. Construct a new science building with dedicated, modern science classrooms.
- B. Convert existing "science" classrooms to regular, up to date classrooms.
- C. Eliminate older portable classrooms as much as possible within state requirements.

This three part improvement should be done at these campuses

1. Grossmont High School
2. Helix Charter High School
3. El Cajon Valley High School
4. El Capitan High School
5. Granite Hills High School
6. Monte Vista High School
7. Santana High School
8. Valhalla High School.
9. Chaparral High School¹⁹³

On July 31, 2008, the governing board adopted Resolution No. 2009-14, to indicate that "sufficient, appropriately configured and equipped science classroom facilities do not currently exist," that adjusting district boundaries or using other facilities are not a viable options, and that "constructing or acquiring new facilities is necessary when and where remodeling existing facilities is not appropriate," as follows

WHEREAS, Section 51225.3 of the California Education Code as added by Chapter 498, Statutes of 1983, requires school districts to provide an additional high school science course thereby increasing student graduation requirements; and

WHEREAS, the Grossmont Union High School District did in Fiscal Years 2007 and 2008 and continues to experience a lack of appropriate high school science classroom facilities, the District has performed the following

¹⁹² Exhibit B, Controller's Late Comments on the IRC, page 171 (Bond Advisory Commission Final Report).

¹⁹³ Exhibit B, Controller's Late Comments on the IRC, pages 173-174 (Bond Advisory Commission Final Report).

1. A study of existing appropriately configured and equipped science classroom facilities;
2. An analysis of existing science facilities throughout the District; and
3. A cost analysis of new facilities versus remodeling existing facilities.¹⁹⁴

According to the Resolution, the District Governing Board declared that

1. Sufficient, appropriately configured and equipped science classroom facilities do not currently exist;
2. Adjusting attendance boundaries, or utilizing other secondary science facilities within a secure walking distance are not a viable means of mitigating the District’s lack of appropriate high school science classroom facilities;
3. Remodeling existing facilities . . . is . . . significantly less expensive than acquiring new facilities;
4. Constructing or acquiring new facilities is necessary when and where remodeling existing facilities is not appropriate; and
5. It is necessary to lease or otherwise obtain temporary classroom facilities during the period of remodeling or new construction.

NOW THEREFORE, BE IT RESOLVED that Chapter 498, Statutes of 1983, has caused the District’s existing science facilities to fail to accommodate the current needs of the District and the Grossmont Union High School District has therefore approved new construction, remodeling, equipment purchase, and or temporary student classroom lease proposals as described in contemporaneous governing board agendas and related documentation.¹⁹⁵

Also on July 31, 2008, the claimant’s staff recommended that the governing board adopt a second resolution (Resolution 2009-17) to determine that inadequate science facilities exist, and to construct new science classrooms “to meet the State graduation requirements for science.”¹⁹⁶ The staff recommendation for this resolution states in relevant part

Topic:

Resolution (2009-17) Determining that Inadequate Science Facilities Exist

Issue:

On December 3, 2003, the Grossmont Union High School District Governing Board, by a unanimous vote, approved the placement of Proposition H on the ballot. The measure passed on March 2, 2004. By adopting Resolution No. 2003-148, the Board made a finding that the physical conditions of the existing school

¹⁹⁴ Exhibit B, Controller’s Late Comments on the IRC, page 614 (District Resolution 2009-14).

¹⁹⁵ Exhibit B, Controller’s Late Comments on the IRC, pages 614-615 (District Resolution 2009-14).

¹⁹⁶ Exhibit B, Controller’s Late Comments on the IRC, pages 617-618 (Agenda Item and District Resolution 2009-17).

facilities did not satisfy the safety and technological and curriculum standards of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip such school facilities and/or lease school facilities.

Plan:

Construct new science classrooms at Grossmont, El Cajon, El Capitan, Granite Hills, Monte Vista, Santana, and Valhalla High Schools to meet the State graduation requirements for science.

Fiscal Impact:

There is no fiscal impact as a result of the adoption of this resolution.

Recommended Action:

Adoption of Resolution (2009-17) Determining that Inadequate Science Facilities Exist¹⁹⁷

Resolution 2009-17 adopted July 31, 2008, itself states:

WHEREAS, prior to the Proposition H Bond measure, the Grossmont Union High School District conducted a facilities needs study and determined that the existing school facilities did not satisfy the safety and technological and curriculum standards of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip such school facilities and/or lease school facilities; and

WHEREAS, the Grossmont Union High School District adopted Resolution No. 2003-148 making said finding and approving placement of the bond measure on the ballot; and

WHEREAS, the District has on a regular basis presented reports to the Governing Board and the Citizen's Bond Oversight Committee regarding the status of Proposition H and the science classrooms; and

NOW THEREFORE, BE IT RESOLVED that the Governing Board of the Grossmont Union High School District hereby determines *that the findings of the facility study completed prior to the Bond measure as they relate to science classrooms remain current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms as called for in the State graduation requirements.*¹⁹⁸

In 2009, the Citizens' Bond Oversight Committee issued its Annual Report, which reported on the status of the Proposition H work, noting that science building construction was underway at

¹⁹⁷ Exhibit B, Controller's Late Comments on the IRC, page 617 (Agenda Item for District Resolution 2009-17).

¹⁹⁸ Exhibit B, Controller's Late Comments on the IRC, page 618 (District Resolution 2009-17). Emphasis added.

eight of the District's high schools, with the first to be open in February 2010. According to the report

Prop H work is at full speed with active construction on ten high school campuses. In total, Prop H will modernize 291 classrooms and provide 87 new classrooms. To date, 264 classrooms have been modernized and eight new classrooms will be opened in February 2010. Work was divided into several phases

☐...☐

Phase 3A: Science building construction is underway at Grossmont, Helix, El Cajon Valley, El Capitan, Granite Hills, Monte Vista, Santana, and Valhalla High Schools. The science building at El Cajon Valley will be the first to open in February 2010.¹⁹⁹

Based on these documents, the Commission finds that the record supports the Controller's finding that construction of new science classrooms and laboratories were not incurred as a direct result of the mandate. The 2008 governing board resolutions, for the first time, attempt to tie the *Graduation Requirements* program to the decision to place Proposition H on the ballot to construct or renovate science classrooms and laboratories by stating that the test claim statute "caused the District's existing science facilities to fail to accommodate the current needs of the District" and that "the findings of the facility study completed prior to the Bond measure as they relate to science classrooms remain current in that there continues to exist inadequate science facilities and that the cost of remodeling would not provide appropriate science classrooms *as called for in the State graduation requirements.*"²⁰⁰

However, the claimant's 2002 facility study, and 2003 resolution approving the ballot measure for Proposition H to expand and update science classrooms, show that science classrooms were inadequate because they were not "modernized" in accordance with the claimant's deferred maintenance plan and because of the growth in district enrollment.²⁰¹ In addition, the argument in support of the Proposition H ballot measure states: "[a]fter 30-50 years of constant use, most high schools in our community are old and deteriorated, some are overcrowded, and virtually all need repair and renovation."²⁰² And in 2007, when the recommendation was made to construct new science classrooms instead of renovate existing classrooms, the reason was to modernize the science classrooms.²⁰³ The Parameters and Guidelines specifically provide that reimbursement is limited to those costs the claimant is required to incur *as a result of the mandate*, and that the

¹⁹⁹ Exhibit B, Controller's Late Comments on the IRC, page 677 (Citizen's Bond Oversight Committee 2009 Annual Report).

²⁰⁰ Exhibit B, Controller's Late Comments on the IRC, pages 614-615 (District Resolution 2009-14), 618 (District Resolution 2009-17).

²⁰¹ Exhibit A, IRC, page 156-160 (Master Plan), 1141-1142 (District Resolution 2003-148).

²⁰² Exhibit B, Controller's Late Comments on the IRC, page 31 ("Yes on H For Our Local High Schools").

²⁰³ Exhibit B, Controller's Late Comments on the IRC, pages 171, 173-174 (Bond Advisory Commission Final Report).

acquisition of additional space for conducting new science classes is reimbursable only to the extent that districts can document that the space would *not* have been otherwise acquired due to increases in the number of students enrolling in high school.” The Parameters and Guidelines also require a showing of increased units of science course enrollments due to the mandate.²⁰⁴ The claimant did not comply with these requirements.

Moreover, the court in the *Graduation Requirements* case, in addressing documentation issues in a prior IRC filed by claimant Grossmont Union High School, held that the Parameters and Guidelines require that the claimant’s documentation “support a finding that, *before approving* the science laboratory classroom construction and remodeling, the board considered an analysis of Grossmont science facilities and a determination that the facilities could not reasonably accommodate increased enrollment *for the additional science course required by Education Code section 51225.3.*”²⁰⁵ As indicated above, the governing board did not make this finding before approving renovation and construction. Rather, the record shows that the governing board said nothing about the *Graduation Requirements* mandate until 2008, about five years after approving the renovation and construction of science classrooms. The claimant was a party to the *Graduation Requirements* case and under principles of collateral estoppel, the court’s decision is binding on the parties for this IRC.²⁰⁶

Based on this record, the Commission finds that the Controller’s reduction of all costs for acquiring additional space for science classrooms is correct as a matter of law.

Because the Controller’s finding on the claimant’s lack of documentation reduced the claims for acquiring new classroom space to zero, the Commission makes no findings on the other disputed reductions in Finding 1; namely, the Controller’s methodology to determine the increased science course enrollment as a result of the mandate, or the reduction of science classroom construction at the Helix Charter High School.²⁰⁷

D. The Controller’s reduction of costs incurred for materials and supplies in Finding 2 is correct as a matter of law, and the Controller’s recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support because the claimant did not comply with the documentation requirements in the Parameters and Guidelines.

Section V.E. of the Parameters and Guidelines authorizes reimbursement for “the increased cost for supplying the new science class with science instructional materials (textbooks, materials,

²⁰⁴ Exhibit A, IRC, pages 87-88 (Parameters and Guidelines).

²⁰⁵ Exhibit X, page 24. (*San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No. 03CS01401, Ruling on Submitted Matter). Emphasis added.

²⁰⁶ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880. Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.

²⁰⁷ Exhibit A, IRC, pp 50-51, 58 (Final Audit Report).

and supplies),” if the costs are supported by specified documentation.²⁰⁸ Section V. also states that reimbursement is only required for the “increased costs that the claimant is required to incur as a result of the mandate.”²⁰⁹ And Section VIII. requires that the costs be supported with documentation showing the “increased units of science course enrollments due to the enactment of Education Code Section 51225.3 necessitating such an increase.”²¹⁰

In fiscal year 2009-2010, the District incurred \$860,978 in costs for materials and supplies to furnish and equip the new science buildings. These costs were part of the science classroom and lab construction costs discussed in Finding 1 and were funded and claimed in the same manner.²¹¹ The Controller reduced the entire amount because the District’s documentation did not comply with the documentation requirements in the Parameters and Guidelines.²¹²

The Controller also reduced \$56,208 during the audit period because the claimant overstated its costs for textbooks, materials, and supplies by using a 50 percent incremental increase in science course enrollment as a result of the mandate without having documentation, as required by the Parameters and Guidelines, to support the 50-percent figure. The Controller recalculated the increased enrollment as a result of the additional year of science instruction mandated by the test claim statute using a One-Quarter Class Load formula (a method similar to the reasonable reimbursement methodology in the Parameters and Guidelines to determine teacher salary costs). Using this formula, the Controller divided the increased number of science classes identified, by the total number of science offerings for the fiscal year, resulting in an incremental increase in enrollment of 40.14 percent (167/416) for 2008-2009 and at 47 percent (154.7/329) for 2009-2010, for a reduction of \$56,208 during the audit period.²¹³

The claimant argues that the Controller’s method is “unnecessary and irrelevant” because there is no legal requirement to use the Controller’s incremental increase cost formula, and there are no incremental costs to be deducted because the District did not claim any incremental increased costs.²¹⁴ The claimant states that since the mandate doubled the number of science courses by law, it reduced the unmatched amount claimed by 50 percent to account for the preexisting requirement for science courses.²¹⁵

The Commission finds that the reduction of costs for materials and supplies is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

²⁰⁸ Exhibit A, IRC, page 88 (Parameters and Guidelines).

²⁰⁹ Exhibit A, IRC, page 87 (Parameters and Guidelines).

²¹⁰ Exhibit A, IRC, page 92 (Parameters and Guidelines).

²¹¹ Exhibit A, IRC, pages 30-31, 58 (Final Audit Report).

²¹² Exhibit A, IRC, pages 57-58 (Final Audit Report). The total audit reduction for 2009-2010 was \$869,918 (plus indirect costs) because unallowable costs were limited to the costs claimed. Exhibit A, IRC, page 57 (Final Audit Report).

²¹³ Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

²¹⁴ Exhibit A, IRC, pages 31-32.

²¹⁵ Exhibit A, IRC, page 26; Exhibit B, Controller’s Late Comments on the IRC, page 19.

1. The reduction of \$860,978 for materials and supplies for the newly constructed science classrooms is correct as a matter of law.

The District incurred costs for materials and supplies in fiscal year 2009-2010 to furnish and equip the new classrooms, and the costs were expensed as part of the new science classrooms in the District's accounting records.²¹⁶ The claimant states that the costs were claimed for fixtures to equip the additional science classrooms.²¹⁷ The Controller reduced the costs claimed because the claimant did not meet the specific documentation requirements in the Parameters and Guidelines to support that the costs resulted from the mandate.²¹⁸ According to the Controller

[A] portion of the materials and supplies costs in the district's claims were charged against restricted resources (Proposition H) as part of the science construction costs. The OPSC [state Office of Public School Construction] provides matching funds for the construction of new buildings, including classroom furniture and fixtures. School districts are allowed to purchase necessary items including, but not limited to, desks, chairs, and supplies to equip the new buildings. The district disputes the reduction related to the portion of materials and supplies charged against the construction projects.

We disagree with the district's contention that specific documentation requirements are unclear. ...[T]he district did not provide documentation of increased science course enrollments due to the implementation of E[ducation] C[ode] section 51225.3 as required by the parameters and guidelines. It is also our contention that the district did not provide documentation to meet the remaining specific documentation requirements outlined in the parameters and guidelines The documentation provided does not support that alternatives were considered in the context of the mandate program, that the space would not have otherwise been acquired due to an increase in high school enrollment, or that remodeling existing facilities was not feasible or would have been more expensive than acquiring additional space. The analysis and subsequent board resolution provide support for passage of Proposition H . . . , authorizing the issuance of bonds to fund various construction projects.

The provided information for the time period subsequent to the bond issuance does not support the need for facilities to implement the mandate; however, it does illustrate the need for the district to comply with the requirements of the Proposition H and the district's desire to maximize state matching funds in the process.

²¹⁶ Exhibit A, IRC, page 58 (Final Audit Report).

²¹⁷ Exhibit A, IRC, pages 30-31. Acquisition of "additional equipment and furniture" is in component V.B. of the Parameters and Guidelines, but the record indicates that the Controller reduced claims for "materials and supplies" in component V.E. Exhibit A, IRC, page 88 (Parameters and Guidelines).

²¹⁸ Exhibit A, IRC, page 58 (Final Audit Report). Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

Although not disputed in its response, the district's space acquisition and related materials and supplies costs are identified as Proposition H expenditures in its records, charged against restricted resources, and reported as such to external oversight entities.²¹⁹

The claimant disputes the reduction on the same grounds as the Controller's reduction in Finding 1 for construction costs for the additional science classroom space; i.e., that the provided documents support the costs claimed and that school districts are entitled to reimbursement for upgrades and replacement costs due to deterioration of the facilities or otherwise by the state-defined curriculum.²²⁰

The Commission finds that the Controller's reduction is correct as a matter of law. The Parameters and Guidelines do not authorize reimbursement for upgrades and replacement costs due to deterioration of the facilities, as asserted by the claimant. Rather, the plain language of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the school district has documentation of increased units of science course enrollments that are due to the mandate.²²¹ The record does not contain any supporting documentation of increased units of science course enrollments due to the mandate. Rather, the claimant simply asserts that the test claim statute doubled the number of science courses by law.²²²

Moreover, as described above, the evidence in the record shows that the claimant constructed new science classrooms and laboratories and equipped those new classrooms with materials and supplies because its existing facilities were aging and outdated (including outdated science labs) and needed to be modernized in accordance with its deferred maintenance plan, and the claimant experienced growth in student enrollment.²²³ The record does not show that the costs for materials and supplies were incurred as a result of the mandate, as required by the Parameters and Guidelines.²²⁴

Accordingly, because the claimant did not comply with the documentation requirements in the Parameters and Guidelines to support its costs for materials and supplies, the Commission finds that the Controller's reduction is correct as a matter of law.

²¹⁹ Exhibit B, Controller's Late Comments on the IRC, pages 18-19.

²²⁰ Exhibit A, IRC, pages 21 and 31.

²²¹ Exhibit A, IRC, page 92 (Parameters and Guidelines).

²²² Exhibit A, IRC, page 26. Exhibit B, Controller's Late Comments on the IRC, page 19.

²²³ Exhibit A, IRC, page 1141 (District Resolution 2003-148). As the Controller notes, the governing board resolution addresses accountability requirements of Proposition 39, a voter-approved constitutional amendment passed in 2000 that lowered the voting threshold for school bonds from 2/3 to 55 percent and added accountability requirements, such as the citizen's oversight committee, annual financial and performance audits, authorization to raise revenue through additional property taxes, and identification of construction projects. Exhibit B, Controller's Late Comments on the IRC, pages 14, 25-29.

²²⁴ Exhibit A, IRC, page 87 (Parameters and Guidelines).

2. The reduction of \$56,208 for the incremental increase in material and supply costs is correct as a matter of law and the recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller also reduced \$56,208 of costs incurred during the audit period because the claimant overstated costs for materials and supplies by using an incremental increase in enrollment of 50 percent, without providing any documentation to support the 50 percent figure. The claimant states that because the mandate doubled the number of science courses by law, it calculated the increased costs for materials and supplies by reducing the unmatched cost by 50 percent to account for the preexisting requirement for science courses.²²⁵

The Commission finds that the Controller's reduction is correct as a matter of law. Section V. of the Parameters and Guidelines states that "only actual costs may be claimed" and "claimant is only allowed to claim and be reimbursed for increased costs" that are "limited to the cost of an activity that the claimant is required to incur as a result of the mandate."²²⁶ In addition, Section VIII. of the Parameters and Guidelines authorizes reimbursement for materials and supplies only if the claimant has documentation of increased units of science course enrollments due to the mandated additional science course.²²⁷ The Parameters and Guidelines do not authorize the use of a 50 percent increase in costs as a result of the mandate, or a "double reduction of costs" as the claimant calls it. Since the claimant provides no documentation to support the 50 percent figure, or that its costs resulted from increased science course enrollments as a result of the mandate, the Controller's reduction is correct as a matter of law.

The Commission also finds that the Controller's recalculation of costs for materials and supplies is not arbitrary, capricious, or without evidentiary support. Since the claimant provided no documentation to support its cost claiming methodology for materials and supplies, the Controller could have reduced those costs to \$0 because the claimant did not comply with the Parameters and Guidelines. Instead, the Controller recalculated the claimant's increased costs using a formula to isolate costs for the mandated additional year of science instruction (a method similar to the reasonable reimbursement methodology authorized in the Parameters and Guidelines to determine teacher salary costs).²²⁸ Using this formula, the Controller divided the increased number of science classes identified, by the total number of science offerings for the fiscal year, resulting in an incremental increase of 40.14 percent (167/416) for 2008-2009 and 47 percent (154.7/329) for 2009-2010.²²⁹

²²⁵ Exhibit A, IRC, pages 26-27, 50 and 58 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, page 19.

²²⁶ Exhibit A, IRC, page 87 (Parameters and Guidelines).

²²⁷ Exhibit A, IRC, page 92 (Parameters and Guidelines).

²²⁸ Exhibit A, IRC, page 91 (Section VII. of the Parameters and Guidelines, Reasonable Reimbursement Methodology to claim teacher salary costs, which isolates the increased enrollment resulting from the additional year of science instruction by dividing the total number of pupils in grades 9-12 by the number four, and then dividing that number by an average class size.)

²²⁹ Exhibit A, IRC, pages 50 and 58 (Final Audit Report).

The claimant provides no evidence or documentation to show that the Controller’s calculation of increased costs is incorrect or arbitrary or capricious. Instead, the claimant argues that the Controller’s methodology “constitute[s] a standard of general application without appropriate state agency rulemaking and is therefore unenforceable.”²³⁰

The Commission disagrees. The claimant has not demonstrated that the Controller’s formula for determining increased costs as a result of the mandate is an unenforceable underground regulation because there is no indication that the Controller intended its formula, or any other audit method it used, to be a rule that applies generally to a class of cases. The California Supreme Court has held that interpretations that arise in the course of case-specific adjudications are not regulations.²³¹

It is notable that the claimant admits in the IRC that “it is arguable that ... consumable supplies would vary directly with science classroom enrollment.”²³² The Controller’s formula for determining the costs of the incremental increase for materials and supplies (dividing the increased number of science classes by the total number of science offerings for the year) accounts for variations in science classroom enrollment, but claimant’s “double reduction” claiming method does not account for enrollment variations.

In sum, the Commission finds that the Controller’s reduction of \$56,208 related to the incremental increase in costs for materials and supplies as a result of the mandate is correct as a matter of law and the Controller’s recalculation of the costs is not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller’s Finding 4, that the local bond funds used to construct the science classrooms are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law because reimbursement under article XIII B, section 6 of the California Constitution is not required for the expenditure of local bond proceeds.

As indicated above in the discussion of Findings 1 and 2, the Controller reduced all costs for construction of science classrooms and laboratories (\$29,633,952), and all costs for construction-related materials and supplies to furnish and equip the new science classrooms (\$860,978), because the claimant did not support its claims with documentation required by the Parameters and Guidelines. Fifty percent of these costs were funded by local school construction bonds approved by the District’s voters in 2004 (Proposition H), and 50 percent by state matching funds (that were not claimed).

As a separate ground for reducing these costs, the Controller found that the claimant failed to identify and deduct from its claims offsetting revenue from the local school-construction bonds received under Proposition H. The Controller concluded that the 50 percent funded by local restricted bond funds and incurred during the audit period (\$14,816,976 for construction, and \$430,489 for materials and supplies, for a total of \$15,247,465) should have been fully offset

²³⁰ Exhibit A, IRC, page 25.

²³¹ *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

²³² Exhibit A, IRC, page 27.

against the total costs incurred for these expenses (\$30,494,930).²³³ Thus, “[n]otwithstanding the audit adjustments in Finding 1 and Finding 2, the costs net of State bonds for Component A (\$14,816,975) and a portion of Component E (\$430,489) are still zero, as the remainder was fully funded with local restricted funds.”²³⁴ In other words, the Controller found that none of the costs claimed for construction and related materials and supplies are subject to reimbursement under article XIII B, section 6.

The claimant argues that “local bond funds are proceeds from taxes like other property taxes (that are used for general fund expenses),” and thus, there are no offsetting revenues.²³⁵ According to the claimant

The local bond revenue is not otherwise “reimbursement for this mandate from any source” because, unlike state bond revenue, it must be repaid by the District tax base. A “reimbursement” that has to be repaid is not reimbursement. Local bond obligations are retired by local property taxes. Local property taxes also fund a portion of the District general fund annual operating costs but are not mandate reimbursement.²³⁶

The claimant also argues that the Controller’s finding regarding the full offset funded by local bond revenue is contrary to the Parameters and Guidelines for the following five reasons: First, the local bond revenue is not an offsetting revenue that results from the law that established the mandate. Second, the Parameters and Guidelines state that claims for construction costs shall be reduced by state bond funds, but do not mention local bond funds. Third, the local bond fund revenue does not fall into the other sources enumerated in the Parameters and Guidelines, such as a federal or state block grant, or a state restricted funding source for science classrooms or labs. Fourth, the claimant asserts that local bond fund revenue is not “reimbursement from any source” because it has to be repaid through local property taxes. A reimbursement that must be repaid is not a reimbursement. And the audit report does not state a legal basis that would allow local property tax proceeds to be considered reimbursement of construction costs. Fifth, although bond proceeds are required to be accounted for in restricted accounts, the account code used for bond proceeds is not determinative of the mandate reimbursement issue.²³⁷

The Commission finds that the Controller’s conclusion, that local school-construction bonds are offsetting revenue that is required to be identified and deducted from the reimbursement claim for construction-related costs, is correct as a matter of law.

Section IX. of the Parameters and Guidelines addresses offsetting revenues as follows

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate

²³³ Exhibit A, IRC, page 65 (Final Audit Report).

²³⁴ Exhibit A, IRC, page 64 (Final Audit Report).

²³⁵ Exhibit A, IRC, pages 66 (Final Audit Report).

²³⁶ Exhibit A, IRC, page 36.

²³⁷ Exhibit A, IRC, pages 36-37.

from any source, including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, § 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; and other state funds, shall be identified and deducted from this claim. The State Controller’s Office (SCO) will adjust the claims for any prior reimbursements received from the Graduation Requirements program from claims submitted for the period beginning January 1, 2005.

If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.²³⁸

Although the Parameters and Guidelines do not expressly require that local school construction bonds be identified as offsetting revenue, they do state that “reimbursement for this mandate from any source, including but not limited to... shall be identified and deducted from this claim.”²³⁹ Local bond proceeds are included as “any source” of reimbursement.²⁴⁰

More importantly, the Parameters and Guidelines must be interpreted in a manner consistent with the California Constitution,²⁴¹ and harmonized with principles of mandates law.²⁴² As explained below, costs that are funded by local school construction bonds are excluded from mandate reimbursement under article XIII B of the California Constitution.

The courts have made it clear that the reimbursement requirement in article XIII B, section 6 of the California Constitution must be interpreted in the context of articles XIII A and XIII B,

²³⁸ Exhibit A, IRC, page 93 (Parameters and Guidelines).

²³⁹ Exhibit A, IRC, page 93 (Parameters and Guidelines).

²⁴⁰ The phrase “including but not limited to is a term of enlargement, and signals the ... intent that [a statute] applies to items not specifically listed in the provision.” *In Re. D. O.* (2016) 247 Cal. App.4th 166, 175.

²⁴¹ See *State Board of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823, holding that a Board tax rule was null and void, as applied, because it violated the Constitution.

²⁴² *Clovis Unified School Dist. v. Chaing* (2010) 188 Cal.App.4th 794, 811-812.

which “work in tandem, together restricting California governments’ power both to levy and to spend taxes for public purposes.”²⁴³

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that “the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property,” and that the one percent (1%) tax was to be collected by counties and “apportioned according to law to the districts within the counties...”²⁴⁴ In addition to limiting the property tax, section 4 also restricts a local government’s ability to impose special taxes by requiring a two-thirds approval by voters.²⁴⁵

Article XIII B was adopted by the voters as Proposition 4 less than 18 months after the addition of article XIII A, and was billed as “the next logical step to Proposition 13.”²⁴⁶ Unlike article XIII A “the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the ‘proceeds of taxes.’”²⁴⁷

Article XIII B established an “appropriations limit,” or spending limit for each “entity of local government,” defined to include school districts, beginning in fiscal year 1980-1981.²⁴⁸ Section 1 of article XIII B defines the appropriations limit as

The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article.²⁴⁹

No “appropriations subject to limitation” may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.²⁵⁰

Article XIII B does not limit the ability to spend government funds collected from *all sources*. The appropriations limit is based on “appropriations subject to limitation,” which means, “any

²⁴³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81].

²⁴⁴ California Constitution, article XIII A, section 1 (adopted June 6, 1978).

²⁴⁵ California Constitution, article XIII A, section 1 (adopted June 6, 1978).

²⁴⁶ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

²⁴⁷ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

²⁴⁸ California Constitution, article XIII B, section 8(d), (h) (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

²⁴⁹ See also Government Code section 7901(a) and (b).

²⁵⁰ California Constitution, article XIII B, section 2 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990).

authorization to expend during a fiscal year the *proceeds of taxes* levied by or for that entity.”²⁵¹ For local government, “proceeds of taxes” subject to the appropriations limit includes all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).²⁵² No limitation is placed on the expenditure of revenues that do not constitute “proceeds of taxes.”²⁵³ According to Government Code section 53715, the constitutional definition of “proceeds of taxes” does not include proceeds from the sale of local bonds

As used in Article XIII B of the California Constitution, the term “proceeds of taxes” *does not include the proceeds from the sale of bonds*, notes, warrants or other obligations required for the purpose of financing or refinancing the acquisition, construction, or completion of public improvements or projects or any rents, charges, assessments, or levies, other than tax levies, made pursuant to law, the proceeds of which are required for the payment of principal and interest, or to otherwise secure such obligations, and to pay the costs and expenses associated therewith.²⁵⁴

In addition, article XIII B, section 8(i) provides that “‘appropriations subject to limitation’ *do not include* local agency loan funds or indebtedness funds” Article XIII B, section 9(a) states that “‘appropriations subject to limitation’ for each entity of government do not include “[a]ppropriations for debt service.” “Debt service” is defined in section 8(g) of article XIII B

[A]ppropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, *or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose.*²⁵⁵

And article XIII B, section 7 makes it clear that “[n]othing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bond indebtedness.”²⁵⁶

²⁵¹ California Constitution, article XIII B, section 8 (adopted Nov. 6, 1979; amended by Proposition 111, June 5, 1990). Emphasis added.

²⁵² California Constitution, article XIII B, section 8; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

²⁵³ *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

²⁵⁴ Emphasis added.

²⁵⁵ Emphasis added.

²⁵⁶ See also, *Bell v. Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32, where the court found that debt service on a proposed tax allocation bond was not an “appropriation subject to the limitation” as defined in article XIII B. Rather, tax allocation bonds constitute “bond indebtedness” exempt under article XIII B, section 7.

In 1991, the California Supreme Court in the *County of Fresno* case reiterated that article XIII B was not intended to reach beyond taxation and would not restrict the growth of appropriations financed from nontax sources, including bond funds:

Article XIII B of the Constitution, however, *was not intended to reach beyond taxation*. That fact is *apparent from the language of the measure*. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 “would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, *bond funds*, traffic fines, user fees based on reasonable costs, and income from gifts.” (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)²⁵⁷

Thus, bond funds are not proceeds of taxes subject to the appropriations limit of article XIII B. Section 6 was included in article XIII B to require that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...” Article XIII B, section 6 was specifically designed to protect the *tax revenues* of local governments from state mandates that would require expenditure of tax revenues:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.²⁵⁸

The California Supreme Court most recently recognized that the purpose of section 6 was to preclude “the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose*.”²⁵⁹

Thus, article XIII B, section 6 must be read in light of the tax and spend limitations imposed by articles XIII A and XIII B, and requires the state to provide reimbursement only when a local

²⁵⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Emphasis added.

²⁵⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Emphasis in original.

²⁵⁹ *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

government is mandated by the state to expend proceeds of taxes subject to the appropriations limit of article XIII B. Article XIII B, section 6 was designed to protect tax revenues, and not the receipt or repayment of local bond funds.

In this case, article XIII B, sections 7, 8, and 9, and Government Code section 53715 make it clear that local bond funds are not “proceeds of taxes” as alleged by the claimant, and the repayment of those bond funds are not considered “appropriations subject to limitation.” School districts cannot accept the benefits of bond funding that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.²⁶⁰

In sum, the state is not required to reimburse the claimant for local bond proceeds used to acquire science classrooms and laboratories and science class materials and supplies. Thus, the Controller’s Finding 4, that the claimant’s Proposition H bond funds are offsetting revenue that should have been identified and deducted from the claimant’s reimbursement claims, is correct as a matter of law.

V. Conclusion

Based on the foregoing, the Commission denies this IRC.

²⁶⁰ *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

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 August 28, 2019, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued August 28, 2019**

Graduation Requirements, 16-4435-I-56
Education Code Section 51225.3; Statutes 1983, Chapter 498
Fiscal Years: 2008-2009 and 2009-2010
Grossmont Union High 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 August 28, 2019 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/28/19

Claim Number: 16-4435-I-56

Matter: Graduation Requirements

Claimant: Grossmont Union High School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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