

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

March 27, 2009

Present: Member Miriam Barcelona Ingenito, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Anne Houston Schmidt
Representative of the Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Ingenito called the meeting to order at 9:44 a.m. Executive Director Paula Higashi called the roll and stated that Member Chivaro was on his way.

APPROVAL OF MINUTES

Item 1 January 30, 2009

The January 30, 2009 hearing minutes were adopted by a vote of 6-0.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING ON STATEWIDE COST ESTIMATES PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. STATEWIDE COST ESTIMATE

Item 11 *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*, 05-PGA-04 (CSM-4455)
San Diego Unified School District, Test Claimant
Education Code Section 48915, subdivisions (a) and (b)
Statutes 1993, Chapters 1255 and 1256
Education Code Section 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1983, Chapters 498 and 1302; Statutes 1985, Chapter 856; Statutes 1987, Chapter 134; Statutes 1990, Chapter 1231; and Statutes 1994, Chapter 146

- Item 13 *Mentally Disordered Offenders: Treatment as a Condition of Parole*, 00-TC-28
County of San Bernardino, Claimant
Penal Code Section 2966
Statutes 1985, Chapter 1419 (SB 1296); Statutes 1986, Chapter 858 (SB 1845); Statutes 1987, Chapter 687 (SB 425); Statutes 1988, Chapter 658 (SB 538); Statutes 1989, Chapter 228(SB 1625); Statutes 1994, Chapter 706 (1918)
- Item 14 *Racial Profiling: Law Enforcement Training*, 01-TC-01
County of Sacramento, Claimant
Penal Code Section 13519.4
Statutes 2000, Chapter 624 (SB 1608)
- Item 15 *Domestic Violence Arrests and Victim Assistance*, 98-TC-14
County of Los Angeles, Claimant
Penal Code Sections 264.2 and 13701
Statutes 1998, Chapters 698 and 702 (AB 1201 and AB 2177)

B. ADOPTION OF PROPOSED RULEMAKING CALENDAR

- Item 16 Authorize Executive Director to Initiate Correction Pursuant to Government Code Section 87302

Member Olsen made a motion to adopt items 11, 13, 14, 15 and 16 on the consent calendar. With a second by Member Glaab, the consent calendar was adopted by a vote of 6-0.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

- Item 2 Staff Report (if necessary)

There were no appeals to consider.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing. (Member Chivaro arrived.)

TEST CLAIMS

- Item 3 *Tuition Fee Waivers*, 02-TC-21
Contra Costa Community College District, Claimant
Education Code Sections 68044, 68051, 68074, 68075, 68075.5, 68076, 68077, 68078, 68082, 68083, 68084, 68121, 68130.5, 76140
Statutes 1975, Chapter 78 (SB 82); Statutes 1976, Chapter 990 (AB 4289); Statutes 1977, Chapters 36 and 242 (AB 447 and AB 645); Statutes 1979, Chapter 797 (AB 1549); Statutes 1980, Chapters 580 and 789 (AB 2567 and AB 2825); Statutes 1981, Chapter 102 (AB 251); Statutes

1982, Chapter 1070 (AB 2627); Statutes 1983, Chapter 317 (SB 646); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1992, Chapters 170 and 1236 (AB 3058 and SB 2000); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapters 389 and 758 (AB 723 and AB 446); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)
California Code of Regulations, Title 5, Sections 54002, 54010, 54012, 54020, 54022, 54024, 54030, 54032, 54041, 54042, 54045, 54045.5, 54046, 54050, 54060, 54070
Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 92, No. 12 (Mar. 27, 1992); Register 92, No. 18 (Feb. 18, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)
Revised Guidelines and Information, "Exemption from Nonresident Tuition"
Chancellor of the California Community Colleges, May 2002

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller stated that this test claim alleges a reimbursable mandate for costs associated with determining student residence status and nonresident student tuition fee charges or waivers at community colleges.

As indicated in the analysis, staff finds that the activities on pages 2 through 10 and 65 through 73 are reimbursable. The claimants submitted comments as specified on page 50 to 59 of the record, disagreeing with parts of the draft staff analysis. Staff addressed these comments in the final analysis. Staff also received an 11-page late filing from the Department of Finance, disagreeing with portions of the draft staff analysis. As a result of Finance's comments, staff changed its recommendation to delete the activity of adopting rules and regulations regarding nonresident tuition as a reimbursable activity because the Chancellor's Office issues annual memoranda on this topic. Because these memoranda constitute rules for nonresident tuition, local districts would not need to adopt their own rules. Therefore, the activity would not be reimbursable.

As noted in the supplemental staff analysis, staff disagrees with Finance's other comments. Thus, staff recommends the test claim be approved for the activities on pages 2 through 10 and 65 through 73 as revised by the supplemental analysis and the pink replacement sheets.

Parties were represented as follows: Keith Petersen representing the test claimant; Donna Ferebee and Ed Hanson representing the Department of Finance.

Mr. Petersen began by stating that this test claim had no threshold legal issues in dispute. It is the type of test claim where somebody had to go through line by line and look at the law for the last 30 years. Mr. Petersen stated that Commission staff responded to all of the concerns in his rebuttal and, therefore, Mr. Petersen will stand on his filings.

Donna Ferebee, Department of Finance, stated that Finance continues to assert that districts have always had to consider factors establishing student residency. The addition of more examples of factors, such as the exceptions that changed classifications of students who will be considered, does not result in a new program or higher level of service. The ways in which a student could

show residency were never limited by law. Ms. Ferebee stated that the analysis of financial independence may have changed, but districts have always had to consider a student's showing of financial independence when seeking to change residency status. She continued that districts do not have to revise their own questionnaires because the questionnaires are provided by the Chancellor's Office. Also, a signature under penalty of perjury does not create any new activity for the districts. Finally, Ms. Ferebee stated that waiving tuition and fees for dependents of victims of the September 11th terrorist attacks is not a new program or higher level of service because the Victim Compensation and Government Claims Board does the eligibility determinations and the districts already have established processes for waiving tuition and fees.

Member Olsen decided to abstain from the discussion because she just received the information from Finance and was unable to digest it.

Member Worthley stated that upon reviewing the late filing, it appears to be a matter of discretionary versus mandatory conduct. While there are many things that could be done, the statute now makes them mandatory.

Member Worthley concurred with the staff recommendation that this test claim still constitutes a reimbursable mandate.

With a motion by Member Chivaro to adopt the staff recommendation as revised, and a second by Member Worthley, the staff recommendation was adopted by a vote of 6-0, with Member Olsen abstaining.

Item 4 Proposed Statement of Decision: *Tuition Fee Waivers*, 02-TC-21
[See Item 3]

Mr. Feller also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision as revised by the supplemental staff analysis accurately reflected the Commission's decision to partially approve the *Tuition Fee Waivers* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the Statement of Decision was adopted by a vote of 6-0 with Member Olsen abstaining.

Item 5 *Cal Grants*, 02-TC-28,
Long Beach Community College District, Claimant
Education Code Sections 69432.8, 69432.9, 69433, 69433.5, 69433.6,
69433.7, 69434, 69434.5, 69435, 69435.3, 69436, 69436.5, 69437, 69437.3,
69437.6, 69439, 69440, and 69514.5
Statutes 2000, Chapter 403 (SB 1644); Statutes 2001, Chapters 8
(SB 176) and 159 (SB 662)
California Code of Regulations, Title 5, Sections 30002, 30007, 30023,
30026, 30027 and 30032

Chief Legal Counsel Camille Shelton presented this item. Ms. Shelton stated that this test claim addresses the Cal Grant program enacted by the Legislature in 2000 to guarantee Cal Grant awards to college students beginning in the 2001-2002 academic year. The guarantee extends to (1) every California high school student graduating in 2001 or after, and to (2) California community college students transferring to a four-year college that graduated from a California high school after June 2000 and who meet the minimum grade-point average and eligibility requirements. Other students can compete for Cal Grant A and B competitive awards.

For the reasons stated in the analysis, staff finds that the test claim statutes and regulations impose a partial reimbursable state-mandated program for community colleges beginning July 1, 2001, to calculate a college or community college grade-point average pursuant to the instructions and the Student Aid Commission's regulations; to certify under penalty of perjury to the best of the school official's knowledge that the grade-point average is accurately reported, and is subject to review by the Student Aid Commission or its designee; and to complete or correct a grade-point average upon notice that the original submitted graded-point average was not complete or correct.

Parties were represented as follows: Keith Petersen representing the test claimant; Keri Tippins representing the Student Aid Commission; and Susan Geanacou representing the Department of Finance.

Mr. Petersen pointed out that this test claim has a significant threshold issue which is whether there is statutory compulsion or practical compulsion to implement the state mandate. The statutory question is whether community colleges are required to adopt the institutional participation agreement. He commented that the staff analysis concluded and agrees with the Student Aid Commission that the institutional participation agreement is discretionary, although all but one college have adopted it. Students cannot be paid their Cal Grants without the college being a participant. The other half of that analysis is practical compulsion. Mr. Petersen stated that as long as the Commission retains the *Kern* case as the definition of practical compulsion, his arguments cannot win.

Keri Tippins, Student Aid Commission, stated that the Student Aid Commission disagreed with one item regarding completing the community college GPA form. As the Cal Grant Program is voluntary on behalf of all of the institutions, then the obligations and requirements that flow from that program, for example, the different Cal Grant A and B competitive awards and the Cal Grant transfer, are part and parcel of that program.

Ms. Tippins indicated that it is the student that requests the school to submit the GPA. Originally, this was a mechanical paper process. It is now an electronic process. The Student Aid Commission does not require that it be electronic because not every school that participated in the Cal Grant Program had the functionality to do that. It is understood that is no longer the case. They all pretty much upload electronically. So this is really an electronic process now. There is no formal certification. There is no formal paper that comes to the commission. There are occasional ones, but the vast majority is now electronic. Ms. Tippins concluded that therefore, because of the voluntary nature of the program and the fact that it is all an electronic batch process now, the Student Aid Commission respectfully disagrees with the staff recommendation on this item.

Mr. Petersen asked for clarification from the Student Aid Commission that indeed they do not require electronic filing. Ms. Tippins agreed that they do not. Mr. Petersen made the point that if the Student Aid Commission were in the position to require anything, it would constitute a mandate.

Member Schmidt posed a question about the expectation of accuracy in a GPA being a reasonable expectation in a professional environment, and therefore not considered a mandate.

Ms. Shelton responded that regulations require that upon notice, you have ten days to correct an incomplete or inaccurate grade-point average. The grade-point average has to be calculated according to the Student Aid Commission's regulations. The only way for the student to be able to have a successful application filed is if the GPA has been certified as correct. The community college is the only entity that would have that information and be able to certify that information under penalty of perjury.

Ms. Tippins commented that the Student Aid Commission does not have independent knowledge of the GPA. When they determine that something is incorrect, it is because of a typographical error when the information is submitted. The only way they know that something may be incorrect is because some other factor caused it to be kicked back out of the system.

Mr. Petersen noted that reasonable expectation of accuracy of professionalism is not a statutory exemption to reimbursement.

Member Worthley noted that schools do not have to perform this particular form of student aid. He concurred with the staff recommendation and pointed out that the question of cost will come up in the parameters and guidelines.

Susan Geanacou, Department of Finance, stated that Finance believes that community colleges should not be reimbursed for the cost of correcting omissions or mistakes, especially if the Commission votes to reimburse the original incorrect or incomplete GPA calculation. Finance continues to assert that accuracy and completeness should be expected as a preexisting standard in a professional environment.

Finance also reiterated that there is considerable funding provided in the Budget Act that should fully cover the alleged mandated activities. Budget Act Item 6870-101-0001 added funding for community colleges to help students obtain financial aid, including the Cal Grant Program. This funding was added soon after the test-claim legislation was enacted. Although the Cal Grant program was not called out in the Budget Act language, this lack of specificity was to allow local flexibility in how the funds would be used to assist students in obtaining aid. Additionally, general apportionment funding to community colleges, which is approximately \$3 billion in fiscal year 2008-09, can also be used to cover these alleged mandated costs. For those funding reasons, Finance believes Government Code section 17556(e) should apply to find no costs mandated by the State.

Ms. Geanacou asserted that the test claim statutes and regulations activities should be cost-neutral or cost-saving because some activities under the former Cal Grant Program, such as submitting transcripts to the Student Aid Commission, are no longer performed or performed electronically with very minimal cost.

Ms. Shelton responded by saying that Government Code section 17556, subdivision (e), requires that an appropriation be specifically intended to fund the cost of those state-mandated programs. There is a budget line item, as referenced on page 30, which was intended for all financial aid programs for students. It did not specifically target the Cal Grant Program. Staff does recommend that it be identified as a potential offset in the parameters and guidelines, but it cannot be used to deny the claim because it is not specifically intended to fund this particular Cal Grant Program. Also, there is no specific tag to the Cal Grant Program with the Prop. 98 funding and it cannot be used as an offset.

Member Olsen asked if there was any direction from the courts about this issue of professionalism to address the compelling issue that Finance raised regarding community colleges' GPA calculation.

Ms. Shelton responded no. However, the plain language of the statute requires that it be corrected after ten days' notice. If they are the only entity that can correct and sign under penalty of perjury, by the plain language reading, it becomes a mandate.

With a motion by Member Worthley to adopt the staff recommendation, and a second by Member Chivaro, the staff recommendation was adopted by a vote of 7-0.

Item 6 Proposed Statement of Decision: *Cal Grants*, 02-TC-28
[See Item 5]

Ms. Shelton also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Cal Grant* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Worthley moved to adopt the staff recommendation. With a second by member Olsen, the Proposed Statement of Decision, as modified, was adopted by a vote of 7-0.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. REVIEW OF OFFICE OF STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Item 9 *Graduation Requirements*, 08-RCI-01
(4181A, 05-PGA-05, 06-PGA-04, 06-PGA-05)
Education Code Section 51225.3
Statutes 1983, Chapter 498
Castro Valley Unified, Fullerton Joint Union High, Grossmont Union High, San Jose Unified and Sweetwater Union High School Districts,
Requestors

Ms. Shelton presented this item. She stated that this is a request to review three sets of claiming instructions issued by the State Controller's Office for the *Graduation Requirements* Program pursuant to the amended parameters and guidelines adopted by the Commission on November 6, 2008.

The amended parameters and guidelines include a reasonable reimbursement methodology (RRM) representing the one-quarter class-load method for claiming increased science teachers' salary costs beginning in fiscal year 1995-96. The requestors challenge the requirement in the claiming instructions that school districts that previously filed reimbursement claims for these prior fiscal years need to refile those claims using the reasonable reimbursement methodology if the school district's teacher salary costs change with the use of the RRM.

Staff finds that the Commission, when it adopted the staff analysis and amended the parameters and guidelines, did not require school districts to refile the reimbursement claims for prior fiscal years. Staff further finds that the Government Code does not require eligible claimants to refile reimbursement claims when parameters and guidelines are amended. Staff finds that the three sets of claiming instructions issued by the State Controller's Office do not conform to the amended parameters and guidelines as required by the Government Code section 17571.

Accordingly, pursuant to Government Code section 17571, staff recommends that the Commission adopt the staff analysis and direct the Controller's Office to replace the language on page 1 of the three sets of claiming instructions with the language provided on pages 2 and 3 of the executive summary which conforms to the amended parameters and guidelines for this program and with the Government Code.

Parties were represented as follows: Keith Petersen representing the five requesting school districts; Donna Ferebee, Department of Finance; Chris Ryan and Jim Spano, State Controller's Office.

Mr. Petersen agreed with staff findings and recommendations as they are consistent with Government Code and regulations.

Ms. Ferebee stated that Finance continues to disagree with the Commission's decision to adopt the revised parameters and guidelines last November, but has nothing to add to this item beyond the comments that were already submitted.

Mr. Spano stated that based on audits done so far, the Controller's Office believes that the only reasonable methodology to determine reasonable costs for science teachers' salary costs is the RRM. That being said, the Controller's Office concurs with the staff analysis that neither the adopted parameters and guidelines, nor the analysis adopted by the Commission on the proposed amendments to the parameters and guidelines requires the school districts to refile older claims.

Member Glaab moved to adopt the staff recommendation. With a second by member Chivaro, the Review of Claiming Instructions was adopted by a vote of 6-0 with Member Schmidt abstaining.

B. STATEWIDE COST ESTIMATES

- Item 12 *National Norm-Referenced Achievement Tests (Formerly STAR)*
05-PGA-03 (04-RL-9723-01)
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as added or amended by Statutes 1997, Chapter 828;
California Code of Regulations, Title 5, Sections 850-904
(Excluding Cal. Code Regs., tit. 5, §§ 853.5, 864.5, 867.5, 894 & 898)

Nancy Patton, Assistant Executive Director, presented this item. She stated that the proposed statewide cost estimate includes four fiscal years, for a total of \$10,809,432 for the *National Norm-Referenced Achievement Test* program.

On July 28, 2005, on reconsideration, the Commission found, effective July 1, 2004, that administering the California Achievement Test, Sixth Edition Survey, CAT/6 in grades 3 and 7 imposes a reimbursable state-mandated program on school districts.

The proposed statewide cost estimate for fiscal years 2004-05 through 2007-08 was developed by totaling the 855 unaudited actual reimbursement claims filed by the State Controller's Office.

No costs are estimated for fiscal year 2008-09 and beyond, because in 2008, the Legislature eliminated the CAT/6 test administration mandate effective September 30, 2008.

The Department of Finance opposes the statewide cost estimate because it believes the reimbursement claims used to develop the estimate may be excessive and, thus, the Commission should wait until the reimbursement claims have been audited by the State Controller's Office before using them to develop the estimate.

Staff disagrees that the cost estimate can be delayed until reimbursement claims are audited because such delay is inconsistent with the statutory scheme governing the mandates process. Therefore, staff finds that the Commission should not delay adoption of this statewide cost estimate, and recommends the Commission adopt the proposed statewide cost estimate for fiscal years 2004-05 through 2007-08.

Elisa Legarra, Department of Finance, expressed concerns with the basis for the statewide cost estimate. She stated that it is based on 855 unaudited actual reimbursement claims resulting in \$10.8 million in costs. Adopting this statewide cost estimate would simply provide a list of

claims to the Legislature, whereas the amount of actual costs could be very different from the estimate. For example, the State Controller's Office has one published audited claim for the *Norm-Referenced Achievement Test* at this time which resulted in over 99 percent of the costs being identified as unallowable.

Ms. Legarra stated that speaking with the State Controller's Office in general, they are going through the process of auditing some other claims for this mandate. They see a general trend with districts claiming for the entire series of STAR tests that they administer, instead of just this very small Norm-Referenced Test that this mandate applies to. Also, Finance is concerned that a lot of districts may not be deducting all or some of the offsetting apportionments they receive for testing. She made a final point that a very similar and related mandate, the STAR mandate, which also allowed districts to claim for testing, has the same high rates of unallowable costs. Specifically, there are seven published audits on the STAR mandate where the average rate of unallowable costs is 66 percent. Therefore, Finance believes it is premature to adopt a statewide cost estimate based on unaudited claims. It would be a much more relevant statewide cost estimate if the information from some audited claims were taken into account.

Chair Ingenito explained that it is laid out in the statute as to what order the audits lay in this process. It is not at the discretion of the Commission on State Mandates to adopt this particular cost estimate after the audits. We have to, based on state law, adopt them prior and then just do an adjustment. Therefore, Finance would revise their numbers in subsequent budget acts when we reconcile.

Member Olsen moved to adopt the statewide cost estimate. With a second by Member Worthley, the statewide cost estimate was adopted by a vote of 7-0.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

TEST CLAIMS

- Item 7 *Identity Theft, 03-TC-08*
City of Newport Beach, Claimant
Penal Code Section 530.6, subdivision (a)
Statutes 2000, Chapter 956 (AB 1897)

Heather Halsey, Commission Counsel presented this item. Ms. Halsey stated that this test claim concerns increased activities of the local law enforcement agency required by the test claim statute when a complainant residing in the agency's jurisdiction makes a report of identity theft.

Staff finds that this test claim statute imposes a reimbursable state-mandated program for cities and counties for some of the required activities within the meaning of Article XIII B, Section 6, of the California Constitution. Specifically, the requirements to take a police report and begin an investigation of the facts mandate a new program or higher level of service and impose costs mandated by the state because these activities were discretionary prior to enactment of the test claim statute, and the test claim statute makes them mandatory.

However, staff finds that referral of the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts is not a mandated activity and is, therefore, not reimbursable.

Finally, staff finds that the requirement to provide the claimant with a copy of the police report is not a new program or higher level of service because the California Public Records Act already

requires local law enforcement agencies to provide complainants with a copy of the report.

However, after the final staff analysis and the proposed Statement of Decision were issued, the claimant filed a request to amend the proposed Statement of Decision to delete the finding regarding whether the activity of referring the matter may still be considered as reasonably necessary to carry out the mandate within the parameters and guidelines; or in the alternative, a request for continuance of this test claim.

Staff prepared a supplemental staff analysis that addresses the issues raised by the claimant. Staff has no legal objection to granting the request to amend the staff analysis and proposed Statement of Decision since the Commission is equally able to make findings at the hearing on the parameters and guidelines after hearing the claimants' arguments. Therefore, staff recommends that as a courtesy to the claimant, Commission adopt the final staff analysis as modified.

Parties were represented as follows: Juliana Gmur and Glen Everroad representing the City of Newport Beach; Carla Castaneda and Lorena Romero representing the Department of Finance.

Ms. Gmur commented on and concurred with the staff analysis.

Ms. Romero stated that Finance also concurs with the staff recommendations and final analysis and has no objections to the supplemental analysis.

Member Olsen moved to adopt the staff recommendation as modified. With a second by Member Chivaro, the staff recommendation was adopted by a vote of 7-0

Item 8 Proposed Statement of Decision: *Identity Theft*, 03-TC-08
[See Item 7]

Ms. Halsey also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision as revised by the supplemental staff analysis accurately reflected the Commission's decision to partially approve the *Identity Theft* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Worthley made a motion to adopt the proposed Statement of Decision as modified. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 7-0.

STAFF REPORTS

Item 18 Report on 2009 Legislation

Ms. Patton stated that in 2004, the Governor's Office requested all boards and commissions to prepare bill analyses and recommend positions on pending legislation. Since deadlines to submit analyses to the Governor's Office may fall outside of scheduled commission meetings, the Commission authorized the Executive Director to submit bill analyses with positions on bills that impact the Commission's statutory authority and workload. The bill analysis must include a statement that the analysis was prepared by staff and does not reflect the Commission's position. When taking positions on bills that do coincide with Commission meetings, staff will seek approval from the Commission to take positions on bills.

Ms. Patton also stated that staff is tracking several bills this year that would amend the mandates process or affect staff workload. AB 661, by Assembly Member Torlakson, is the *Behavioral Intervention Plans* or BIPS test claim, which involves special education services for children with disabilities. It was determined by the Commission to be a mandate in 2000. Instead of

developing parameters and guidelines, the Department of Finance and school officials negotiated a settlement regarding how much school districts would receive in reimbursement for this program. Finance and school officials have reached an agreement, and AB 661 includes that agreement, which would pay schools \$65 million for 2009, \$85 million per year for six additional years, and a one-time appropriation of \$10 million for county offices of education.

Ms. Patton noted that this agreement has been signed by the parties, including Commission staff. As a result of that agreement, the Commission would not have to adopt parameters and guidelines or the statewide cost estimate. Staff recommends that the Commission submit an analysis supporting AB 661.

Member Olsen moved to submit an analysis supporting AB 661. With a second by Member Worthley, the motion to submit the analysis was adopted by a vote of 7-0.

Item 19 Chief Legal Counsel's Report (info)

Ms. Shelton stated that the *Department of Finance vs. Commission on State Mandates* case is now final and is published at 170 Cal.App.4th 1355. In that case, the Third District Court of Appeal reversed the decision of the Commission, finding that school districts and special districts that are permitted by statute to employ peace officers who supplement the general law enforcement units of cities and counties are not mandated by the state to comply with the POBOR legislation. The court went further in discussing the idea of practical compulsion. In that case, whenever a claimant is alleging practical compulsion, it must show that they are facing certain and severe penalties such as double taxation or other draconian consequences with concrete evidence in the record.

The other update is the BIPS stipulation. The real parties in interest, the Department of Finance and the school districts, are attending a hearing to obtain a judge's approval on that joint stipulation.

Item 13 Executive Director's Report (info)

Ms. Higashi reported that staff issued a revised report to provide new information and update the hearing calendars that are pending.

Also, staff has been contacted by a fourth county regarding the SB 1033 process. Alameda County is considering whether or not to prepare an application for significant financial distress. No applications have been filed yet nor has Ms. Patton heard back from the counties as to any more specific intent if they have moved along in their processes.

Staff is scheduled for its first budget hearing on April 23, and we'll be attending a prehearing meeting to determine whether or not any of the long-suspended mandates should be made optional or repealed. For instance, there has been some interest in moving some of the education

mandates. But there is only one bill that Ms. Patton reported on, the Romero bill, which actually starts to make some changes to Education Code statutes. Staff will inform the Commission on developments as they occur as well as additional workload.

Ms. Higashi noted tentative agendas. May 29 is the next hearing at the Department of Finance because a Capitol hearing room could not be reserved. The July hearing is on July 31.

Ms. Geanacou from Finance asked if there will be a June 26 hearing. Ms. Higashi confirmed that there will not be a June 26th hearing at this time.

PUBLIC COMMENT

Patrick Day, San Jose Unified School District, Chairperson for Education Mandated Costs Network, commented on the discussion about a level of professionalism expected from educators. As a professional educator, Mr. Day stated that he does not have a problem with that expectation. However, Mr. Day pointed out that in two education items, *Tuition Fee Waivers* and *Cal Grants*, the Department of Finance requested 11 extensions in each one and all were granted. Mr. Day stated he would want the same level of professionalism expected from all. Timely filings and doing things timely is certainly an expected level of professionalism.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

A. PENDING LITIGATION

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Hearing no further comments, Chairperson Ingenito adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:39 p.m., Chairperson Ingenito reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

Member Glaab requested to change his vote on the minutes to an abstention as he was not present at the January 30, 2009 hearing.

ADJOURNMENT

Hearing no further business, Chairperson Ingenito adjourned the meeting at 10:39 p.m.



PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:44 a.m.
DATE: Friday, March 27, 2009
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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A P P E A R A N C E S

COMMISSIONERS PRESENT

MIRIAM BARCELONA INGENITO
(Commission Chair)
Representative for MICHAEL GENEST
Director, State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

ANNE HOUSTON SCHMIDT
Representative for CYNTHIA BRYANT
Director, Office of Planning & Research

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



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 20)

ERIC FELLER
Senior Commission Counsel
(Items 3 and 4)

A P P E A R A N C E S

COMMISSION STAFF PRESENT

continued

HEATHER HALSEY
Commission Counsel
(Items 7 and 8)

NANCY PATTON
Assistant Executive Director
(Items 12 and 18)

CAMILLE SHELTON
Chief Legal Counsel
(Items 5, 6, 9, 10 & 12, 19)



PUBLIC TESTIMONY

Appearing Re Items 3 & 4 (Tuition Fee Waivers):

For Contra Costa Community College District:

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

For Department of Finance:

EDWARD HANSON
Department of Finance
915 L Street
Sacramento, California 95814

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 5 and 6 (Cal Grants):

For Long Beach Community College District:

KEITH B. PETERSEN, MPA, JD
SixTen and Associates

For California Student Aid Commission:

KERI TIPPINS
Legal Counsel
California Student Aid Commission
10834 International Drive, Suite 100
Rancho Cordova, CA 95670

For Department of Finance:

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

Appearing Re Items 7 and 8 (Identity Theft):

For Claimant City of Newport Beach:

JULIANA F. GMUR
Manager, Cost Services
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658-8915

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 7 and 8 (Identity Theft): *continued*

For the Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

LORENA ROMERO
Finance Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 9 (Graduation Requirements):

For Castro Valley Unified, Fullerton Joint Union High, Grossmont Union High, San José Unified, and Sweetwater Union High School Districts:

KEITH B. PETERSEN, MPA, JD
SixTen and Associates

For the State Controller's Office:

CHRISTOPHER B. RYAN
Audit Manager
Division of Audits
State Controller's Office
300 Capitol Mall
Sacramento, California 95814

JIM SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing re Item 12 (National Norm-Referenced
Achievement Tests)**

For the Department of Finance

ELISA LEGARRA
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Public Comments:

For San José Unified School District and
Education Mandated Costs Network:

PATRICK DAY
San José Unified School District
855 Lenzen Avenue
San José, California 95126

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Commission on State Mandates – March 27, 2009

1 BE IT REMEMBERED that on Friday, March 27,
2 2009, commencing at the hour of 9:44 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 *(The following proceedings commenced with*
8 *Mr. Chivaro absent from the meeting room.)*

9 CHAIR INGENITO: Good morning. The meeting of
10 the Commission on State Mandates will come to order.

11 Paula, could you call the roll, please?

12 MS. HIGASHI: Yes.

13 Mr. Chivaro is on his way.

14 Mr. Glaab?

15 MEMBER GLAAB: Present.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Ms. Schmidt?

21 MEMBER SCHMIDT: Here.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: And Ms. Ingenito?

25 CHAIR INGENITO: Here.

Commission on State Mandates – March 27, 2009

1 MS. HIGASHI: The first item is Item 1,
2 approval of the minutes from the last meeting.

3 CHAIR INGENITO: Are there any objections to or
4 corrections of the January 30 minutes?

5 MEMBER WORTHLEY: Move approval, Madam Chair.

6 MEMBER OLSEN: Second.

7 CHAIR INGENITO: Having a motion and a second,
8 Paula, are there any -- those in favor?

9 *(A chorus of "ayes" was heard.)*

10 CHAIR INGENITO: Opposed?

11 *(No response)*

12 CHAIR INGENITO: Abstentions?

13 *(No response)*

14 CHAIR INGENITO: Okay.

15 MS. HIGASHI: Thank you.

16 CHAIR INGENITO: The minutes are adopted.

17 And then on to the Consent Calendar.

18 MS. HIGASHI: The Consent Calendar is printed
19 on yellow paper, and it consists of Item 11, Item 13,
20 Item 14, Item 15, and Item 16.

21 CHAIR INGENITO: Are there any objections to
22 the *Proposed Consent Calendar*?

23 *(No response)*

24 CHAIR INGENITO: Is there a motion to adopt --

25 MEMBER OLSEN: So moved.

Commission on State Mandates – March 27, 2009

1 MEMBER GLAAB: Second.

2 CHAIR INGENITO: It has been moved and
3 seconded.

4 All those in favor?

5 *(A chorus of "ayes" was heard.)*

6 CHAIR INGENITO: Opposed?

7 *(No response)*

8 CHAIR INGENITO: The motion carries.

9 MS. HIGASHI: Thank you very much.

10 There are no appeals to consider under Item 2.

11 And then this brings us to the hearing portion
12 of our meeting.

13 And I'd like all of the parties and witnesses
14 who intend to come to the table for any of the test-claim
15 items to please stand.

16 *(Parties and witnesses stood)*

17 MS. HIGASHI: Do you solemnly swear or affirm
18 that the testimony which you are about to give is true
19 and correct based upon your personal knowledge,
20 information, or belief?

21 *(A chorus of "I do's" was heard.)*

22 MS. HIGASHI: Thank you very much.

23 *(Mr. Chivaro entered the hearing room.)*

24 MS. HIGASHI: Let the record reflect that
25 Mr. Chivaro has arrived.

Commission on State Mandates – March 27, 2009

1 MS. HIGASHI: Our first test claim is Item 3.
2 And this item will be presented by Senior Commission
3 Counsel Eric Feller on *Tuition Fee Waivers*.

4 MR. FELLER: Good morning. This test claim
5 alleges a reimbursable mandate for costs associated with
6 determining student residence status and nonresident
7 student tuition fee charges or waivers at community
8 colleges.

9 As indicated in the analysis, staff finds that
10 the activities on pages 2 through 10 and 65 through 73
11 are reimbursable, and that's as revised by the pink
12 sheets that you should have received.

13 The claimants submitted comments as specified
14 on page 50 to 59 of the record, disagreeing with parts of
15 the draft staff analysis. And staff addressed these
16 comments in the final analysis.

17 Yesterday, staff received an 11-page letter
18 from the Department of Finance, disagreeing with portions
19 of the draft staff analysis. You should have that before
20 you, as well as the supplemental analysis staff prepared
21 in response.

22 As a result of Finance's comments, staff
23 changed its recommendation to delete the activity of
24 adopting rules and regulations regarding nonresident
25 tuition as a reimbursable activity because the

1 chancellor's office issues annual memoranda on this
2 topic. And that should be attached to your supplemental
3 analysis as well.

4 Because these memoranda constitute rules for
5 nonresident tuition, local districts would not need to
6 adopt their own rules, so that activity would not be
7 reimbursable.

8 As noted in the supplemental staff analysis,
9 staff disagrees with Finance's other comments.

10 Thus, staff recommends the test claim be
11 approved for the activities on pages 2 through 10 and
12 65 through 73 as revised by the supplemental analysis and
13 the pink replacement sheets.

14 Would the witnesses and parties please state
15 your names for the record?

16 MR. PETERSEN: Keith Petersen, representing the
17 test claimant.

18 MS. FEREBEE: Donna Ferebee, Department of
19 Finance.

20 MR. HANSON: Ed Hanson, Department of Finance.

21 CHAIR INGENITO: Mr. Petersen?

22 MR. PETERSEN: Good morning. This test claim
23 has no threshold legal issues in dispute. It's one of
24 those test claims where somebody had to go through line
25 by line and look at the law for the last 30 years.

1 Was that you?

2 And the Commission staff has responded to all
3 the concerns I had my rebuttal, so I will stand on my
4 filings.

5 CHAIR INGENITO: Department of Finance?

6 MS. FEREBEE: Thank you.

7 Donna Ferebee, Department of Finance. And
8 thank you for accepting our late filing.

9 Finance continues to assert that the districts
10 have always had to consider factors establishing a
11 student's residency and the addition of more examples
12 of factors, such as the exceptions that changed the
13 classifications of students who will be considered
14 residents does not result in any program or higher level
15 of service.

16 It is our understanding that the ways in which
17 a student could show residency were never limited by law.
18 In other words, if a student came forward with factors
19 such as the four that are specified on page 24 of the
20 analysis, before the regulations specifically called them
21 out, the districts would have had to have considered
22 them.

23 Similarly, the analysis of financial
24 independence may have changed, but districts have always
25 had to consider a student's showing of financial

1 independence when he or she seeks to have his or her
2 residency status changed.

3 And as for the questionnaires, they are
4 provided by the chancellor's office, so it's our position
5 that districts don't have to revise their own; they can
6 use those questionnaires that are provided.

7 And also that a signature under penalty of
8 perjury does not create any new activity for the
9 districts.

10 And finally, the waiving of tuition and fees
11 for dependents of victims of the September 11th terrorist
12 attacks is not a new program or higher level of service
13 because, number one, the Victim Compensation and
14 Government Claims Board does the eligibility
15 determinations and, number two, districts already have
16 established processes for waiving tuition and fees.

17 Thank you.

18 CHAIR INGENITO: Thank you.

19 Are there any questions from the Members?

20 *(No response)*

21 CHAIR INGENITO: Is there any further
22 discussion?

23 Ms. Olsen?

24 MEMBER OLSEN: Yes, I have to say that if we
25 are going to discuss this today, I'm going to have to

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1 abstain because I just got the information from Finance
2 this morning. So that's where I am on it.

3 I don't have any questions because I haven't
4 been able to digest anything.

5 MEMBER WORTHLEY: Madam Chair, just to comment.
6 To me, it was -- and I haven't had a chance to review the
7 response from our staff -- but as I was reviewing the
8 late filing, to me, it was a matter of discretionary
9 versus mandatory conduct.

10 Yes, they could have done many things; but with
11 the statute, it now became mandatory: These are the
12 things you will consider. It was an extensive list. It
13 was greater than what the previous language had
14 indicated. And so to me, I would concur with the staff
15 recommendation that this still constitutes an unfunded
16 mandate.

17 CHAIR INGENITO: Is there any other discussion
18 on the item?

19 *(No response)*

20 CHAIR INGENITO: Is there a motion?

21 MEMBER CHIVARO: I'll move staff
22 recommendation.

23 MEMBER WORTHLEY: Second.

24 CHAIR INGENITO: Having a motion and a second,
25 Paula, can you call the roll?

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1 MS. HIGASHI: I just want to request a
2 clarification. Your motion is to adopt the staff
3 recommendation as revised by Mr. Feller this morning?

4 MEMBER CHIVARO: That's correct.

5 MS. HIGASHI: Okay, thank you.

6 Mr. Chivaro?

7 MEMBER CHIVARO: Aye.

8 MS. HIGASHI: Mr. Glaab?

9 MEMBER GLAAB: Aye.

10 MS. HIGASHI: Mr. Lujano?

11 MEMBER LUJANO: Aye.

12 MS. HIGASHI: Ms. Olsen?

13 MEMBER OLSEN: Abstain.

14 MS. HIGASHI: Ms. Schmidt?

15 MEMBER SCHMIDT: Aye.

16 MS. HIGASHI: Mr. Worthley?

17 MEMBER WORTHLEY: Aye.

18 MS. HIGASHI: Ms. Ingenito?

19 CHAIR INGENITO: Aye.

20 MS. HIGASHI: Thank you very much.

21 This brings us to Item 4, the Proposed
22 Statement of Decision.

23 Mr. Feller?

24 MR. FELLER: Staff recommends the Commission
25 adopt the Proposed Statement of Decision as revised by

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1 the supplemental staff analysis in the blue replacement
2 sheets before you, which accurately reflects the
3 Commission's decision to partially approve the test
4 claim.

5 Staff also recommends the Commission allow
6 minor changes to be made to the proposed decision,
7 including reflecting the witnesses, hearing testimony,
8 and vote count that will be included in the final
9 Statement of Decision.

10 CHAIR INGENITO: Are there any comments from
11 the parties?

12 MR. PETERSEN: No.

13 CHAIR INGENITO: Is there a motion?

14 MEMBER WORTHLEY: Move recommendation.

15 MEMBER GLAAB: Second.

16 CHAIR INGENITO: There has been a motion to
17 adopt the revised --

18 MS. HIGASHI: Proposed Statement of Decision.

19 CHAIR INGENITO: -- Proposed Statement of
20 Decision. Thank you.

21 The Proposed Statement of Decision.

22 Can you call the roll, please?

23 MS. HIGASHI: Mr. Glaab?

24 MEMBER GLAAB: Aye.

25 MS. HIGASHI: Mr. Lujano?

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1 MEMBER LUJANO: Aye.

2 MS. HIGASHI: Ms. Olsen?

3 MEMBER OLSEN: I'll abstain again.

4 MS. HIGASHI: Ms. Schmidt?

5 MEMBER SCHMIDT: Aye.

6 MS. HIGASHI: Mr. Worthley?

7 MEMBER WORTHLEY: Aye.

8 MS. HIGASHI: Mr. Chivaro?

9 MEMBER CHIVARO: Aye.

10 MS. HIGASHI: And Ms. Ingenito?

11 CHAIR INGENITO: Aye.

12 MS. HIGASHI: The motion is carried.

13 This brings us to Item 5. This is the test
14 claim on *Cal Grants*. And this item will be presented by
15 Chief Counsel Camille Shelton.

16 MS. SHELTON: This test claim addresses the
17 Cal Grant program enacted by the Legislature in 2000 to
18 guarantee Cal Grant awards to college students beginning
19 in the 2001-2002 academic year. The guarantee extends to
20 every California high-school student graduating in 2001
21 or after and to California community-college students
22 transferring to a four-year college that graduated from
23 a California high school after June 2000 and who meet the
24 minimum grade-point average and eligibility requirements.
25 Other students can compete for Cal Grant A and B

1 competitive awards.

2 For the reasons stated in the analysis, staff
3 finds that the test-claim statutes and regulations impose
4 a partial reimbursable state-mandated program for
5 community colleges beginning July 1st, 2001, to calculate
6 a college or community-college grade-point average
7 pursuant to the instructions and the Student Aid
8 Commission's regulations, to certify under penalty of
9 perjury to the best of the school official's knowledge
10 that the grade-point average is accurately reported and
11 that it is subject to review by the Student Aid
12 Commission or its designee, and to complete or correct a
13 grade-point average upon notice that the original
14 submitted graded-point average was not complete or
15 correct.

16 Will the parties and witnesses please state
17 your names, for the record?

18 MR. PETERSEN: Keith Petersen, representing the
19 test claimant.

20 MS. TIPPINS: Keri Tippins, representing the
21 Student Aid Commission.

22 MS. GEANACOU: Susan Geanacou, Department of
23 Finance.

24 CHAIR INGENITO: Mr. Petersen?

25 MR. PETERSEN: Okay, this test claim has a

1 significant threshold issue that I lost in January. That
2 is, whether there is statutory compulsion or practical
3 compulsion to implement the state mandate.

4 The statutory question is whether the
5 institutional participation agreement is required --
6 whether community colleges are required to adopt the
7 institutional participation agreement.

8 Staff analysis concludes and agrees with the
9 Student Aid Commission that the institutional
10 participation agreement is discretionary, although I
11 believe all colleges, save one, have adopted it, and the
12 students cannot be paid their Cal Grants without the
13 college being a participant.

14 The other half of that two-prong analysis is
15 the practical compulsion. As I said, I lost that in
16 January on the "*if you have to build schools*" discussion.
17 The same issue here, as long as the Commission retains
18 the *Kern* case as the definition of practical compulsion,
19 there's no traction here.

20 So, if you concur with the staff analysis, the
21 rest of the analysis just follows mechanically, again,
22 the analysis from section to section.

23 CHAIR INGENITO: The Department of Finance?

24 MS. GEANACOU: I'll yield for the moment to the
25 Student Aid Commission representative.

1 MS. TIPPINS: Thank you.

2 There was just the one item that the Student
3 Aid Commission disagreed with the staff analysis on, and
4 that had to do with completing the GPA -- the community
5 college GPA form, whether or not that was a state
6 mandate.

7 And going back to the argument that
8 participation in the Cal Grant Program is voluntary on
9 behalf of all of the institutions, then the obligations
10 and requirements that flow from that program, for
11 example, the different Cal Grant A and B competitive
12 awards and the Cal Grant transfer, are part and parcel of
13 that program.

14 And it's the student requesting the school to
15 submit the GPA, as I indicated in our supplemental
16 filing. Originally, this was a more mechanical paper
17 process. It's now an electronic process.

18 We don't require that it be electronic just
19 because for a while there, not every school that
20 participated in the Cal Grant Program had the
21 functionality to do that. That's no longer the case,
22 is my understanding. They all pretty much upload
23 electronically.

24 So this is really an electronic process now.
25 There is no formal certification. There is no formal

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1 paper that comes to the commission. There are occasional
2 ones, but the vast majority are now electronic.

3 So between those two factors of the voluntary
4 nature of the program, the fact that this is really all
5 an electronic batch process now, we respectfully disagree
6 with the staff recommendation on this item.

7 CHAIR INGENITO: Are there others that aren't
8 at the table that would like to speak on this item?

9 *(No response)*

10 CHAIR INGENITO: Are there any questions from
11 the Members?

12 MEMBER WORTHLEY: Mr. Petersen has got
13 something.

14 CHAIR INGENITO: Oh, I'm sorry.
15 Mr. Petersen?

16 MR. PETERSEN: I notice the representative from
17 the Student Aid Commission said they didn't require
18 electronic filing; is that correct?

19 MS. TIPPINS: We do not require electronic
20 filing.

21 MR. PETERSEN: If you're in a position to
22 require anything, that might be a mandate.

23 MS. TIPPINS: Usually.

24 MR. PETERSEN: How interesting.

25 CHAIR INGENITO: Members?

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1 MEMBER SCHMIDT: I had a question about
2 something Finance commented on. It was that expecting
3 accuracy in a GPA is a reasonable expectation in a
4 professional environment and, therefore, shouldn't be
5 considered a mandate. And I was wondering if -- I don't
6 know if Camille would be the person to answer this or if
7 someone could explain to me why that would be considered
8 a mandate since, to me, it does seem like a reasonable
9 expectation of professionalism and accuracy.

10 MS. SHELTON: No, that's a good point.

11 The regulations in the statute require that
12 upon notice, you have ten days to correct an incomplete
13 or an inaccurate grade-point average. And the
14 grade-point average has to be calculated according to the
15 Student Aid Commission's regulations. And the only way
16 for the student to be able to have a successful
17 application filed is if the GPA has been certified as
18 correct. And the community college is the only entity
19 that would have that information and be able to certify
20 that under penalty of perjury.

21 MS. TIPPINS: Can I also comment on that?

22 The Student Aid Commission doesn't have any
23 independent knowledge, as we just indicated, of the GPA.

24 When we determine something is incorrect, it's because
25 the system, when they're electronically uploaded, there

1 may be a typographical error of some sort when this
2 information is submitted. That's really the only way we
3 know that something may be incorrect is because our
4 system won't accept whatever was -- whether it's beyond
5 a 4.0, whether some other factor caused that to be kicked
6 back out of the system.

7 CHAIR INGENITO: Mr. Petersen?

8 MR. PETERSEN: In response to the last issue,
9 reasonable expectation of accuracy of professionalism is
10 not a statutory exemption to reimbursement.

11 CHAIR INGENITO: Other Members?

12 MEMBER WORTHLEY: Just a comment.

13 Mr. Petersen, I think if you lost that case the
14 last time, you're going to lose this one, in my mind,
15 even more so, because I voted in opposition to the last
16 one because --

17 MR. PETERSEN: This is less rigorous, yes.

18 MEMBER WORTHLEY: Housing, in my mind, isn't
19 something schools have to do. They don't have to provide
20 this particular form of student aid. There's other forms
21 of student aid and so forth. So I think that's a weaker
22 argument in this case.

23 MR. PETERSEN: Yes, and I expect a court will
24 tell us in three or four years.

25 MEMBER WORTHLEY: So I support staff's

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1 recommendation. And I think the comment made by you,
2 Madam, is that it really goes to the question of cost.
3 And I think that will come up in the parameters and
4 guidelines, what it actually costs to do this. And
5 whether it's de minimis, whether it takes time and energy
6 and therefore costs money, that will come out, I believe,
7 in the filing. But it is a mandated process which is
8 worthy of our action this morning.

9 I would move the staff analysis.

10 MS. GEANACOU: I would like to get Finance's
11 comments on the record. I didn't mean --

12 MEMBER WORTHLEY: I'm sorry.

13 MS. GEANACOU: That's okay. That didn't mean I
14 didn't want to comment. I was just letting the Student
15 Aid Commission proceed first. So I'm ready whenever you
16 are.

17 CHAIR INGENITO: The Department of Finance, go
18 ahead.

19 MS. GEANACOU: Okay, thank you.

20 A few of these items were already presented --
21 or, actually, all of them were presented in our
22 February filing, but I'd just like to reiterate a few of
23 them, particularly regarding completing or correcting
24 GPAs, which was just briefly discussed here.

25 Finance believes that community colleges should

1 not be reimbursed for the cost of correcting omissions or
2 mistakes, especially if the Commission votes today to
3 reimburse the original incorrect or incomplete GPA
4 calculation.

5 As you questioned about, we continue to assert
6 that accuracy and completeness should be expected as a
7 preexisting standard in a professional environment.

8 We'd also like to reiterate that there is
9 considerable funding provided in the Budget Act that
10 should fully cover the alleged mandated activities.

11 Budget Act Item 6870-101-0001 added funding for
12 community colleges to help students obtain financial aid,
13 including the Cal Grant Program. This funding was added
14 soon after the test-claim legislation was enacted. And
15 although the staff points out the Cal Grant was not
16 called out in the Budget Act language, this lack of
17 specificity was to allow local flexibility in how the
18 funds would be used to assist students in obtaining aid.

19 Additionally, general apportionment funding to
20 community colleges, which is approximately \$3 billion in
21 fiscal year 2008-09, can also be used to cover these
22 alleged mandated costs. And for those funding reasons,
23 we believe Government Code section 17556(e) should apply
24 to find no costs mandated by the State.

25 Additionally, as was alluded to a bit earlier,

1 we believe the test-claim statutes and regs activities
2 should be cost-neutral or cost-saving because some
3 activities under the former Cal Grant Program are no
4 longer performed, such as submitting transcripts to the
5 Student Aid Commission or performed electronically with
6 very minimal cost.

7 CHAIR INGENITO: Camille?

8 MS. SHELTON: May I just respond to the offset
9 issue?

10 Government Code section 17556, subdivision (e),
11 requires that an appropriation be made specifically
12 intended to fund the cost of those state-mandated
13 programs.

14 Ms. Geanacou did mention a budget line item
15 which we have referenced on page 30, and it was intended
16 for all financial-aid programs for students. And it
17 didn't specifically target the Cal Grant Program. We do
18 recommend that it be identified as a potential offset in
19 the parameters and guidelines, but it can't be used to
20 deny the claim because it is not specifically intended
21 to fund this particular Cal Grant Program.

22 Also, general apportionment as our Prop. 98
23 funding, there is no specific tag to the Cal Grant
24 Program with the Prop. 98 funding and can't be used as an
25 offset.

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1 MEMBER OLSEN: Madam Chair, I think this is a
2 question for Ms. Shelton.

3 Is there any direction from the courts about
4 this issue of professionalism? I mean, I find it, on its
5 face, to be a fairly compelling issue that Finance
6 raises.

7 MS. SHELTON: No. But when you look at the
8 plain language of the statute, it requires that it be
9 corrected after ten days' notice. If they're the only
10 entity that can correct and sign under penalty of
11 perjury, by the plain language reading, it becomes a
12 mandate.

13 MEMBER CHIVARO: I was just going to second
14 Member Worthley's motion.

15 CHAIR INGENITO: There has been a motion to
16 adopt the staff recommendation and a second.

17 Is there any further discussion on the matter?

18 *(No response)*

19 CHAIR INGENITO: Hearing none, Paula, can you
20 please call the roll?

21 MS. HIGASHI: Mr. Lujano?

22 MEMBER LUJANO: Aye.

23 MS. HIGASHI: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MS. HIGASHI: Ms. Schmidt?

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1 MEMBER SCHMIDT: Aye.

2 MS. HIGASHI: Mr. Worthley?

3 MEMBER WORTHLEY: Aye.

4 MS. HIGASHI: Mr. Chivaro?

5 MEMBER CHIVARO: Aye.

6 MS. HIGASHI: Mr. Glaab?

7 MEMBER GLAAB: Aye.

8 MS. HIGASHI: Ms. Ingenito?

9 CHAIR INGENITO: Aye.

10 MS. HIGASHI: Thank you.

11 The next item is Item 6.

12 MS. SHELTON: Item 6 is the Proposed Statement
13 of Decision on the *Cal Grant* test claim. Staff
14 recommends that the Commission adopt the Proposed
15 Statement of Decision which accurately reflects the
16 adopted staff analysis and minor changes, including those
17 to reflect the vote count, will be included when we issue
18 the final Statement of Decision.

19 MEMBER WORTHLEY: Move approval.

20 MEMBER OLSEN: Second.

21 CHAIR INGENITO: There's been a motion and a
22 second to adopt the Statement of Decision.

23 Is there any other discussion on the matter?

24 *(No response)*

25 CHAIR INGENITO: Hearing none, can you call the

1 question?

2 MS. HIGASHI: Ms. Schmidt?

3 MEMBER SCHMIDT: Aye.

4 MS. HIGASHI: Mr. Worthley?

5 MEMBER WORTHLEY: Aye.

6 MS. HIGASHI: Mr. Chivaro?

7 MEMBER CHIVARO: Aye.

8 MS. HIGASHI: Mr. Glaab?

9 MEMBER GLAAB: Aye.

10 MS. HIGASHI: Mr. Lujano?

11 MEMBER LUJANO: Aye.

12 MS. HIGASHI: Ms. Olsen?

13 MEMBER OLSEN: Aye.

14 MS. HIGASHI: Ms. Ingenito?

15 CHAIR INGENITO: Aye.

16 MS. HIGASHI: The motion is carried.

17 We're going to skip Items 7 and 8 at the
18 moment. We're waiting for some copying to be done. And
19 we're going to move to Item 9, I believe, the *Graduation*
20 *Requirements* issue, review of claiming instructions.

21 This item will be presented by Chief Counsel
22 Camille Shelton.

23 CHAIR INGENITO: Camille?

24 MS. SHELTON: Item 9 is a request to review
25 three sets of claiming instructions issued by the State

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1 Controller's Office for the *Graduation Requirements*
2 Program pursuant to the amended parameters and guidelines
3 adopted by the Commission on November 6th, 2008.

4 The amended parameters and guidelines include
5 a reasonable reimbursement methodology representing the
6 one-quarter class-load method for claiming increased
7 science teachers' salary costs beginning in fiscal year
8 1995-96.

9 The requesters challenge the requirement in
10 the claiming instructions that school districts that
11 previously filed reimbursement claims for these prior
12 fiscal years, to refile those claims using the reasonable
13 reimbursement methodology if the school district's
14 teacher salary costs change with the use of the RRM.

15 Staff finds that the Commission when it adopted
16 the staff analysis and amended the parameters and
17 guidelines did not require school districts to refile
18 the reimbursement claims for prior fiscal years. Staff
19 further finds that the Government Code does not require
20 eligible claimants to refile reimbursement claims when
21 parameters and guidelines are amended. Though, staff
22 finds that the three sets of claiming instructions
23 issued by the State Controller's office do not conform
24 to the amended parameters and guidelines as required by
25 the Government Code section 17571.

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1 Accordingly, pursuant to Government Code
2 section 17571, staff recommends that the Commission adopt
3 the staff analysis and direct the Controller's office to
4 replace the language on page 1 of the three sets of
5 claiming instructions with the language provided on
6 pages 2 and 3 of the executive summary which conforms
7 to the amended parameters and guidelines for this program
8 and with the Government Code.

9 Will the parties please state your names for
10 the record?

11 MR. PETERSEN: Keith Petersen representing the
12 five requesting school districts.

13 MS. FEREBEE: Donna Ferebee, Department of
14 Finance.

15 MR. RYAN: Chris Ryan, Department of -- State
16 Controller's Office.

17 MR. PETERSEN: Unless you've got news.

18 MR. SPANO: Jim Spano, State Controller's
19 Office.

20 CHAIR INGENITO: Mr. Petersen?

21 MR. PETERSEN: The Commission's findings and
22 recommendations are consistent with the Government Code
23 and regulations, as I understand them, and the past
24 practice for the last 20 years of this commission. So
25 I agree with them.

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1 CHAIR INGENITO: Finance?

2 MS. FEREBEE: Well, Finance continues to
3 disagree with the action that was taken by the Commission
4 last November adopting the revised P's & G's; but as far
5 as this item is concerned --

6 MR. PETERSEN: You've got to move on. Believe
7 me, you've got to move on.

8 MS. FEREBEE: Thank you for letting me get
9 that --

10 We have nothing to add as far as this item is
11 concerned beyond the comments we've already submitted.
12 Thank you.

13 CHAIR INGENITO: The Controller's office,
14 please?

15 MR. SPANO: Based on the audits we've done so
16 far, we believe that the RRM, the reasonable
17 reimbursement methodology, is the only reasonable
18 methodology to determine reasonable costs for science
19 teachers' salary costs. But that being said, we concur
20 with the staff analysis that neither the adopted
21 P's & G's, parameters and guidelines, nor the analysis
22 adopted by the Commission on the proposed amendments to
23 the P's & G's requires the school districts to refile
24 older claims.

25 CHAIR INGENITO: All right. Anybody else that

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1 would like to comment on this item that hasn't already
2 spoken?

3 *(No response)*

4 CHAIR INGENITO: Members?

5 *(No response)*

6 CHAIR INGENITO: There seems to be some
7 agreement here.

8 Is there a motion on the bill -- on the issue?

9 MEMBER GLAAB: So moved.

10 CHAIR INGENITO: You can tell where I came
11 from, huh?

12 MEMBER CHIVARO: Second.

13 CHAIR INGENITO: There's been a motion and a
14 second to adopt the staff recommendation.

15 If there's no further discussion, Paula?

16 MS. HIGASHI: I just wanted to clarify, who
17 made the motion?

18 CHAIR INGENITO: Paul.

19 MS. HIGASHI: Mr. Chivaro?

20 MEMBER CHIVARO: Aye.

21 MS. HIGASHI: Mr. Glaab?

22 MEMBER GLAAB: Aye.

23 MS. HIGASHI: Mr. Lujano?

24 MEMBER LUJANO: Aye.

25 MS. HIGASHI: Ms. Olsen?

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1 MEMBER OLSEN: Aye.

2 MS. HIGASHI: Ms. Schmidt?

3 MEMBER SCHMIDT: Not voting.

4 MS. HIGASHI: Mr. Worthley?

5 MEMBER WORTHLEY: Aye.

6 MS. HIGASHI: And Ms. Ingenito?

7 CHAIR INGENITO: Aye.

8 MS. HIGASHI: Thank you.

9 We'll now move to Item 12, which is the
10 proposed statewide cost estimate on the *National*
11 *Norm-Referenced Achievement Tests*. This item came off of
12 the Consent Calendar.

13 And Assistant Executive Director Nancy Patton
14 will introduce this item.

15 MS. PATTON: Good morning. The proposed
16 statewide cost estimate includes four fiscal years, for
17 a total of \$10,809,432 for the *National Norm-Referenced*
18 *Achievement Test* program.

19 On July 28, 2005, on reconsideration, the
20 Commission found, effective July 1, 2004, that
21 administering the California Achievement Test, Sixth
22 Edition Survey, CAT/6, in grades 3 and 7, imposes a
23 reimbursable state-mandated program on school districts.

24 The proposed statewide cost estimate for fiscal
25 years 2004-05 through 2007-08 was developed by totaling

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1 the 855 unaudited actual reimbursement claims filed by
2 the State Controller's Office.

3 No costs are estimated for fiscal year 2008-09
4 and beyond, because in 2008 the Legislature eliminated
5 the CAT/6 test administration mandate effective
6 September 30, 2008.

7 The Department of Finance opposes the statewide
8 cost estimate because it believes the reimbursement
9 claims used to develop the estimate may be excessive and,
10 thus, the Commission should wait until the reimbursement
11 claims have been audited by the State Controller's Office
12 before using them to develop the estimate.

13 Staff disagrees that the cost estimate can be
14 delayed until reimbursement claims are audited because
15 such delay is inconsistent with the statutory scheme
16 governing the mandates process.

17 Please see the purple sheet that we passed out
18 in front of you, which provides the Commission's previous
19 finding on this matter. You may also find this finding
20 today in the statewide cost estimate on the *Pupil*
21 *Expulsions* program that was adopted on the Consent
22 Calendar.

23 Therefore, staff finds that the Commission
24 should not delay adoption of this statewide cost
25 estimate, and recommends the Commission adopt the

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1 proposed statewide cost estimate for fiscal years 2004-05
2 through 2007-08.

3 CHAIR INGENITO: Okay, at the table?

4 MS. LEGARRA: Elisa Legarra, Department of
5 Finance.

6 I just wanted to walk you through some concerns
7 we have with the basis for the statewide cost estimate
8 that you're looking at.

9 It is based on 855 unaudited actual
10 reimbursement claims resulting in \$10.8 million in costs.
11 And this would -- adopting this would simply provide a
12 list of claims to the Legislature, whereas the amount of
13 actual costs could be very different from the estimate.
14 For example, the State Controller's Office has one
15 published audited claim for the Norm-Referenced Test at
16 this time; and it resulted in over 99 percent of the
17 costs being identified as unallowable.

18 Speaking with the State Controller's Office in
19 general, they're going through the process of auditing
20 some other claims for this mandate; and they see a
21 general trend with districts claiming for the entire
22 series of STAR tests that they administer, instead of
23 just this very small Norm-Referenced Test that this
24 mandate applies to.

25 In addition, Finance is concerned that a lot of

1 districts may not be deducting all or some of the
2 offsetting apportionments they receive for testing.

3 A final point is that a very similar mandate, a
4 related mandate, the STAR mandate, which also allowed
5 districts to claim for testing, has the same high rates
6 of unallowable costs. Specifically, there's seven
7 published audits on the STAR mandate, very similar. And
8 the average rate of unallowable costs is 66 percent.
9 Therefore, we think it is premature to adopt a statewide
10 cost estimate based on unaudited claims. It would be a
11 much more relevant statewide cost estimate if the
12 information from some audited claims were taken into
13 account.

14 CHAIR INGENITO: My understanding is that it
15 is laid out in the statute as to what order the audits,
16 and then where this lays in the process. And it's not at
17 the discretion of the Commission on State Mandates to
18 adopt this particular cost estimate after the audits. We
19 have to, based on state law, adopt them prior and then
20 just do an adjustment. And so Finance just has to revise
21 their numbers in subsequent budget acts when we
22 reconcile.

23 Is that correct?

24 MS. PATTON: That is correct.

25 CHAIR INGENITO: Any other comments?

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1 (No response)

2 CHAIR INGENITO: Is there a motion?

3 MEMBER OLSEN: So moved.

4 CHAIR INGENITO: Is there a second?

5 MEMBER WORTHLEY: Second.

6 CHAIR INGENITO: There has been a motion to
7 adopt the statewide cost estimate listed in our binders,
8 and a second.

9 Is there any further discussion?

10 (No response)

11 CHAIR INGENITO: Hearing none, can we call the
12 question?

13 MS. HIGASHI: Mr. Glaab?

14 MEMBER GLAAB: Aye.

15 MS. HIGASHI: Mr. Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HIGASHI: Ms. Schmidt?

20 MEMBER SCHMIDT: Aye.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Aye.

23 MS. HIGASHI: Mr. Chivarro?

24 MEMBER CHIVARO: Aye.

25 MS. HIGASHI: Ms. Ingenito?

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1 CHAIR INGENITO: Aye.

2 MS. HIGASHI: Thank you.

3 Then to keep moving, this brings us to -- hold
4 on one moment.

5 We're waiting for some copying work to come,
6 and I just --

7 MEMBER OLSEN: Is this regarding --

8 MS. PATTON: We found it.

9 MEMBER OLSEN: We found ours.

10 MS. HIGASHI: You found it?

11 MEMBER OLSEN: We're okay.

12 MS. PATTON: Now, Heather doesn't have hers.

13 MS. HIGASHI: She can take mine.

14 So you did get it in the mail?

15 MEMBER OLSEN: Yes.

16 CHAIR INGENITO: So we're going back to Item 7?

17 MS. HIGASHI: Yes, we're going back to Item 7.

18 Item 7 will be presented by Commission Counsel
19 Heather Halsey.

20 MS. HALSEY: Good morning. This test claim
21 concerns increased activities of the local law
22 enforcement agency required by the test-claim statute
23 when a complainant residing in the agency's jurisdiction
24 makes a report of identity theft. Staff finds that this
25 test-claim statute imposes a reimbursable state-mandated

1 program for cities and counties for some of the required
2 activities within the meaning of Article XIII B,
3 Section 6, of the California Constitution. Specifically,
4 the requirements to take a police report and begin an
5 investigation of the facts mandate a new program or
6 higher level of service and impose costs mandated by
7 the State because these activities were discretionary
8 prior to enactment of the test-claim statute, and the
9 test-claim statute makes them mandatory.

10 However, staff finds that referral of the
11 matter to the law-enforcement agency where the suspected
12 crime was committed for further investigation of the
13 facts is not a mandated activity and is, therefore, not
14 reimbursable.

15 Finally, staff finds that the requirement to
16 provide the claimant with a copy of the police report is
17 not a new program or higher level of service because the
18 California Public Records Act already requires local
19 law-enforcement agencies to provide complainants with a
20 copy of the report.

21 However, after the final staff analysis and the
22 proposed Statement of Decision were issued, the claimant
23 filed a request to amend the proposed Statement of
24 Decision to delete the finding regarding whether the
25 activity of referring the matter may still be considered

1 as reasonably necessary to carry out the mandate within
2 the parameters and guidelines; or in the alternative, a
3 request for continuance of this test claim.

4 We've prepared a supplemental staff analysis
5 that should be in your binder, that addresses the issues
6 raised by the claimant. And this was distributed to the
7 members on March 18th and is posted on our Web site.

8 Staff has no legal objection to granting the
9 request to amend the staff analysis since the Commission
10 is equally able to make findings at the hearing on the
11 parameters and guidelines after hearing the claimants'
12 arguments.

13 Therefore, staff recommends that as a courtesy
14 to the claimant, Commission adopt the final staff
15 analysis on page 12 as modified on your yellow sheet in
16 your binder, if you want to take a look at the revised
17 language.

18 Will the parties and witnesses please state
19 your names for the record?

20 MS. GMUR: Juliana Gmur for the City of Newport
21 Beach.

22 MR. EVERROAD: Glen Everroad, City of Newport
23 Beach, test claimant.

24 MS. CASTAÑEDA: Carla Castañeda, Department of
25 Finance.

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1 MS. ROMERO: Lorena Romero, Department of
2 Finance.

3 MS. GMUR: Good morning, Commissioners.

4 First, we'd like to say how much we appreciate
5 the fine work by your staff in this matter. And we'd
6 also like to concur with that fine work, as amended.

7 CHAIR INGENITO: Very good.

8 And Department of Finance?

9 MS. ROMERO: Lorena Romero, Department of
10 Finance. We also accept -- concur with the staff
11 recommendations and final analysis, and have no
12 objections to the supplemental analysis.

13 CHAIR INGENITO: Very good.

14 Are there any other comments, either from the
15 public or the members?

16 *(No response)*

17 CHAIR INGENITO: Hearing none, is there a
18 motion?

19 MEMBER OLSEN: So moved.

20 CHAIR INGENITO: A second?

21 MEMBER CHIVARO: A second.

22 CHAIR INGENITO: There has been a motion to
23 adopt the revised staff recommendation, and a second.

24 If there's no additional discussion, Paula?

25 MS. HIGASHI: Mr. Lujano?

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1 MEMBER LUJANO: Aye.

2 MS. HIGASHI: Ms. Olsen?

3 MEMBER OLSEN: Aye.

4 MS. HIGASHI: Ms. Schmidt?

5 MEMBER SCHMIDT: Aye.

6 MS. HIGASHI: Mr. Worthley?

7 MEMBER WORTHLEY: Aye.

8 MS. HIGASHI: Mr. Chivaro?

9 MEMBER CHIVARO: Aye.

10 MS. HIGASHI: Mr. Glaab?

11 MEMBER GLAAB: Aye.

12 MS. HIGASHI: Ms. Ingenito?

13 CHAIR INGENITO: Aye.

14 MS. HIGASHI: Thank you.

15 Item 8, Proposed Statement of Decision.

16 MEMBER WORTHLEY: Move approval.

17 MEMBER CHIVARO: Second.

18 MEMBER HALSEY: Okay. I'd just like to point
19 out that the motion should be to adopt it as modified and
20 using your green page 12.

21 MEMBER WORTHLEY: That was my motion.

22 CHAIR INGENITO: Are there any comments from
23 the parties?

24 *(No response)*

25 CHAIR INGENITO: From Members?

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(No response)

CHAIR INGENITO: There's been a motion.
Is there a second?

MEMBER CHIVARO: Second.

CHAIR INGENITO: There's been a motion and a
second to adopt the revised Statement of Decision.

Paula?

MS. HIGASHI: You can do a voice vote.

CHAIR INGENITO: Oh, we can do a voice vote?
All those in favor?

(A chorus of "ayes" was heard.)

CHAIR INGENITO: Opposed?

(No response)

CHAIR INGENITO: Abstentions?

(No response)

CHAIR INGENITO: The motion carries.

MR. EVERROAD: Thank you very much.

MS. GMUR: Thank you very much.

MS. HIGASHI: This brings us now to Item 18.

Item 18 is our staff report on 2009
legislation. And our leg. coordinator and Assistant ED,
Nancy Patton, will present this item.

MS. PATTON: Good morning, again.

In 2004, the Governor's Office requested all
boards and commissions to prepare bill analyses and

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1 recommend positions on pending legislation. Since
2 deadlines to submit analyses to the Governor's Office may
3 fall outside of scheduled commission meetings, the
4 Commission authorized the Executive Director to submit
5 bill analyses with positions on bills that impact the
6 Commission's statutory authority and workload, and the
7 bill analysis include a statement that the analysis was
8 prepared by staff and does not reflect the Commission's
9 position.

10 Of course, when taking positions on bills that
11 do coincide with Commission meetings, staff will seek
12 approval from the Commission to take positions on bills.

13 We are tracking several bills this year that
14 would amend the mandates process or affect our workload,
15 which I listed under Item 18 in your binders.

16 There is one bill that I would like to discuss,
17 that's AB 661 by Assembly Member Torlakson. The
18 *Behavioral Intervention Plans*, or BIPS, test claim, which
19 involve special-education services for children with
20 disabilities was determined by the Commission to be a
21 mandate in 2000. Instead of developing parameters and
22 guidelines, the Department of Finance and school
23 officials negotiated a settlement regarding how much
24 school districts would receive in reimbursement for this
25 program.

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1 Finance and school officials have reached an
2 agreement, and AB 661 includes that agreement, which
3 would pay schools \$65 million for 2009, \$85 million per
4 year for six additional years, and a one-time
5 appropriation of \$10 million for county offices of
6 education.

7 This agreement has been signed by the parties,
8 including Commission staff. And as a result of that
9 agreement, we would not have to adopt parameters and
10 guidelines or the statewide cost estimate.

11 And so staff is recommending that the
12 Commission submit an analysis supporting AB 661.

13 MEMBER WORTHLEY: I'm sure you would.

14 Do you need a motion on this matter or are you
15 just --

16 MS. HIGASHI: We just thought that since you
17 were meeting and this was a timely date, that it would be
18 nice for the Commission to actually take the action.

19 MEMBER WORTHLEY: Sure.

20 MEMBER OLSEN: So moved.

21 CHAIR INGENITO: Is there a second?

22 MEMBER WORTHLEY: Second.

23 MEMBER GLAAB: Second.

24 CHAIR INGENITO: Any further discussion?

25 All those in favor?

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1 (A chorus of "ayes" was heard.)

2 CHAIR INGENITO: Opposed?

3 (No response)

4 CHAIR INGENITO: Abstentions?

5 (No response)

6 CHAIR INGENITO: The motion carries.

7 MS. HIGASHI: Thank you.

8 MEMBER WORTHLEY: Madam Chairman, just a
9 comment. It looked to me like AB 844 would be a huge
10 amount of work for the Commission. We might not want to
11 support that one.

12 MS. PATTON: I will not be asking you for your
13 support position on that bill.

14 MS. HIGASHI: Does the Commission wish to give
15 us some direction on AB 844?

16 MEMBER WORTHLEY: Oh, I don't know. I just
17 looked at it, and I thought, oh, my goodness. It looks
18 like a lot of work.

19 MEMBER GLAAB: It's huge.

20 CHAIR INGENITO: Very good.

21 MEMBER WORTHLEY: No comment. No comment.

22 CHAIR INGENITO: All right, Item 19?

23 MS. HIGASHI: Item 19, Ms. Shelton?

24 MS. SHELTON: We've had a lot of litigation
25 activity, and I have a couple of updates to this public

1 report.

2 One, the first case, the *Department of Finance*
3 *vs. Commission on State Mandates*. That case has been --
4 is now final and is published at 170 Cal.App.4th 1355.
5 And in that case, the Third District Court of Appeal
6 reversed the decision of the Commission, finding that
7 school districts and special districts that are permitted
8 by statute to employ peace officers who supplement the
9 general law-enforcement units of cities and counties are
10 not mandated by the State to comply with the POBOR
11 legislation.

12 The Court went further, though, in discussing
13 the idea of practical compulsion. And in that case,
14 whenever a claimant is alleging practical compulsion,
15 it must show that they are facing certain and severe
16 penalties such as double taxation or other draconian
17 consequences with concrete evidence in the record. So
18 we will be looking for that.

19 The other update, Nancy mentioned the BIPS
20 stipulation. Today, this morning, the real parties in
21 interest, the Department of Finance and the school
22 districts, are attending a hearing, trying to get a judge
23 to sign off on that joint stipulation this morning.

24 And that is all I have for update.

25 CHAIR INGENITO: Okay.

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1 MS. HIGASHI: Item 20, we issued a revised
2 report to provide new information, and update the hearing
3 calendars that are pending.

4 The most important point for all of you is just
5 to note that we now have been contacted by a fourth
6 county, which is Alameda County, that is considering
7 whether or not to prepare an application for significant
8 financial distress.

9 We have had no applications filed yet. And
10 Ms. Patton has not heard back from the counties as to any
11 more specific intent, if they have moved along in their
12 processes. So I just wanted to make that note for you.

13 In addition, we are starting -- even though we
14 have a state budget, the Commission is scheduled for its
15 first budget hearing on April 23rd, and we'll be
16 attending a prehearing meeting to get ready for that next
17 week.

18 What could come up in that is just whether or
19 not any of the mandates that currently exist, that have
20 been long-time suspended mandates, would be modified by
21 statute, so that they could be made optional or repealed
22 because there are a number of mandates that have not been
23 funded for a long time, and other issues that may come up
24 as the session continues.

25 We know, for instance, that on the Ed. side,

1 that there has been some interest in moving some of the
2 education mandates. But there's only one bill that
3 Ms. Patton reported on, the Romero bill, that actually
4 starts to make some changes to Ed. Code statutes.

5 So we'll keep you posted on these developments
6 as they occur and what additional workload could be
7 coming our way if the Legislature continues to send us
8 work.

9 And also, the tentative agendas are noted for
10 you here. The hearing dates, May 29th is our next
11 hearing. And we'll be meeting at the Department of
12 Finance on that date because we could not reserve a
13 Capitol hearing room. And then our July hearing is on
14 July 31st.

15 So if you could note those dates on your
16 calendars, if there are any issues that come up, please
17 let us know, so if we need to make any changes, we can
18 begin doing so.

19 Are there any other questions?

20 MS. GEANACOU: I have a question for May.

21 Susan Geanacou from Finance.

22 Does your hearing date information indicate
23 there will not be a June hearing? You had scheduled it
24 for June 26.

25 MS. HIGASHI: That's correct.

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1 MS. GEANACOU: No June hearing?

2 MS. HIGASHI: At this time, we do not have a
3 June hearing.

4 MS. GEANACOU: Thank you.

5 CHAIR INGENITO: Are there any other comments
6 from the public?

7 MR. DAY: Good morning. Patrick Day, director
8 in San José Unified School District, Chairperson for
9 Education Mandated Costs Network.

10 I just wanted to point out, there was a
11 discussion this morning about professionalism, a level
12 of professionalism expected by educators for two
13 different -- for one claim this morning. And I'd like to
14 point out that as a professional educator, I have no
15 problem with that. However, it's a little -- it seems a
16 different playing field here, that there were two items
17 this morning, *Tuition Fee Waivers* and *Cal Grants*. And
18 in both of those, in each one, the Department of Finance
19 requested 11 extensions in each one, and were granted.

20 We just want the same level of professionalism.
21 And timely filings and doing things timely is certainly
22 an expected level of professionalism.

23 Thank you.

24 CHAIR INGENITO: Thank you.

25 Any other comments from the public?

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1 (No response)

2 CHAIR INGENITO: All right, the Commission will
3 meet in closed session pursuant to Government Code
4 section 11126, subdivision (e), to confer with and
5 receive advice from legal counsel for consideration and
6 action, as necessary and appropriate for consideration
7 pertaining to litigation listed in the public notice and
8 in the agenda, and to confer with and receive advice from
9 legal counsel regarding potential litigation.

10 The Commission will also confer on personnel
11 matters listed on the published notice and agenda.

12 We will reconvene in public session in
13 approximately 15 minutes.

14 *(The Commission met in executive closed*
15 *session from 10:21 a.m. to 10:39 a.m.)*

16 CHAIR INGENITO: The Commission met in closed
17 executive session pursuant to Government Code
18 Section 11126, subdivision (e) to confer with and receive
19 advice from legal counsel, for consideration and action,
20 as necessary and appropriate upon the pending litigation
21 listed on the published notice and agenda and potential
22 litigation, and pursuant to Government Code Section
23 11126, subdivision (a), and 17526 to confer on personnel
24 matters listed on the published notice and agenda.

25 The Commission will reconvene in open session.

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MEMBER GLAAB: Madam Chairman, I'd like to change my vote with regards to the minutes. In error, I voted on that item when I was absent. And so I'd like to change it to an abstention.

MS. HIGASHI: Thank you, Mr. Glaab.

MEMBER GLAAB: Thank you.

CHAIR INGENITO: Anything else?

(No response)

CHAIR INGENITO: Having nothing else before the Commission, the meeting is adjourned.

MS. HIGASHI: Thank you.

(The meeting concluded at 10:39 a.m.)

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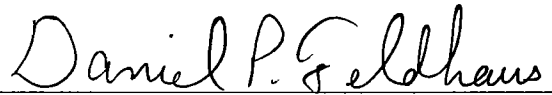
REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on April 16th, 2009.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter