

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
September 25, 2015

Present: Member Eraina Ortega, Chairperson  
Representative of the Director of the Department of Finance  
Member Richard Chivaro, Vice Chairperson  
Representative of the State Controller  
Member Scott Morgan  
Representative for Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member  
Member Mark Hariri  
Representative of the State Treasurer

Absent: Member Don Saylor  
County Supervisor

*NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.*

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Ortega called the meeting to order at 10:01 a.m. Executive Director Heather Halsey called the roll. Member Saylor was absent at roll call. Executive Director Heather Halsey later noted that Member Saylor was not available to attend the hearing.

#### **APPROVAL OF MINUTES**

Member Chivaro made a motion to adopt the minutes. With a second by Member Olsen, the July 24, 2015 hearing minutes were adopted by a vote of 5-0, with Member Hariri abstaining. Executive Director Heather Halsey introduced Member Hariri as the new Commission designee for the State Treasurer's Office.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

The Chairperson asked if there was any public comment. There was no response.

## CONSENT CALENDAR

Item 2\* Corrected minutes for January 23, 2015, March 27, 2015, and May 29, 2015

Member Chivaro made a motion to adopt the Consent Calendar. With a second by Member Olsen, the Consent Calendar was adopted by a vote of 6-0.

## HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Heather Halsey swore in the parties and witnesses participating in the hearing.

## APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 3 Appeal of Executive Director Decisions

There were no appeals to consider.

## PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 4 *Immunization Records – Pertussis*, 14-PGA-01 (11-TC-02)  
Health and Safety Code Section 120335, as amended and replaced by Statutes 2010, Chapter 434 (AB 354)  
Desert Sands Unified School District, Requester

This is a request to amend the parameters and guidelines for the *Immunization Records – Pertussis* program to add a unit-cost reimbursement methodology in lieu of detailed documentation of actual costs.

Senior Commission Counsel Julia Blair presented this item, stating that while the Department of Finance and the State Controller's Office oppose the request, staff recommends that the Commission adopt the amendment to add a unit cost beginning July 1, 2014.

Parties were represented as follows: Arthur Palkowitz, representing the claimant; Jim Novak, Desert Sands Unified School District; Brad Williams, Capital Matrix Consulting; Ed Hanson, representing the Department of Finance; Gwendolyn Carlos, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation was adopted by a vote of 6-0.

## INCORRECT REDUCTION CLAIMS

Item 5      *Handicapped and Disabled Students*, 05-4282-I-03

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882)

California Code of Regulations, Title 2, Sections 60000-60200; Emergency regulations effective January 1, 1986 [Register 86, No. 1], and re-filed June 30, 1986, effective July 12, 1986 [Register 86, No. 28]

Fiscal Years 1996-1997, 1997-1998, and 1998-1999

County of San Mateo, Claimant

This incorrect reduction claim addresses the reductions made by the State Controller's Office based on activities considered beyond the scope of the mandate and the amount of offsetting revenue from the early and periodic screening diagnosis and testing Medi-Cal program.

Commission Counsel Matt Jones presented this item and recommended the Commission adopt the proposed decision to partially approve the incorrect reduction claim, remanding the issue to the Controller to recalculate and redetermine the most accurate amount of revenues to be offset.

Parties were represented as follows: Patrick Dyer, representing the claimant; Glenn Kulm and John Klyver, Behavioral Health Services, County of San Mateo; Shawn Silva and Chris Ryan, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation was adopted by a vote of 5-1, with Member Chivaro voting no.

Item 6      *Collective Bargaining and Collective Bargaining Agreement Disclosure*, 05-4425-I-09

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213

Fiscal Years 1999-2000, 2000-2001, and 2001-2002

San Mateo Community College District, Claimant

This incorrect reduction claim addresses the reductions made by the State Controller's Office based on its findings of insufficient documentation of salaries and benefits, materials and supplies and errors in calculating productive hourly rate. The issue of whether the audit was timely completed is also addressed.

Senior Commission Counsel Eric Feller presented this item and recommended the Commission adopt the proposed decision to partially approve the incorrect reduction claim.

Parties were represented as follows: Keith Peterson, representing the claimant; Shawn Silva and Jim Venneman, representing the State Controller's Office.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation was adopted by a vote of 5-1, with Member Chivaro voting no.

Item 7      *Notification of Truancy, 05-904133-I-02*  
Education Code Section 48260.5  
Statutes 1983, Chapter 498  
Fiscal Years 1998-1999, 1999-2000, and 2000-2001  
Los Angeles Unified School District, Claimant

This incorrect reduction claim addresses the following issues:

1. Whether the mandate requires school districts to provide written notification to parents or guardians upon a pupil's initial classification as a truant.
2. Whether claimant provided documentation, in accordance with the requirements in the parameters and guidelines, sufficient to support the reductions made by the State Controller's Office.
3. Whether the Controller's reduction of costs claimed for truancy notifications at the school sites not included in the audit sample is correct.

Senior Commission Counsel Eric Feller presented this item and recommended the Commission adopt the proposed decision to partially approve the incorrect reduction claim.

Parties were represented as follows: Sung Yon Lee, representing the claimant; Jim Venneman, representing the State Controller's Office.

Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation was adopted by a vote of 6-0.

Item 8      *Health Fee Elimination, 09-4206-I-29*  
Former Education Code Section 72246 (Renumbered as Section 76355)  
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and  
Statutes 1987, Chapter 1118 (AB 2336)  
Fiscal Years 2003-2004, 2004-2005, 2005-2006, and 2006-2007  
San Diego Community College District, Claimant

This incorrect reduction claim addresses whether the Controller incorrectly reduced reimbursement claims to account for costs and revenues at the district's health centers at Mesa College and Miramar College, both of which operated at a profit during the audit period and were not included in the district's reimbursement claims.

Senior Commission Counsel Eric Feller presented this item and recommended the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Jim Venneman, representing the State Controller's Office.

Executive Director Heather Halsey noted the claimant would not be attending and would stand on their record.

Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the staff recommendation was adopted by a vote of 6-0.

**HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)**

- Item 9 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

**STAFF REPORTS**

- Item 10 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 11 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 12 Executive Director: Workload Update, 2016 Hearing Calendar, and Tentative Agenda Items for the December 2015 and January 2016 Meetings (info/action)

Executive Director Heather Halsey presented this item and reported on the Commission's pending caseload.

Executive Director Heather Halsey also presented the 2016 hearing calendar and recommended the Commission select an alternate date for the November hearing traditionally held in December, due to a conflict with the CSBA and CSAC annual meetings.

Following discussion among the Commission members and staff, Member Ramirez made a motion to select November 18 as the hearing date and adopt the proposed 2016 hearing calendar as modified. With a second by Member Morgan, the motion to adopt the 2016 hearing calendar as modified was adopted by a vote of 6-0.

Executive Director Heather Halsey announced the retirement of Giny Chandler and congratulated her on her retirement. Chief Counsel Camille Shelton presented Ms. Chandler with a resolution commemorating her achievements as Senior Commission Counsel.

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

**A. PENDING LITIGATION**

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(e)(1):

Trial Courts:

1. *California School Board Association (CSBA) v. State of California et al.* Alameda County Superior Court, Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools,

Redetermination Process]

2. *Coast Community College District, et al. v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 34-2014-80001842  
[Minimum Conditions for State Aid, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]
3. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*  
Sacramento County Superior Court, Case No. 34-2015-80002016  
[Water Conservation (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register

2012, No. 28.

Courts of Appeal:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition)  
Third District Court of Appeal, Case No. C070357  
(Sacramento County Superior Court Case No. 34-2010-80000604)  
[*Discharge of Stormwater Runoff*, Order No. R9-207-000 (07-TC-09), California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
2. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL  
[Mandate Redetermination, Sexually Violent Predators, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006

California Supreme Court:

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition)  
California Supreme Court, Case No. S214855  
Los Angeles County Superior Court, Case No. BS130730  
Second District Court of Appeal, Case No. B237153  
[*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]

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(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 or staff.

**B. PERSONNEL**

To confer on personnel matters pursuant to Government Code section 11126(a):

The Commission adjourned into closed executive session at 11:24 a.m., pursuant to Government

Code section 11126(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 to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION  
REPORT FROM CLOSED EXECUTIVE SESSION**

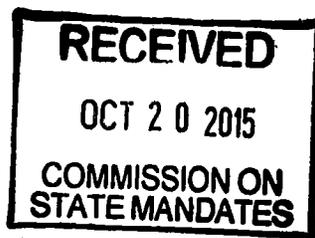
At 11:30 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

**ADJOURNMENT**

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:31 a.m.



Heather Halsey  
Executive Director



**ORIGINAL**

**PUBLIC MEETING**  
**COMMISSION ON STATE MANDATES**



**TIME:** 10:00 a.m.  
**DATE:** Friday, September 25, 2015  
**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomat Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
Representative for MICHAEL COHEN, Director  
Department of Finance  
(*Chair of the Commission*)

RICHARD CHIVARO  
Representative for BETTY T. YEE  
State Controller  
(*Vice Chair of the Commission*)

SCOTT MORGAN  
Representative for KEN ALEX  
Director  
Office of Planning & Research

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

MARK HARIRI  
Representative for JOHN CHIANG  
State Treasurer



COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(*Items 3 and 12*)

HEIDI PALCHIK  
Assistant Executive Director

CAMILLE N. SHELTON  
Chief Legal Counsel  
(*Item 11*)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

JULIA BLAIR  
Senior Commission Counsel  
(Item 4)

GINY CHANDLER  
Senior Commission Counsel

ERIC FELLER  
Senior Commission Counsel  
(Items 6, 7, and 8 )

MATTHEW B. JONES  
Commission Counsel  
(Item 5)

KERRY ORTMAN  
Program Analyst  
(Item 10)



PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Desert Sands Unified School District:

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

For Desert Sands Unified School District:

JAMES NOVAK  
Assistant Superintendent, Business Services  
Desert Sands Unified School District  
47-950 Dune Palms Road  
La Quinta, CA 92253

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:** *continued*

For Desert Sands Unified School District:

BRAD WILLIAMS  
Capital Matrix Consulting  
Post Office Box 161472  
Sacramento, California 95816

For Department of Finance:

ED HANSON  
Education Systems Unit  
Department of Finance  
915 L Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

For the State Controller's Office

GWENDOLYN CARLOS  
Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 725  
Sacramento, California 95814

**Appearing Re Item 5:**

For County of San Mateo:

PATRICK DYER  
Director  
MGT of America, Inc.  
2251 Harvard Street, Suite 134  
Sacramento, California 95815

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5:**

For County of San Mateo

GLENN KULM  
Deputy Director  
Administration for Behavioral Health  
County of San Mateo  
225 West 37th Avenue  
San Mateo, California 94403

JOHN CLIVER  
Financial Services Manager  
Behavioral Health and Recovery Services  
County of San Mateo  
225 West 37th Avenue  
San Mateo, California 94403

For State Controller's Office:

SHAWN D. SILVA  
Staff Counsel  
State Controller's Office  
300 Capitol Mall, Suite 1850  
Sacramento, California 95815

CHRISTOPHER B. RYAN  
Audit Manager  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 725  
Sacramento, California 95814

**Appearing Re Item 6:**

For the County of San Mateo

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 6:**

For State Controller's Office:

SHAWN D. SILVA  
Staff Counsel  
State Controller's Office  
300 Capitol Mall, Suite 1850  
Sacramento, California 95815

JIM VENNEMAN  
Audit Manager  
Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

**Appearing Re Item 7:**

For the Los Angeles Unified School District

SUNG YON LEE  
Assistant General Counsel  
Office of General Counsel  
Los Angeles Unified School District  
333 South Beaudry Avenue, 20<sup>th</sup> Floor  
Los Angeles, California 90017

For State Controller's Office:

JIM VENNEMAN  
Audit Manager  
Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 8:**

For State Controller's Office:

JIM VENNEMAN  
Audit Manager  
Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816





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**Commission on State Mandates – September 25, 2015**

1 BE IT REMEMBERED that on Friday, September 25,  
2 2015, commencing at the hour of 10:01 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:



7 CHAIR ORTEGA: I will call to order the  
8 September 25<sup>th</sup> meeting of the Commission on State  
9 Mandates.

10 If you could please call the roll.

11 MS. HALSEY: Mr. Chivaro?

12 MEMBER CHIVARO: Here.

13 MS. HALSEY: Mr. Hariri?

14 MEMBER HARIRI: Here.

15 MS. HALSEY: Mr. Morgan?

16 MEMBER MORGAN: Here.

17 MS. HALSEY: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HALSEY: Ms. Ortega?

20 CHAIR ORTEGA: Here.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: Here.

23 MS. HALSEY: And Mr. Saylor?

24 *(No response)*

25 CHAIR ORTEGA: Okay, thank you. We have a

**Commission on State Mandates – September 25, 2015**

1 quorum.

2 Let's see. Our first item of business are  
3 the minutes from the July 24<sup>th</sup>, 2015, meeting.

4 Are there any corrections or comments on  
5 the minutes?

6 MEMBER CHIVARO: I'll move approval of  
7 the minutes.

8 CHAIR ORTEGA: Moved by Mr. Chivaro.

9 MEMBER OLSEN: Second.

10 CHAIR ORTEGA: Second by Ms. Olsen.

11 All in favor?

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

13 CHAIR ORTEGA: Okay, it's been approved  
14 unanimously.

15 MEMBER HARIRI: I abstain since I was not  
16 present at the last meeting.

17 CHAIR ORTEGA: Okay, sure.

18 Mr. Hariri abstains.

19 MS. HALSEY: And I just wanted to take a moment  
20 to introduce Mr. Hariri. He is new to our commission.  
21 He's going to be the designee for the State Treasurer.  
22 He comes to us with 35 years of experience working for  
23 the State in finance at both Caltrans and the State  
24 Controller's Office.

25 And his experience --

**Commission on State Mandates – September 25, 2015**

1 MEMBER HARIRI: State Treasurer.

2 MS. HALSEY: Pardon?

3 MEMBER HARIRI: State Treasurer.

4 MS. HALSEY: Oh, State Treasurer's? My  
5 goodness. I know that.

6 His experience and knowledge of state programs  
7 and finance will be a welcome addition to the Commission.

8 CHAIR ORTEGA: Thank you.

9 Welcome, Mr. Hariri.

10 Let's see, Item 2 we have corrected minutes, is  
11 that --

12 MEMBER CHIVARO: It's on the consent.

13 CHAIR ORTEGA: Okay.

14 Okay, is there any public comment on items not  
15 on the agenda?

16 *(No response)*

17 CHAIR ORTEGA: All right. Seeing none, we'll  
18 move to the Consent Calendar.

19 Item 2 is the only item for proposed consent,  
20 and that's the corrected minutes.

21 Any questions or comments?

22 MEMBER CHIVARO: Move approval.

23 CHAIR ORTEGA: Okay, moved by Mr. Chivaro.

24 MEMBER OLSEN: I'll second.

25 CHAIR ORTEGA: Second by Ms. Olsen.

**Commission on State Mandates – September 25, 2015**

1 Any public comment on that?

2 *(No response)*

3 CHAIR ORTEGA: Okay, seeing none, all in favor?

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

5 CHAIR ORTEGA: Any abstentions?

6 *(No response)*

7 CHAIR ORTEGA: No?

8 The consent calendar is adopted unanimously.

9 We'll move on to the Article 7 portion.

10 MS. HALSEY: I can't hear you very well.

11 CHAIR ORTEGA: Okay, sorry.

12 MS. HALSEY: Let's move to the Article 7

13 portion of the hearing.

14 Will the parties and witnesses for Items 4, 5,  
15 6, 7, and 8 please rise?

16 *(Parties/witnesses stood to be sworn  
17 or affirmed.)*

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

22 *(A chorus of affirmative responses was  
23 heard.)*

24 MS. HALSEY: Thank you.

25 Please be seated.

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1           Item 3 is reserved for appeals of the Executive  
2 Director decisions, and there are no appeals to consider  
3 under Item 3 for this hearing.

4           Senior Commission Counsel Julia Blair will  
5 present Item 4, a parameters and guidelines amendment for  
6 *Immunization Records - Pertussis*.

7           MS. BLAIR: Good morning.

8           This is a request filed by Desert Sands Unified  
9 School District to amend the parameters and guidelines  
10 in the *Immunization Records - Pertussis* program to add a  
11 unit-cost reimbursement methodology in lieu of detailed  
12 documentation of actual costs.

13           Finance and the Controller oppose this request.

14           Staff recommends that the Commission approve  
15 this request and amend the parameters and guidelines to  
16 add a unit cost beginning July 1<sup>st</sup>, 2014, which would be  
17 \$9.47 for fiscal year 2014-15, after adjustment for  
18 inflation.

19           Staff recommends that the Commission adopt  
20 the proposed decision and amend the parameters and  
21 guidelines, and authorize staff to make any  
22 non-substantive corrections following the hearing.

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

25           MR. PALKOWITZ: Good morning. Arthur

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1 Palkowitz, on behalf of the claimant, Desert Sands  
2 Unified School District.

3 MR. NOVAK: Good morning. Jim Novak, Assistant  
4 Superintendent for Business Services for Desert Sands  
5 Unified School District.

6 MR. WILLIAMS: Brad Williams of Capital Matrix  
7 Consulting.

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

9 MS. CARLOS: Gwendolyn Carlos, State  
10 Controller's Office.

11 CHAIR ORTEGA: Okay, thank you.

12 Mr. Palkowitz?

13 MR. PALKOWITZ: Yes, thank you.

14 As mentioned, this is a request by Desert  
15 Sands, requesting that a unit rate be established for a  
16 mandate.

17 We agree with the staff's conclusion. We  
18 believe that the calculations made by Mr. Williams will  
19 clearly show that his methodology is simplistic, it's  
20 based on data supplied by the State Controller's Office.  
21 As in previous requests that Mr. Williams worked on, it  
22 was approved. So we believe this calculation complies  
23 with the code that allows a unit-rate calculation.

24 Mr. Williams will go into more detail of how  
25 he did that calculation based on the data provided from

1 previous claims filed by claimants.

2 At this point, Mr. Novak will explain the  
3 activities that are done by the District.

4 MR. NOVAK: In Desert Sands Unified School  
5 District, we have about 2,000 seventh graders. So every  
6 year, we send letters out to our sixth graders in  
7 anticipation of getting ready for the school year.  
8 Letters go out to each one of the parents; and as they  
9 provide the information to the School District, the  
10 nurses or the office staff enter all the information into  
11 E-school, which is our student information system.

12 We would love it if everybody would just comply  
13 and get all the information in. That doesn't always  
14 happen. So there are follow-up letters that go to the  
15 parents, and we continue to do that over the summer.  
16 We also provide information to the parents. Not all of  
17 them understand where to get the immunizations, so we  
18 give them information about free clinics and where to get  
19 the immunizations.

20 When school starts, if somebody does show up  
21 and does not have the proper records, and have not  
22 submitted their proof, then they're issued a ten-day  
23 letter.

24 They are not allowed to come to school -- or  
25 they do come to school, but then after ten days, if they

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1 don't have their immunization, they're not allowed to  
2 attend.

3 So there's a lot of follow-up that happens with  
4 that small percentage of students who do not come. And  
5 at the end of the day, we hope that we have a hundred  
6 percent immunization.

7 CHAIR ORTEGA: Okay, thank you.

8 MR. PALKOWITZ: Are there any questions?

9 Okay, thank you.

10 CHAIR ORTEGA: Any questions at this point?

11 *(No response)*

12 CHAIR ORTEGA: No?

13 Mr. Williams?

14 MR. PALKOWITZ: Before Mr. Williams provides a  
15 summary, I just wanted to briefly review his experience  
16 or credentials.

17 CHAIR ORTEGA: Sure.

18 MR. PALKOWITZ: Mr. Williams received his  
19 bachelor of arts and his master of arts in economics  
20 from UC Davis. His 32 years of professional employment  
21 includes positions of budget analyst for the California  
22 Legislative Analyst's Office, Director of Economic and  
23 Revenue Forecasting, Executive Director for the  
24 California Commission and State Finance, and senior  
25 economist, Director of Economic and Revenue Forecasting

1 for the California Legislative Analyst's Office.

2 Thank you.

3 CHAIR ORTEGA: Thank you.

4 Mr. Williams?

5 MR. WILLIAMS: Thank you.

6 Well, yes, I was hired by the Desert Sands  
7 Unified School District to perform this analysis to try  
8 to develop a unit-cost rate which, again, is based on  
9 kind of a trade-off between accuracy and simplicity.  
10 It's based -- what I did is based very closely on the  
11 methodology that I used in 2012 for the *Habitual Truant*  
12 mandate, the same methodology for that mandate which was  
13 approved in 2012.

14 It is based on unaudited claims from the  
15 Controller's Office; and those claims, I believe, were  
16 included in a declaration by Ms. Carlos. And it is for  
17 172 districts that filed claims in 2012-13.

18 I'm going to focus on the 2012-13, because that  
19 was the primary basis for my analysis. I did a similar  
20 analysis for 2011-12, but that included all students from  
21 seventh grade to twelfth grade, so it's not quite as  
22 on point as the 2012-13.

23 So what I did is, I combined that information  
24 with in-district enrollment data that I retrieved from  
25 the California Department of Education; and then we

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1 backed out from those enrollment totals for each of those  
2 districts' students that were in charter schools, on the  
3 grounds that claims can't be filed on behalf of students  
4 that are in schools -- you know, charter schools.

5 So then we came up with an average claim for  
6 each district. And we looked at those claims, and we  
7 took out the claims that were filed by the county offices  
8 of education, because we couldn't tie their claims to  
9 specific school districts.

10 They represented a very small share of the  
11 total. But in terms of the total number of claims -- but  
12 we took them out.

13 And we also eliminated from that year one  
14 really extreme outlier, one that was more than double;  
15 than any other, in terms of average-claim per student,  
16 and was over, in that year, I think over six times the  
17 average claim.

18 So that formed the basis for our analysis.  
19 And what we did is, we performed a variety of different  
20 statistical analyses on that data. And what we came up  
21 with is, if you just look at the unweighted claim, the  
22 average of the averages for all the remaining districts,  
23 which there were 158 districts, after we took out the  
24 outlier and the county offices of education, we had an  
25 average of \$12.87 per student.

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1           If you weight each claim based on the number  
2           of students in each district, we came up with \$9.64 per  
3           student. And the reason that is smaller than the overall  
4           average is simply because the larger districts tend to  
5           have smaller per-average claims than smaller districts.  
6           So those districts are more heavily weighted than the  
7           weighted average.

8           Then the last thing we did is, we further  
9           removed some outliers using a sort of statistical test,  
10          that I could go in more detail if you want. But that  
11          elimination reduced the number of claims by about seven  
12          or eight. And really, what it was, is we looked at the  
13          expected value of the district claims based on the size  
14          of the district and the proportion of its total claims  
15          that were related to follow-up activities, with the idea  
16          that the more follow-up activities you had to do, the  
17          larger the average claim would be.

18          We looked at that, and we said: Well, if any  
19          district is more than two standard deviations away from  
20          that predictive value, we eliminated it, both those on  
21          the high side and those on the low side. And when we did  
22          that, we came up with this \$9.17 average per student,  
23          when we eliminated these further outliers.

24          And the last measure is simply a median, which  
25          is just at what point are exactly half the districts

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1 above and half the districts below. And that was \$8.88.

2 We recommended the \$9.17 claim after  
3 eliminating the outliers on the grounds that after we did  
4 that, we felt that we should give some credence to the  
5 districts that had some larger claims if they were  
6 related to reasonable factors, like a district that had  
7 a large amount of claims for follow-up activities.

8 So we recommended \$9.17 in 2012-13. And if you  
9 apply an inflation adjustment, that would translate it to  
10 \$9.47 next year.

11 So that's kind of a summary of what I did to  
12 arrive at that number.

13 CHAIR ORTEGA: Okay, thank you.

14 Any questions of Mr. Williams at this point?

15 MEMBER CHIVARO: No.

16 MEMBER MORGAN: I have just one question.

17 CHAIR ORTEGA: Go ahead.

18 MEMBER MORGAN: You mentioned that you based  
19 this work on similar work you did in 2012.

20 Was that work also based on unaudited claims?

21 MR. WILLIAMS: Yes, it was.

22 MEMBER MORGAN: Thank you.

23 CHAIR ORTEGA: Okay.

24 MEMBER RAMIREZ: I do have a question.

25 CHAIR ORTEGA: Go ahead. Sure, Ms. Ramirez.

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1           MEMBER RAMIREZ: Just tangentially, do you see  
2 a rise in the number of students that need to be  
3 contacted over the years, or does it stay flat?

4           MR. WILLIAMS: You know, I wish I could be of  
5 some assistance on that. But really, my focus was just  
6 on that data set, the 2012-13, so I really only had a  
7 snapshot for that year for seventh graders only. I had  
8 one more year, you know, 2012-13. But that was for all  
9 students in seventh through twelfth grades; and I don't  
10 think there would be any basis for me to make any  
11 judgment.

12           MEMBER RAMIREZ: Thank you.

13           CHAIR ORTEGA: Anyone else?

14           Okay, Mr. Hanson?

15           MR. HANSON: Yes, Ed Hanson, Department of  
16 Finance.

17           We'd just like to simply state for the record  
18 that we think it's premature to adopt an RRM at this  
19 time based on unaudited claims, given the historical  
20 disallowance rate of SCO audits.

21           On average, over the last 10 years, the SCO  
22 audits have disallowed in excess of 50 percent of the  
23 amounts claimed for those particular audits. And we just  
24 have a concern that locking in an RRM at this time based  
25 on unaudited claims could lock in some unwarranted costs.

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1 CHAIR ORTEGA: Thank you.

2 Ms. Carlos?

3 MS. CARLOS: Yes. My name is Gwendolyn Carlos  
4 from the State Controller's Office.

5 And I do agree -- we do agree with the  
6 Department of Finance which related to unsupported data,  
7 because we understand the amount is immaterial. However,  
8 \$10,000 a year commencing in 2012-13 for 170 claimants,  
9 although it's immaterial, but we're not going to  
10 challenge that. However, we still are -- we're not  
11 supporting the Commission on State Mandates for the  
12 reasonable reimbursement methodology because of the big  
13 variance in claim costs by claimants. This is ranging  
14 from \$1 to \$105.

15 And although we have the claims with us, we  
16 verified them; but then we cannot verify the number of  
17 students per -- on the seventh-grade, as it's not  
18 included in the claim that they have submitted to the  
19 State Controller's Office.

20 We do have a concern about the number of  
21 students because we checked and verified that some of the  
22 claimants at that time, when they have it online, that  
23 maybe the number of students they have was ten. And  
24 just today, we found out that one of the claimants have  
25 44 students based on the CDE numbers online.

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1 Thank you.

2 CHAIR ORTEGA: Can you say more about that?

3 I'm not sure I understand the point there.

4 So that the numbers of -- the actual number of  
5 students that are used in the calculation may not be --

6 MS. CARLOS: May not be -- may not be correct.  
7 Because the number of students, that when they're  
8 probably checking it in 2013 and check it on the CDE  
9 Web site, may be less; because as of today, when we were  
10 checking the CDEs for one of the claimants, we found out  
11 that the number of students actually increased from ten  
12 to 44.

13 CHAIR ORTEGA: Mr. Williams?

14 MR. WILLIAMS: I guess I had not heard this.  
15 But one issue, I think, would be very important to look  
16 at, when looking at the number of students that we used,  
17 compared to what's on the CDE Web site, is the number of  
18 students that are in charter schools. We backed out the  
19 charter schools.

20 I have no idea whether the difference between  
21 ten and 44 is because of that factor. But that was a  
22 significant factor for some districts, not -- certainly  
23 not all districts, but for some districts. So that the  
24 student numbers we used are not the total number of  
25 students in the districts. They are the total number of

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1 students in the districts minus the students that are in  
2 charter schools.

3 CHAIR ORTEGA: Okay.

4 MR. WILLIAMS: Could I add one more thing in  
5 response?

6 I think there is -- as was the case with the  
7 *Habitual Truant* claims, there is variability. There's no  
8 question.

9 I would say, though, the 110 was the outlier  
10 in 2011-12 that we eliminated. Most of the claims were  
11 between, you know, \$1 and \$50 -- I mean, all the claims  
12 fell within that range after we eliminated those extreme  
13 outliers.

14 But I would also say, even though you have  
15 some outliers on the high end, the great majority of  
16 claims are between \$1 and \$10. About half the districts  
17 have claims between \$1 and \$10, and those districts  
18 represented about two-thirds of the students. Another  
19 25 percent of the districts had claims between \$10 and  
20 \$20.

21 So while you do have these outliers that, you  
22 know, if you're just talking about the total range, the  
23 numbers that I provided are very heavily influenced by  
24 the extremely large number of students in districts that  
25 had modest claim levels.

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1           And we tried to adjust for -- further adjust  
2           for these outliers by going through that second process  
3           of eliminating outliers based on what we would expect,  
4           given the size of the district and the proportion of  
5           claims related to follow-up activities. And that further  
6           reduced our numbers. So we feel like we sort of  
7           accommodated the high-end numbers that are a relatively  
8           small share of the total.

9           CHAIR ORTEGA: And within the \$1 to \$10, how  
10          are the numbers distributed just between -- I mean, is  
11          it pretty even? I mean, because you're getting to an  
12          RRM of 9, right --

13          MR. WILLIAMS: Well, the RRM of 9 is --

14          CHAIR ORTEGA: -- with all of them.

15          MR. WILLIAMS: Yes, there's a lot of students  
16          between the \$1 to \$10, but there's a few out there that  
17          do bring it up.

18          CHAIR ORTEGA: Right.

19          MR. WILLIAMS: I don't know exactly what the  
20          distribution is within the 1 to 10. I want to say that  
21          it's fairly evenly distributed, but I don't recall.

22          CHAIR ORTEGA: Okay.

23          Mr. Chivaro?

24          MEMBER CHIVARO: Yes, I just have a question  
25          for Finance.

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1           You indicate that this is premature.

2           What are you proposing instead?

3           MR. HANSON: We prefer to wait until the SCO  
4 has done some audits, so we can get a better sense of  
5 the accuracy of the data.

6           MR. PALKOWITZ: If I may respond to that?

7           MEMBER CHIVARO: Yes.

8           MR. PALKOWITZ: In staff's decision on page 3,  
9 it points out there is no requirement of RRM to use  
10 audited data. RRM's may be even approved before claims  
11 are even filed. So the whole intent of the legislation  
12 was to create an alternative to filing for actual costs.  
13 It was an attempt to have a streamlined system; and in  
14 that system, there was an attempt to have some balance  
15 and equity for everyone who files. So there is no legal  
16 authority that would require to have audited data to  
17 determine the RRM.

18          CHAIR ORTEGA: Mr. Morgan?

19          MEMBER MORGAN: For the SCO, what is -- do you  
20 have a schedule for your audits for these claims?

21          MS. CARLOS: We don't have -- at this point in  
22 time, we don't know because we are not in the same  
23 department. I work for the Division of Accounting and  
24 Reporting, and perhaps the Division on Audits can respond  
25 to that question.

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1 MEMBER MORGAN: And then do you audit all  
2 claims or just a percentage of those claims?

3 MS. CARLOS: The percentage -- yes, a  
4 percentage of the claims has been audited, yes.

5 CHAIR ORTEGA: Can someone maybe talk about  
6 what the process would look like if there was a future  
7 audit that showed that perhaps the proposed decision here  
8 was not reflective of the actual costs that were shown in  
9 the audits? What are the potential avenues after that?

10 MS. SHELTON: If the Commission adopts this  
11 proposal here, and adopts the unit cost of \$9.17, if  
12 audits later reflect that the dollar amount is lower or  
13 higher, any party can file another request to amend the  
14 parameters and guidelines.

15 The period of reimbursement would be based on  
16 Government Code section 17557, so it depends on the  
17 filing date of that PGA request.

18 CHAIR ORTEGA: Okay, well, I will say that the  
19 use of the unaudited claims gives me pause in terms of  
20 the -- ensuring that there's appropriate reimbursement  
21 for the mandate. However, I'm not sure what -- it  
22 doesn't feel that there's any other option before us  
23 when the statute does not require audited claims.

24 So I don't know if anyone -- it seems to be a...

25 MS. SHELTON: Let me just explain if this were

1 litigated, what standard of review the court would hold.

2 They're going to apply an "arbitrary and  
3 capricious" standard. So you have to have a reason for  
4 not adopting this decision.

5 Again, as you said, having audited claims is  
6 not a legal reason to deny it; you would have to make  
7 some sort of argument that the data evidence presented  
8 here does not reasonably represent the costs mandated by  
9 the State.

10 New arguments have been raised by the  
11 Controller's office that we have not analyzed. That's  
12 the first time that we've heard that information.  
13 And I'm not, you know, wrapping my head around what is  
14 being argued, so that would maybe be something.

15 But with the data that we have currently in  
16 the record, it does reflect a reasonable representation.  
17 I will also say that there are two other immunization  
18 programs that the Commission has adopted. One of them  
19 is currently being reimbursed under the SMAS program;  
20 and to get a program under SMAS, it has to show stability  
21 of costs. That one was -- the *Immunization Records*,  
22 which the same type of activities for diphtheria, the  
23 initial pertussis entering into kindergarten, tetanus,  
24 polio, and measles.

25 Also, the Hep. B. immunization records is also

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1 reimbursed on a unit-cost basis as well.

2 CHAIR ORTEGA: Any other comments?

3 Mr. Morgan?

4 MEMBER MORGAN: Just one question.

5 Finance had suggested use of a block-grant  
6 program. I'm curious why you didn't bring that up in the  
7 oral testimony?

8 MR. HANSON: We were just primarily focused on  
9 the unaudited claims as our primary concern. The block  
10 grant is certainly an alternative to districts. We  
11 proposed it for the simplicity aspect of being able to  
12 claim costs. We were just primarily focused on the  
13 unaudited aspect at this time.

14 MS. SHELTON: The only concern I have with that  
15 is that there has been no evidence rebutting the evidence  
16 filed by the claimants that the numbers are unreasonable.  
17 I mean, just because they're unaudited, that's an  
18 allegation; but there is no evidence supporting the  
19 conclusion that the numbers are not reasonable.

20 CHAIR ORTEGA: Any other members of the  
21 Commission?

22 *(No response)*

23 CHAIR ORTEGA: No?

24 Is there any public -- any additional public  
25 comment on the item?

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(No response)

MEMBER RAMIREZ: So I'd like to move the staff's recommendation.

MEMBER OLSEN: And I'll second that.

CHAIR ORTEGA: All right, moved by Ms. Ramirez, second by Ms. Olsen.

MS. HALSEY: Mr. Chivaro?

MEMBER CHIVARO: Yes.

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Yes.

MS. HALSEY: Mr. Morgan?

MEMBER MORGAN: Yes.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Yes.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Yes.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Aye.

CHAIR ORTEGA: Okay, the motion carries.

Thank you, everyone.

MS. HALSEY: Commission Counsel Matt Jones will present Item 5, an incorrect reduction claim on *Handicapped and Disabled Students*.

MR. JONES: Good morning.

The proposed decision for this incorrect

1 reduction claim finds that medication-monitoring  
2 activities are beyond the scope of the mandate, and  
3 crisis-intervention activities are beyond the scope of  
4 the mandate for fiscal year 1998-1999; and that these  
5 reductions are, therefore, correct as a matter of law.

6 In addition, the proposed decision concludes  
7 that reductions for eligible day treatment services  
8 inadvertently miscoded as "skilled nursing and  
9 residential, other" are incorrect.

10 And finally, the proposed decision finds that  
11 the Controller's reduction of the full amount of  
12 offsetting funds received from the early and periodic  
13 screening diagnosis and testing Medi-Cal program is  
14 incorrect as a matter of law, and the decision remands  
15 the issue to the Controller to recalculate and  
16 redetermine the most accurate amount of revenues to be  
17 offset.

18 Therefore, staff recommends that the Commission  
19 adopt the decision to partially approve the incorrect  
20 reduction claim.

21 Will the parties and witnesses please state  
22 your names for the record?

23 MR. DYER: Patrick Dyer on behalf of the  
24 claimant, San Mateo County.

25 MR. KULM: Glenn Kulm, Deputy Director of

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1 Administration for Behavioral Health, San Mateo County.

2 MR. CLIVER: John Cliver, Financial Services  
3 Manager for Behavioral Health, Recovery Services,  
4 San Mateo County.

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

7 MR. RYAN: Chris Ryan, State Controller's  
8 Office.

9 CHAIR ORTEGA: Okay, Mr. Dyer?

10 MR. DYER: First, the County of San Mateo would  
11 like to commend the Commission staff for their thorough  
12 and detailed analysis of this very complex incorrect  
13 reduction claim that spans almost 20 years.

14 We agree with the Commission's recommendation  
15 on the medication monitoring issue, as well as the  
16 reinstatement of two of the three years on the crisis  
17 intervention.

18 The outstanding issue that remains unsolved  
19 here is the EPSDT revenue offsets, which we remain at  
20 odds with the Controller on.

21 And I'd just like to go over a few things  
22 related to that EPSDT revenue. That stands for "early  
23 periodic screening diagnosis and treatment." It's part  
24 of the Medicaid program. It's a required offset from  
25 the costs claimed. Methodologies for dealing with those

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1 revenues have changed over the years.

2 The Controller's has offset or forced claimants  
3 to offset the entire amount, then several years later  
4 changed that method; and so we are hopeful that we can  
5 negotiate a settlement on that issue. But that has been  
6 an ongoing issue.

7 The Department of Mental Health recognized that  
8 and proposed a method which San Mateo County followed.  
9 We feel that if the State Controller has a problem with  
10 that method, that parameters and guidelines should have  
11 been changed. But we're hopeful that we can reach  
12 a resolution with the Controller following today's  
13 proceeding, which is essentially what we've been charged  
14 to do, is to work that out with the Controller.

15 Thank you.

16 MR. KULM: Glenn Kulm.

17 I'd like to add just a little bit of history.  
18 I know that the Commission has heard this many, many  
19 times. But in the mid-eighties came the AB 3632, which  
20 passed the State's mandate on to the counties. And  
21 because of a couple of court decisions in the early  
22 nineties, then there became the EPSDT issue that came up.

23 There was anticipated to be tremendous growth  
24 in the program because of a couple of court decisions.  
25 And at the time, the counties worked with the Department

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1 of Mental Health on ascertaining a methodology that  
2 really reflected the growth outside of the school program  
3 that was going to occur because of some court decisions,  
4 and how the State determined how much State General  
5 Funds would be given to the counties in order to reflect  
6 EPSDT -- new EPSDT mandates.

7 The Controller's office, during the audits,  
8 \has taken -- you know, it's a very difficult calculation  
9 to come up with, and the data is very old. And the  
10 Controller's Office has taken some very simplistic  
11 methodologies to determine how much EPSDT State General  
12 Funds should be offset against the claims here.

13 We feel that the Department of Mental Health  
14 at the time was very proactive, worked with Finance, in  
15 really determining a methodology that could calculate  
16 how much of the EPSDT State General Funds should be  
17 offset against the *Handicapped and Disabled Children's*  
18 program.

19 So we agree with the Commission staff that we'd  
20 like to have the Controller's office really take a look  
21 at and reflect upon that methodology and the principles  
22 that were handled at that time to determine the correct  
23 amount of EPSDT offset for these claims.

24 CHAIR ORTEGA: Okay. Let's see, anything --  
25 Mr. Cliver, do you have anything to add?

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1 MR. CLIVER: No.

2 CHAIR ORTEGA: Okay.

3 Mr. Silva?

4 MR. SILVA: The first concern we have at the  
5 Controller's office is, we don't believe this IRC was  
6 timely filed. As noted in the proposed decision, the  
7 final audit report was issued on December 26<sup>th</sup> of 2002.  
8 And if you calculate the three years from there, that  
9 would have resulted in a deadline of December 26<sup>th</sup>, 2005,  
10 to submit an IRC. In this case, the Commission found --  
11 and we would agree -- that the IRC was not filed until  
12 April 27<sup>th</sup> of 2006, approximately five months later than  
13 the deadline.

14 It was only a few months ago when the  
15 Commission made several decisions which kind of set forth  
16 some bright-line rules on when an audit begins and ends;  
17 and specifically, the Commission found that the audit  
18 ended and was complete at the issuance of the final audit  
19 report.

20 And in this decision here, the staff has set  
21 that aside for a very vague and nebulous determination  
22 that in this case, since the audit report mentioned that  
23 we would be willing to look at more documentation, that  
24 the audit report was not truly final. However, there is  
25 no basis in statute or regulation that requires that the

1 audit report have a certain degree of finality.

2 And we'd note that 1185 of the regulations for  
3 the Commission states that the IRC must be filed within  
4 three years following remittance advice or other notice  
5 of adjustment, notifying the claimant of reduction.

6 Well, the audit report -- the final audit  
7 report did just that: It listed all of the reductions,  
8 the exact amounts reduced, and the basis for those  
9 reductions. And it's in compliance with both the  
10 regulation and the statute, which discusses the filing  
11 of IRCs.

12 And as we note in that regulation, there is no  
13 finality requirement; that it not be left open anymore.  
14 And we believe that this only brings in confusion rather  
15 than clarity. We believe, ultimately, it's an attempt to  
16 do equity, which as the Commission has noted, is not  
17 within its authority.

18 This also -- as a standard practice, we've  
19 always been open to any additional information in an  
20 attempt to resolve an IRC.

21 Does that mean that all of our final audits  
22 are in question if we're willing to accept documents,  
23 which would be really contrary to the goal of early  
24 mutual resolution of the dispute, rather than pushing  
25 it all the way to this process?

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1           Even if we get past that issue, we're also  
2           concerned that, specifically with respect to the  
3           residential "other" and skilled nursing work-sheet issue,  
4           and the change in the coding, that essentially, the  
5           Commission's decision -- or the staff decision has  
6           created a presumption that the work sheet is valid, and  
7           the Controller has no actual authority to audit other  
8           documents to verify the validity of the work sheet  
9           itself. And that would be contrary to 17561(d)(2), which  
10          sets out the Controller's authority, and states that the  
11          Controller has the authority to audit the records of any  
12          local agency or school district to verify the actual  
13          amount of the mandated costs.

14                 And by citing to the fact that the work sheets  
15          are addressed in the P's & G's, the staff essentially  
16          precludes the Controller's office from looking at other  
17          documentation to verify the actual accuracy of those  
18          numbers contained in the work sheet.

19                 And the audit authority is not simply  
20          statutory, but it's also constitutional. In Article XVI,  
21          Section 7, it provides that no warrant shall issue  
22          without the approval of the Controller. And the AG has  
23          held that that means that the Controller has the  
24          constitutional authority to audit all claims against the  
25          Treasury.

1           And the staff's precaution that precludes us  
2 from looking beyond the work sheet we believe runs  
3 contrary to the clear statutory language of subdivision  
4 (d) (2).

5           And we'd note that an "audit," in Black's Law  
6 dictionary, is defined as a formal examination of an  
7 organization's accounting records. However, they have  
8 limited us to simply the work sheet, which is really not  
9 an accounting record but, rather, a summary of the  
10 documents and the accounting records held at the  
11 claimant's place of business.

12           We would also note that, at least with respect  
13 to that portion of the finding, the staff finds that,  
14 as a matter of law, the Controller's reduction was  
15 incorrect and that it was arbitrary and capricious.  
16 And if the question is one of law, then the standard of  
17 arbitrary and capricious is not really relevant at that  
18 point; it's whether it is or is not correct under law.

19           As to the EPSDT, we're not opposed to a remand  
20 to the Controller's office to try and work with the  
21 claimant, to see if we can't find a reasonable,  
22 acceptable method -- acceptable by both parties -- that  
23 determines how to distribute those funds as offsetting  
24 savings.

25           I think, again, we would object to the use of

1 "arbitrary and capricious" in that case. We'd note that  
2 the burden is on the claimant to prove up the claim.  
3 They didn't provide any real documentation that showed  
4 how those funds were applied; and so given the fact the  
5 burden was on the claimant, the Controller's office found  
6 that they all applied.

7 We'd note that, to the contrary, that the  
8 claimant has asserted five different numbers. And we  
9 realize that it may be a difficult calculation. I think  
10 it's a little hard to declare that the Controller's  
11 approach was arbitrary and capricious, which essentially  
12 means "on a whim."

13 We tried to look at the documents and come to a  
14 conclusion.

15 And that's all.

16 CHAIR ORTEGA: Thank you.

17 Any questions at this point?

18 Go ahead, Ms. Olsen.

19 MEMBER OLSEN: I'd be interested in the  
20 Commission staff addressing the "arbitrary and  
21 capricious" issue.

22 MS. SHELTON: Well, there are a couple of  
23 findings.

24 One, if we're talking -- let me just deal with  
25 the offset, since it's the last thing that Mr. Silva

1 talked about.

2 As a matter of law, you do -- it's been shown  
3 in the analysis that the EPSDT funding is much broader  
4 than the *Handicapped and Disabled Student* Program. So  
5 as a matter of law, it's not synonymous. It doesn't --  
6 just because a person gets funding, doesn't mean they're  
7 part of the *Handicapped and Disabled Student* Program, or  
8 that those funds are being used for some other purpose  
9 that go beyond the scope of the mandated program. So as  
10 a matter of law, you can't just reduce the entire amount  
11 of the state funding, because it's not been shown to be  
12 the same. You can't do that.

13 So that is incorrect, as a matter of law.

14 The Controller's application of the law is  
15 subject to their discretion and it's subject to how they  
16 applied it in this case, which is arbitrary and  
17 capricious, to reduce it to zero without any evidence in  
18 the record.

19 So there's no evidence in the record to show  
20 that the entire amount of State funding used -- or  
21 received by the County of San Mateo was used for this  
22 particular program in these fiscal years. That  
23 application is arbitrary and capricious.

24 MEMBER OLSEN: Okay, so this is one of those  
25 "Can we all make nice here?" questions.

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1           Because my sense is that the Controller's  
2           representative is reacting to the language, which me, as  
3           the public member, who is not a lawyer, if somebody told  
4           me I was being arbitrary and capricious, you know, the  
5           hackles would go up on the back of my neck, too.

6           So is that -- is "arbitrary and capricious" a  
7           legal standard that's being applied?

8           MS. SHELTON: Yes.

9           MEMBER OLSEN: That's what I'm asking.

10          MS. SHELTON: Yes, it is. And it's also the  
11          same standard applied to the Commission on decisions  
12          like adopting an RRM. It's the standard in law.

13          MS. HALSEY: It is actually the legal standard  
14          that we're required to apply to all auditing decisions  
15          of the Controller.

16          And the "correct, as a matter of law" is for a  
17          legal interpretation, and then "arbitrary and capricious"  
18          or "entirely lacking in evidentiary support" is for  
19          those determinations then made by the Controller on the  
20          auditing decisions and based on those facts that they  
21          consider and put into the record.

22          MEMBER OLSEN: Okay, thank you.

23          CHAIR ORTEGA: Any other questions on that  
24          topic?

25          MEMBER RAMIREZ: So it's nothing personal;

1 right?

2 MEMBER OLSEN: Right.

3 MEMBER RAMIREZ: Don't take it personally.

4 CHAIR ORTEGA: Could I ask staff to talk a  
5 little bit about the finality of the audit question?  
6 Because one thing that concerns me that related to what  
7 Mr. Silva said is that if they are open to receiving  
8 additional information, that somehow it would be  
9 determined that the audit is not complete. Because if  
10 they aren't open to receiving additional information,  
11 then the only way the body who is being audited can --  
12 their only option then is to come to us with an IRC.  
13 And so I'm not really sure that that's the most efficient  
14 way to handle things if a district finds additional  
15 information.

16 So I want to clarify that question about what  
17 made this not be final or final.

18 MR. JONES: I can try to speak to that.

19 So we've had a couple decisions in the last few  
20 hearings that have found that either a remittance advice  
21 or a final audit report started the clock, essentially,  
22 for the SOL to file -- the statute of limitations, that  
23 is -- to file an IRC.

24 And we've gone both ways because sometimes the  
25 evidence in our record is, we're missing something or we

1 have a -- in some cases, we have a notice of payment  
2 action, but we don't necessarily have anything that looks  
3 likes a remittance advice letter. Or in some cases, we  
4 have an audit report, but we don't necessarily have a  
5 remittance advice. Or at least in one case, we had  
6 notices of payment action and remittance advices with no  
7 audit at all.

8 So essentially, what starts the clock for that  
9 regulation, for that three years, has been something that  
10 we've had to evaluate on a case-by-case basis. And this  
11 is another example of that happening.

12 And in this case, we do have what's stated to  
13 be a final audit report. But in the cover letter to that  
14 final audit report, it expressly invites the claimant,  
15 which I believe staff hasn't seen this before. We  
16 thought this was unusual.

17 The Controller apparently is expressly inviting  
18 the claimant, within 60 days, to file additional  
19 documentation and a request for review of the audit  
20 report, at which -- presumably, at which time, the audit  
21 report might be revised if the claimant can prove up  
22 something different than the conclusions that are made  
23 in the audit.

24 So because that was unusual, we didn't notice  
25 it on the first draft, which is why we have this revised

1 draft. We issued a draft in May. The claimant pointed  
2 this out that they were invited to file additional  
3 documentation. And we found this letter in the record,  
4 and, indeed, it's pretty express. And so this is --  
5 again, we've had to apply our statute of limitations on  
6 a case-by-case basis.

7 And part of that, too, is that the regulation  
8 itself has gone through several iterations in the last  
9 15 years or so. The regulation has been amended, I  
10 believe, four times since the late nineties. And it has  
11 used: "final audit report," "remittance advice," "other  
12 notice of payment action," "other notice of adjustment,"  
13 all kinds of different verbiage in our regulation that  
14 has -- each time it's been amended, it seems to capture  
15 more possibilities. And in so doing, again, that just  
16 leads us, again, to a case-by-case analysis to say,  
17 well, the universe of things that could trigger the  
18 statute of limitations to begin to run is intended to be  
19 fairly loose, apparently, under this regulation. And so  
20 it could be as early as the audit report or it could be  
21 a remittance advice in absence of an audit report or any  
22 number of things.

23 And so that was the recommendation staff has  
24 made in this case.

25 CHAIR ORTEGA: Okay, thank you.

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1           So, Mr. Silva, I would ask, is the invitation  
2 to provide additional information something that's  
3 common? Would we likely see that in other IRCs? The  
4 kind of, you thinking an audit is final versus still  
5 accepting information?

6           MR. SILVA: At this point, I wouldn't have any  
7 specific summary as to the numbers how often that's  
8 occurred. I think the problem is -- I'm no Commission  
9 historian, but every time I've appeared on an IRC that's  
10 based on an audit, that we've used the audit since that  
11 was the operative document that provided the explanation  
12 of the reductions, the dollars -- that was the date we've  
13 used.

14           I haven't heard of a case where we've used the  
15 remittance advice when we had a final audit report. I  
16 can't -- like I said, I don't have -- run through all of  
17 the possible occurrences.

18           I would also note the Government Code section  
19 17558.5 states that the Controller, in notifying a  
20 claimant in writing when an adjustment resulting from  
21 an audit requires the notice shall specify the claim  
22 component suggested, the amount suggested, and the reason  
23 for the adjustment. And the final audit report satisfies  
24 the statutory requirement to be a notice, as they noted  
25 in the regulations at the notice of adjustment, notifying

1 the claimant of reduction.

2 So the claimant was clearly on notice of our  
3 position as to the adjustments to the audit.

4 To add on a vague and -- the purpose of the  
5 statute of limitations is to create certainty. And in  
6 this case, they don't even base -- the staff doesn't  
7 even base the date that it starts on the 60-day window  
8 provided by the Controller's office. But because there  
9 was no specific response in writing, it's remained open  
10 until the remittance advices.

11 However, the whole purpose of a statute of  
12 limitations is to ensure that we don't have stale and  
13 old claims that nobody remembers all the facts on. And  
14 there is no specific -- they don't cite to any authority  
15 that states that being open to additional documentation,  
16 whether it's stated verbally at the exit conference or  
17 in writing in the cover letter to the final audit report,  
18 would somehow toll the statute of limitations.

19 They aren't prejudiced in any way by us giving  
20 them the opportunity to respond, and them spending some  
21 time and effort submitting some additional documentation.  
22 That doesn't in any way deprive them of that full  
23 three-year window provided by the regulations on IRCs.

24 CHAIR ORTEGA: Thank you.

25 Camille?

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1 MS. SHELTON: May I say just a couple of  
2 things?

3 One, if you recall from a couple of hearings  
4 ago, it's a question of fact because the Controller's  
5 office has not adopted regulations to say when they start  
6 an audit and when they finish an audit. And the courts  
7 have held, those are issues that are subject to the  
8 APA that need a regulation. So we have to determine them  
9 on a case-by-case basis.

10 As Matt indicated, we have not seen that  
11 language before. And on page 26 of the analysis, when  
12 you're applying a statute of limitations, the general  
13 rule in applying and enforcing a statute of limitations,  
14 is that period of limitation for initiating an action,  
15 it begins to run when the last essential element of a  
16 cause of action accrues.

17 And here, you have in the record, under the  
18 history, that the claimant actually did respond to that  
19 invitation on February 20<sup>th</sup>, 2003, for each of those  
20 years after that invitation -- or after the final audit  
21 report was issued. And then they didn't change their  
22 final audit report.

23 So the last essential element was at least  
24 after that opportunity was given for them to file their  
25 letter.

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1 MS. HALSEY: And the remittance advice was  
2 issued --

3 CHAIR ORTEGA: Well, one of the things that  
4 concerns me with this -- the decision, including this  
5 piece -- is that we would have future issues come before  
6 us where we would say, well, because there was a  
7 communication with the claimant after the audit was  
8 final, that, you know, we have lengthened the statute of  
9 limitations.

10 MS. SHELTON: There's no problem with the  
11 parties settling a case. The parties can settle a case.  
12 But we do have to have some sort of finality in the  
13 jurisdiction of the Controller's office before the  
14 requirement for them to file an IRC expires with the  
15 Commission.

16 You have to base that on a case-by-case basis  
17 until we have some law, a statute, or a regulation or  
18 something that says when an audit is final. Until then,  
19 we are going to be looking at this on a case-by-case  
20 basis.

21 CHAIR ORTEGA: Right. But what you're saying  
22 is that in this case, that the Controller believes the  
23 audit was final; but because they put language that said  
24 they would accept additional information, in your mind,  
25 it is not final?

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1 MS. SHELTON: Absolutely, because that's  
2 different than any other case we've seen. It invites --  
3 it opens the door --

4 CHAIR ORTEGA: Right, but was there more to  
5 come after this, that --

6 MS. SHELTON: It's possible. I don't know.

7 MS. HALSEY: Yes, we have not seen any. And  
8 this is very old. I don't believe the Controller uses  
9 this language anymore. And this report was issued in  
10 2002. We don't have any more IRCs that are that old.

11 CHAIR ORTEGA: You have a comment?

12 MR. DYER: Can I make a comment?

13 But if you look at the cover letters that go  
14 with audits from 2002 until the present day, there's  
15 very little uniformity with those. And so that has  
16 changed over time, in part, to keep up with the statute.

17

18 But from the claimant's perspective, until that  
19 money is taken from the other office, in the Controller's  
20 office, the claimants don't feel like the audit is final  
21 until they actually take the money back.

22 There's nothing in the cover letter that says  
23 you have three years from today to file the IRC. They  
24 are always hopeful that the Controller will come to their  
25 senses and reinstate some of the costs at a later time

1 or prior to the money being taken from accounting and  
2 reporting.

3 MR. KULM: To amplify a little bit, I think  
4 that from a claimant's perspective, when they read the  
5 language that says that the statute of limitations runs  
6 from the date of the audit letter or remittance advice,  
7 we really pay attention. I mean, because if you're  
8 invited to provide more information and then nothing  
9 else is forthcoming, when you come to that date of  
10 remittance advice, then you know that's the finality.

11 And as long -- from our perspective, as long  
12 as you're filing within three years of that date of  
13 finality, that date of remittance advice, you should be  
14 considered timely filed, regardless of whatever  
15 interaction goes on between the time that the audit  
16 report comes -- or is issued and then the time of the  
17 remittance advice.

18 MS. SHELTON: And I just need to say, the  
19 reason why the Commission's regulation was written the  
20 way it was, was because at that time the Controller's  
21 office was using different methods for closing out an  
22 audit. I mean, sometimes they would just issue a  
23 remittance advice; other times, there would be an audit  
24 report.

25 I mean, over time, they've gotten much more

1 consistent. I mean, whenever they have an audit now, an  
2 audit report is issued. But at the time those regs were  
3 written, sometimes no notice was provided, and they would  
4 just get a payment reduction letter.

5 CHAIR ORTEGA: So just back to the earlier  
6 question I had about the ability of the Controller and  
7 the claimants to continue to have conversations before  
8 filing an IRC. Are we doing anything here that would  
9 chill that effect? Because people would think that  
10 they -- you know, there would be some feeling that they  
11 were then extending the time frame.

12 MS. SHELTON: I can just say what I stated  
13 earlier, that the parties can always settle a claim.  
14 Just like on a mandate test claim, the Legislature can  
15 always fund something; but when you're talking about a  
16 jurisdictional basis for the Commission to take action  
17 and receive a claimant, I do need some finality; and  
18 that's what the law says.

19 So you can still negotiate and still have a  
20 pending IRC on file. If they settle, great, somebody  
21 can withdraw the IRC. There's nothing preventing them  
22 from continuing their discussions, ever. I mean, that's  
23 always a good idea.

24 MS. HALSEY: What staff essentially found here,  
25 was that this was not truly a final audit report, based

1 on the language that the SCO had established an informal  
2 review process to resolve the dispute of facts and that  
3 the audit -- and specifically directing that the auditee  
4 should submit in writing a request for review of all  
5 information pertinent within 60 days. That is a very  
6 formal process and invitation that was right on the cover  
7 letter, which indicated that it was not truly a final  
8 decision. And that's the distinction between this and  
9 the other decisions that have been adopted recently,  
10 where we found that the final audit report was the  
11 trigger.

12 CHAIR ORTEGA: Any additional questions?

13 MR. SILVA: Is it possible to make a quick  
14 response to that?

15 I think what I would note is that in the  
16 letter, it does specifically say an informal audit  
17 review, which specifically puts it outside of the legal  
18 process, which is the IRC.

19 So we have in no way asserted that this was  
20 going to toll the statute of limitations or that this put  
21 on hold the legal process that had been initiated once  
22 the final audit report was issued. And the final audit  
23 report does contain all of those essential elements that  
24 create a cause of action.

25 And the way to verify that, is to look at

1 when -- how early could the claimant have filed an IRC  
2 based on the fact we gave them the final audit report,  
3 which -- let me make sure I get these elements correct --  
4 specify the claim components adjusted, the amounts  
5 adjusted, and the reason for adjustment. They have --  
6 we have met the elements under both the statute and the  
7 regulation for them to then file a claim.

8 Now, obviously, most people don't file it the  
9 next day; but at that point, all of the elements and  
10 requirements of the statute and regulation have been met.  
11 If that's the case, then that's when the clock starts.

12 MS. SHELTON: Can we just note, all of those  
13 elements that you just mentioned are also in the draft  
14 audit report, and that's clearly not final. I mean,  
15 that's the problem with that argument. And the law says  
16 it has to be the last essential element.

17 So from a claimant's perspective, with all the  
18 language being used, whether it's formal or informal,  
19 they don't have any idea when you're done. That's the  
20 problem.

21 CHAIR ORTEGA: Ms. Ramirez?

22 MEMBER RAMIREZ: Two questions.

23 Who has the burden here of proving it's a final  
24 audit? Or is it simply our staff's assessment that we  
25 would adopt?

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1 MS. SHELTON: Well, I think any party making  
2 an assertion that it is or is not final has the burden  
3 of going forward and producing evidence.

4 So it would be, here, the Controller has the  
5 burden of showing that this is a final decision. But we  
6 have language in the record which tends to dispute that.

7 MEMBER RAMIREZ: It seems to me, what's  
8 necessary going forward -- and I don't know, it's not my  
9 place -- maybe the Commission's place to say anything  
10 about it -- but further rules that clarify the situation  
11 that doesn't put claimants in a guessing game.

12 It seems like that's what's going here without  
13 anybody's bad intentions. But it does seem like there's  
14 confusion. And certainly, both sides can argue; and  
15 when you both can argue, then maybe the ball is in the  
16 Controller's court to resolve it in the future, by rules.

17 So my opinion.

18 MS. SHELTON: I was going to say, as we've  
19 indicated, I think that more -- this was the only time  
20 where we've seen this language. All the other ones are  
21 final audit reports and there's no invitation to do  
22 anything further.

23 So the issue -- I mean, in those cases, it  
24 seems to be more clear that the final audit report was,  
25 indeed, the final audit report.

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1 CHAIR ORTEGA: Any additional comments from  
2 commissioners?

3 MR. SILVA: I'm sorry, ma'am.

4 CHAIR ORTEGA: Yes.

5 MR. SILVA: If I could point one final fact  
6 out.

7 They did note that the burden was on us. And  
8 I would cite to the audit report, which is in the record,  
9 the very first sentence states, "The State Controller's  
10 Office has completed an audit of the claims filed by  
11 San Mateo."

12 CHAIR ORTEGA: All right, is there any  
13 additional public comment on this item?

14 *(No response)*

15 CHAIR ORTEGA: Okay, I don't see any.

16 Is there anyone who --

17 MR. JONES: Madam Chair, did anyone have  
18 questions on the miscoded costs or the EPSDT offsets,  
19 the substantive issues here or was...

20 CHAIR ORTEGA: Anyone?

21 MEMBER CHIVARO: No.

22 MR. JONES: No? All right.

23 CHAIR ORTEGA: Yes.

24 MR. CLIVER: If I could make a comment just to  
25 the historical process. When we filed -- when we -- in

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1 our interaction with the State Controller's Office around  
2 the filing of the IRC, their initial response to us was  
3 not that we had missed the IRC filing date that they're  
4 now expressing.

5 There was an acknowledgment that we were  
6 looking at the April 2003 date; and there was a question  
7 about whether we had filed in a timely manner to make  
8 that.

9 But in our communication with them, that was  
10 their -- I think there was some agreement about that  
11 being the date which we needed to hit to file IRC in a  
12 timely way, at that time.

13 CHAIR ORTEGA: Thank you.

14 All right, anything else?

15 MEMBER OLSEN: I'll move the staff  
16 recommendation.

17 CHAIR ORTEGA: Thank you.

18 Moved by Ms. Olsen.

19 MEMBER RAMIREZ: Second.

20 CHAIR ORTEGA: Second by Ms. Ramirez.

21 Please call the roll.

22 MS. HALSEY: Mr. Chivaro?

23 MEMBER CHIVARO: No.

24 MS. HALSEY: Mr. Hariri?

25 MEMBER HARIRI: Yes.

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1 MS. HALSEY: Mr. Morgan?

2 MEMBER MORGAN: Yes.

3 MS. HALSEY: Ms. Olsen?

4 MEMBER OLSEN: Aye.

5 MS. HALSEY: Ms. Ortega?

6 CHAIR ORTEGA: Aye.

7 MS. HALSEY: Ms. Ramirez.

8 MEMBER RAMIREZ: Aye.

9 MS. HALSEY: And, I'm sorry, I'm remiss.

10 Mr. Saylor did send me an e-mail about a month  
11 ago, I just found it in my trash. So sorry about that.  
12 So that's on the transcript.

13 CHAIR ORTEGA: Thank you.

14 Okay, we'll move on to Item 6.

15 MS. HALSEY: Senior Commission Counsel Eric  
16 Feller will present Item 6, an incorrect reduction claim  
17 on *Collective Bargaining* and *Collective Bargaining*  
18 *Agreement Disclosure*.

19 MR. FELLER: Good morning.

20 This IRC challenges the Controller's reduction  
21 to the San Mateo Community College District's  
22 reimbursement claims, in which the Controller found that  
23 the District did not have sufficient documentation to  
24 justify its claims for salaries and benefits, materials  
25 and supplies; that some salaries reported conflicted

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1 with payroll records; and that claimant calculated its  
2 productive hourly rate incorrectly. The District also  
3 argues that the Controller missed the audit deadline for  
4 fiscal year 1999-2000, but staff finds that the audit is  
5 not barred by the deadline, Government Code section  
6 17558.

7 Staff further finds that the reductions for  
8 salaries and benefits and materials and supplies based  
9 on supporting documentation are incorrect, as a matter  
10 of law. The remaining reductions relating to reports  
11 of salaries that conflict with payroll records and  
12 productive hourly rates are partially correct to the  
13 extent they are supported by evidence in the record.

14 Staff recommends the Commission adopt the  
15 proposed decision and partially approve the IRC, and  
16 authorize staff to make any technical and non-substantive  
17 changes following the hearing.

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

20 MR. PETERSEN: Keith Petersen, representing  
21 San Mateo.

22 MR. SILVA: Shawn Silva with the State  
23 Controller's Office.

24 MR. VENNEMAN: Jim Venneman, State Controller's  
25 Office.

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1 CHAIR ORTEGA: Mr. Petersen?

2 MR. PETERSEN: We're going to have to stand on  
3 the written submissions. We're all pretty much stuck  
4 with the *Clovis I* and the *Clovis II* court decisions.  
5 We may not like them, but we're stuck.

6 CHAIR ORTEGA: Thank you.

7 Mr. Silva?

8 MR. SILVA: Although we are stuck with those  
9 decisions, I don't think they actually guide us that  
10 well in this case. And that's one of our -- that's  
11 our primary concern, is the overreliance on the  
12 Contemporaneous Source Document Rule and the *Clovis*  
13 decision with respect to it.

14 That Contemporaneous Source Document Rule is  
15 only relevant if it was utilized to reduce the funds or  
16 make the adjustments that are complained of. However, in  
17 this case, none of the reductions were made based on the  
18 Contemporaneous Source Document Rule.

19 As we noted in our responses to the IRC and  
20 the proposed -- the draft proposed decision, the  
21 decisions were based on a lack of supporting evidence  
22 or documentation found or reviewed when the audit was  
23 conducted.

24 And the only two documents that were in a sense  
25 rejected, were not rejected because they were not source

1 documents. The two documents were credit-card statements  
2 and a job-duty statement. Both of those were rejected  
3 because they did not provide a connection to the activity  
4 mandate itself. They showed expenditures, but they  
5 didn't show that they were related to the mandate.

6 And as to the duty statement, it only -- it  
7 showed several duties -- I believe seven, four of which  
8 were related to the mandate -- but there was no  
9 distribution of time. So there was no way for us to  
10 know how to apportion that individual's salary.

11 What it ultimately comes down to is, the  
12 proposed decision essentially negates the Controller's  
13 constitutional and statutory duty to audit the claims in  
14 question.

15 Although they don't come out and specifically  
16 say how they've reached the conclusion, it appears they  
17 rely on the P's & G's as one factor; and the P's & G's  
18 are regulations. The audit authority is found in  
19 statute, as well as the Constitution.

20 In the *Clovis* decision, again, the core of  
21 the *Clovis* decision was the determination that the  
22 Contemporaneous Source Document Rule was underground  
23 regulation. But since we didn't apply it to make any  
24 reductions, that does not -- the *Clovis* decision does  
25 not negate the audit.

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1           And we would note that the Controller's  
2 authority in subdivision (d) (2) provides that we may  
3 audit the records of any local agency or school district  
4 to verify the actual amount of the mandated costs. And  
5 we were not provided any documentation during the audit  
6 that supported those costs claimed that were reduced.

7           And in addition, beyond altering the  
8 Controller's audit authority, this seems to create a  
9 self-proving claim. The staff decision notes that work  
10 sheets are addressed in the P's & G's and therefore  
11 states that we cannot go beyond looking at the work  
12 sheets in order to verify the mandate.

13           However, the work sheet is simply a summary --  
14 essentially an Excel spreadsheet showing certain columns  
15 of data. That data is derived from the underlying  
16 accounting records held by the school district.

17           The whole purpose of an audit is to look behind  
18 the claim itself and at the financial records to verify  
19 the validity of that claim.

20           However, I think -- sorry for the delay here --  
21 I think a citation to the staff decision or the proposed  
22 decision shows how much they've essentially eliminated  
23 the ability to look behind the work sheet; and states  
24 that with respect to the materials, the claimant  
25 identified these costs as a direct cost as a result of

1 the mandate, and the parameters and guidelines do not  
2 require any documentation beyond the summary schedules  
3 that were submitted with the reimbursement claims.

4 The decision then goes on to state that they  
5 find the reduction incorrect as a matter of law.

6 However, that still leaves the full panoply of documents  
7 held by the District that are subject to the review by  
8 the Controller as unreviewable. Since if they can rely  
9 on simply the work sheet which is submitted with the  
10 claim, and we cannot, according to the staff decision,  
11 compel them to produce the other documents, the claim  
12 itself becomes self-proving and that would totally defeat  
13 the whole purpose of the audit review power of the  
14 Controller.

15 And that's all.

16 CHAIR ORTEGA: Thank you, Mr. Silva.

17 Does staff want to respond to the issue raised  
18 about source document versus the authority of the  
19 Controller?

20 MR. FELLER: Sure. We don't dispute the  
21 Controller's audit authority. It is most assuredly in  
22 the Constitution and in statutes. However, the finding  
23 here is, it has to be based on something. And the basis  
24 that the Controller requires the documentation to be put  
25 forth on is the claiming instructions, which have not

1       been adopted as regulations pursuant to the  
2       Administrative Procedures Act. So the fallback  
3       documentation rules are in the parameters and guidelines,  
4       which have no documentation requirements attached to  
5       them.

6               The reason that the claiming instructions in  
7       this case aren't underground regulations is because they  
8       meet both of the elements as put forth by the California  
9       Supreme Court. They're a standard of general  
10      application, they apply to all audits of the collective  
11      bargaining program, and they interpret or make  
12      specific -- or enforce the law that the Controller  
13      governs.

14             So because the documentation requirements are  
15      not in the parameters and guidelines or in a regulation  
16      promulgated by the Controller, they can't be enforced by  
17      the Commission. That's our basic position.

18             As the claim being self-proving, we don't look  
19      at it that way. We look at the only documentation  
20      requirements that are in the parameters and guidelines  
21      were met through the documentation that the claimant  
22      submitted with its claims. So if that makes it  
23      self-proving, unfortunately, that's the case here. But  
24      it's not usually the case, because in most parameters  
25      and guidelines, there are documentation requirements.

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1 MS. SHELTON: Let me just add, this case is  
2 really also very similar to the *Graduation Requirements*  
3 IRC that was heard by the trial court, maybe about  
4 ten years ago. In that case, the Controller reduced all  
5 the *Graduation Requirement* claims because the school  
6 districts did not take an offset for laying off  
7 non-mandated teachers. And they did that because the  
8 claimants didn't have any documentation, or they didn't  
9 show that they exercised that authority.

10 The school districts filed 50, something like  
11 that, IRCs. Went to court. The Commission agreed with  
12 the Controller on that one. We both lost because, as  
13 the Court stated, of course, you have the authority to  
14 look at the documentation of the school districts; you  
15 certainly have that authority. But you have to --  
16 because you're asserting that allegation, you have to  
17 provide evidence to back up the allegation in order to  
18 take that offset.

19 And here, we don't have any -- oh, I think  
20 I'm getting off-track a little bit.

21 In this case, as the *Clovis* Court stated,  
22 there's just no documentation required by these  
23 P's & G's. You can't force this as -- I think I did get  
24 off-track, didn't I?

25 MS. HALSEY: A little bit.

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1 MS. SHELTON: You cannot force this as a source  
2 documentation requirement when none are provided.

3 It is an underground reg issue, whether it's  
4 called a contemporaneous source document or a source  
5 document; any documents outside what the P's & G's  
6 require would be non-regulatory.

7 MR. PETERSEN: By the way, that all changes in  
8 2005.

9 MS. SHELTON: Oh, it does.

10 The Commission did amend these P's & G's in  
11 addition to all other parameters and guidelines to  
12 include contemporaneous source documents into all of  
13 them. So now, all reimbursement claims must be supported  
14 by contemporaneous evidence.

15 That is only made effective going forward, from  
16 2005, prospectively.

17 CHAIR ORTEGA: So we should remember that we're  
18 working on a backlog of IRCs.

19 MS. SHELTON: Right.

20 CHAIR ORTEGA: And some of these are addressing  
21 issues that are not the same problem going forward.

22 MS. SHELTON: These are also the same years  
23 that were litigated in the *Clovis* decision.

24 CHAIR ORTEGA: Any other -- Ms. Ramirez?

25 MEMBER RAMIREZ: I'd just like to ask if

1 there's some sort of commonsense rule that could be  
2 applied about evidence required. And these are claims  
3 under penalty of perjury, I assume?

4 MS. SHELTON: The reimbursement claims are  
5 signed under penalty of perjury.

6 You know, I would think that -- so if the  
7 Controller is asserting that something is not met, they  
8 do have to produce evidence to show that they've met that  
9 burden, that the claimant is not correct in their claim.  
10 And that's basically what it is.

11 Here, we just had a full reduction on the  
12 allegation that no source documentation was provided, and  
13 that rule was in the claimant instructions, and was not  
14 adopted through the APA.

15 MS. HALSEY: And that's a little bit different  
16 than saying that it conflicts with evidence that the  
17 auditor found it during the audit.

18 For example, if the auditor reviewed the  
19 records of the claimant and found that it contradicted  
20 what was submitted in the claim, that would be a  
21 different story.

22 MS. SHELTON: Which actually is an issue in  
23 this case --

24 MR. FELLER: Right, the productive hourly rate  
25 issue.

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1 MS. SHELTON: -- on the productive hourly rate.

2 MR. FELLER: The Controller did submit

3 documentation that its findings were correct for all but

4 one employee during two fiscal years, which was like

5 \$120 worth. But, still...

6 MR. PETERSEN: We'll let that go.

7 MR. FELLER: You can; I can't.

8 CHAIR ORTEGA: Any other comments,

9 Commissioners?

10 *(No response)*

11 CHAIR ORTEGA: Any other public comment on this

12 item?

13 *(No response)*

14 CHAIR ORTEGA: All right, is there a motion?

15 MEMBER OLSEN: I'll move adoption.

16 MEMBER RAMIREZ: Second.

17 MS. HALSEY: Mr. Chivaro?

18 MEMBER CHIVARO: No.

19 MS. HALSEY: Mr. Hariri?

20 MEMBER HARIRI: Yes.

21 MS. HALSEY: Mr. Morgan?

22 MEMBER MORGAN: Yes.

23 MS. HALSEY: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MS. HALSEY: Ms. Ortega?

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1 CHAIR ORTEGA: Yes.

2 MS. HALSEY: Ms. Ramirez?

3 MEMBER RAMIREZ: Aye.

4 MS. HALSEY: Thank you.

5 Senior Commission Counsel Eric Feller will  
6 present Item 8 --

7 MR. FELLER: 7.

8 MS. HALSEY: -- 7, I'm sorry, I'm getting ahead  
9 of myself -- Item 7, an incorrect reduction claim on  
10 *Notification of Truancy*.

11 MR. FELLER: This IRC challenges reductions  
12 made by the Controller to claims filed by the Los Angeles  
13 Unified School District.

14 For three fiscal years in the audit, the  
15 Controller randomly sampled schools that contained  
16 roughly half the district's pupil population and  
17 extrapolated the findings to the schools not sampled.

18 Staff finds that the audited findings are  
19 correct for fiscal year 1998-99 because the claimant did  
20 not provide any documentation that it issued written  
21 notices.

22 Staff also finds the audit findings are correct  
23 for fiscal years 1999 to 2001 for notifications of the  
24 67 schools sampled; but findings are not correct for  
25 53 schools not sampled because there's nothing in the

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1 record indicating that the audit results from sampled  
2 schools accurately reflect or are representative of the  
3 schools not sampled.

4 Staff recommends the Commission adopt the  
5 proposed decision to partially approve the IRC and  
6 authorize staff to make any technical, non-substantive  
7 changes following the hearing.

8 Will the parties and witnesses please state  
9 your names, for the record?

10 MS. LEE: Good morning. Sung Yon Lee for  
11 claimant, Los Angeles Unified School District.

12 MR. VENNEMAN: Jim Venneman, State Controller's  
13 Office.

14 CHAIR ORTEGA: Okay, Ms. Lee?

15 MS. LEE: Well, we submit on the proposed  
16 decision, and we urge the Commission to adopt it.

17 CHAIR ORTEGA: Okay, Mr. Venneman?

18 MR. SILVA: Controller's Office supports  
19 staff's findings and recommendation.

20 CHAIR ORTEGA: Okay, any questions or comments  
21 from the commissioners?

22 *(No response)*

23 CHAIR ORTEGA: Any other public comment on this  
24 item?

25 *(No response)*

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1 CHAIR ORTEGA: Is there a motion?

2 MEMBER RAMIREZ: So moved.

3 CHAIR ORTEGA: Moved by Ms. Ramirez.

4 MEMBER OLSEN: Second.

5 CHAIR ORTEGA: Second by Olsen.

6 MS. HALSEY: Mr. Chivaro?

7 MEMBER CHIVARO: Yes.

8 MS. HALSEY: Mr. Hariri?

9 MEMBER HARIRI: Yes.

10 MS. HALSEY: Mr. Morgan?

11 MEMBER MORGAN: Yes.

12 MS. HALSEY: Ms. Olsen?

13 MEMBER OLSEN: Aye.

14 MS. HALSEY: Ms. Ortega?

15 CHAIR ORTEGA: Yes.

16 MS. HALSEY: Ms. Ramirez?

17 MEMBER RAMIREZ: Aye.

18 MS. LEE: May I also ask one thing? That the

19 remaining disallowed costs be offset against any prior

20 claims still owed by the District -- or, I'm sorry,

21 still owed to the District?

22 Is that something that we handle here, or...?

23 MS. HALSEY: That is a Controller issue. We

24 don't have any jurisdiction over that.

25 MS. LEE: All right. I'll be in touch with

1 them.

2 Thank you.

3 MS. HALSEY: Thank you.

4 CHAIR ORTEGA: Okay, Item 8?

5 MS. HALSEY: Item 8, Senior Commission Counsel

6 Eric Feller will present Item 8, an incorrect reduction

7 claim on *Health Fee Elimination*.

8 MR. FELLER: So this IRC challenges audit

9 findings for the San Diego Community College District

10 under the *Health Fee* program for fiscal years 2003 to

11 2007.

12 The Controller found the District did not

13 include in its claims any costs or that revenues for

14 two of the three college health centers, both of which

15 operated at a profit during the audit period. Staff

16 finds that the failure to report the information violated

17 the parameters and guidelines, so that the audit findings

18 are correct, as a matter of law.

19 Staff recommends the Commission deny the IRC

20 and authorize staff to make technical non-substantive

21 changes following the hearing.

22 Would the parties and witnesses please state

23 your names for the record?

24 MR. VENNEMAN: Jim Venneman, State Controller's

25 Office.

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1 MS. HALSEY: And just to note, claimant said  
2 they would not be attending and would just stand on their  
3 record.

4 CHAIR ORTEGA: Okay, Mr. Venneman?

5 MR. VENNEMAN: The State Controller's Office  
6 supports staff's finding and recommendation.

7 CHAIR ORTEGA: Okay, any questions or comments  
8 from the commissioners?

9 *(No response)*

10 CHAIR ORTEGA: Any other public comment on this  
11 item?

12 *(No response)*

13 CHAIR ORTEGA: Okay, is there a motion?

14 MEMBER OLSEN: I'll move adoption.

15 MEMBER RAMIREZ: Second.

16 MS. HALSEY: Mr. Chivaro?

17 MEMBER CHIVARO: Yes.

18 MS. HALSEY: Mr. Hariri?

19 MEMBER HARIRI: Yes.

20 MS. HALSEY: Mr. Morgan?

21 MEMBER MORGAN: Yes.

22 MS. HALSEY: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Ms. Ortega?

25 CHAIR ORTEGA: Aye.

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1 MS. HALSEY: Ms. Ramirez?

2 MEMBER RAMIREZ: Aye.

3 MS. HALSEY: Moving on to Item 9.

4 Item 9 is reserved for county applications for  
5 a finding of significant financial distress or SB 1033  
6 applications, and no SB 1033 applications have been  
7 filed.

8 Program Analyst Kerry Ortman will present  
9 Item 10, the Legislative Update.

10 MS. ORTMAN: Good morning.

11 We are monitoring two bills this legislative  
12 session, AB 575, *Teachers: Best Practices Teacher*  
13 *Evaluation System* would replace the Stull Act. This bill  
14 was referred to the Senate Committee on Education on  
15 June 18<sup>th</sup>.

16 AB 731, *Maintenance of the Codes*, was signed  
17 by the Governor on September 21<sup>st</sup> -- yes, I'm sorry,  
18 September 21<sup>st</sup>. It removes two programs from the  
19 education block grant funding: *Race to the Top* and  
20 *Immunization Records - Pertussis*. However, since this  
21 bill was enacted after the August 31<sup>st</sup>, the date by which  
22 a school district must elect to receive block grant  
23 funding, it is unclear what effect this bill will have  
24 for the 2015-16 fiscal year for the two programs.

25 MS. HALSEY: Thank you, Kerry.

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1                   Item 11 -- or did anyone have questions on  
2                   that?

3                   CHAIR ORTEGA: I don't think so.

4                   MS. HALSEY: Item 11, Chief Legal Counsel  
5                   Camille Shelton will present Item 11, the Chief Legal  
6                   Counsel Report.

7                   MS. SHELTON: Good morning.

8                   The Counties of San Diego, Los Angeles,  
9                   San Bernardino, Orange County, and Sacramento County have  
10                  filed a notice of appeal in the *Sexually Violent Predator*  
11                  mandate redetermination case. The underlying trial court  
12                  decision denied that petition for writ of mandate.

13                  Also not listed here, we did receive recently  
14                  a notice of appeal, appealing the trial court decision  
15                  on the *Minimum Conditions Community College Districts*  
16                  claim. That one was appealed, and filed on  
17                  September 18<sup>th</sup> in the third District Court of appeal.

18                  And then we have one upcoming hearing at the  
19                  trial court level on the *Water Conservation* test claim  
20                  filed by Paradise Irrigation District, on February 5<sup>th</sup>,  
21                  2016.

22                  CHAIR ORTEGA: Any questions?

23                  (*No response*)

24                  CHAIR ORTEGA: Okay.

25                  MS. HALSEY: Item 12 is the Executive

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1 Director's report, which has information and one action  
2 item on it today.

3 For information, we have 16 pending test  
4 claims, and four of those were filed in fiscal year  
5 2014-15; and three of those newly filed claims are  
6 tentatively set for the December and January hearings.

7 The other 13 are the *Stormwater Permit* claims,  
8 and those are on inactive, pending resolution of  
9 litigation in the California Supreme Court.

10 In addition, we have one parameters and  
11 guidelines amendment -- or one parameters and guidelines,  
12 two parameters and guidelines amendments, three statewide  
13 cost estimates, 54 incorrect reduction claims, and three  
14 mandate redeterminations pending.

15 Currently, Commission staff expects to complete  
16 that IRC backlog, including all new IRCs filed through  
17 fiscal year 2014-15, by approximately either the end of  
18 2016 or 2017 calendar year. And that's depending on  
19 staffing and other workload and, in particular, what  
20 happens in the Supreme Court.

21 Also, good news. Today, we finished the 2005  
22 IRCs. And that means the oldest ones are 2007s. And so  
23 making some headway on that, finally.

24 CHAIR ORTEGA: Great.

25 MS. HALSEY: We have an action item here that

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1 hearing calendar for Commission meetings have generally  
2 been held on the fourth Fridays of odd months. However,  
3 the Commission has traditionally held its November  
4 hearing on the first Friday of December, because the  
5 fourth Friday of November is a state holiday.

6 There's a conflict, though, because both CSBA  
7 and CSAC now hold their annual meetings during the first  
8 week of December. So many claimants and potential  
9 claimants and their representatives are unavailable for  
10 hearings that week. Therefore, staff is proposing an  
11 alternative hearing date for 2016, on the third Friday of  
12 November.

13 Staff recommends that the Commission select  
14 the hearing date for the November hearing, and there's  
15 two options there provided for you; and then adopt the  
16 proposed 2016 hearing calendar as modified by the  
17 Commission vote, attached as "Exhibit A" to the Executive  
18 Director's report.

19 MEMBER OLSEN: Can I ask a question?

20 CHAIR ORTEGA: Yes.

21 MEMBER OLSEN: The May hearing, is that the  
22 weekend of Labor Day -- I mean, Memorial Day? It looks  
23 like it is to me; but I don't actually..

24 MS. HALSEY: I believe it didn't fall that way  
25 this year. I'd have to look at my calendar real quick to

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1 see that, May 27<sup>th</sup>.

2 I believe we didn't propose any adjustments  
3 because it did not fall that way. Let's see.

4 MEMBER OLSEN: You're right. The 25<sup>th</sup> is  
5 Memorial Day.

6 MS. HALSEY: Yes, it just naturally fell this  
7 year, that it wasn't a conflict.

8 CHAIR ORTEGA: Okay, any other questions on the  
9 calendar?

10 *(No response)*

11 CHAIR ORTEGA: So are folks amenable to the  
12 November 18<sup>th</sup> date rather than the December 2<sup>nd</sup> date?

13 Does that work for everyone?

14 *(A chorus of "yeses" were heard.)*

15 CHAIR ORTEGA: Okay, is there a motion?

16 MEMBER RAMIREZ: So moved.

17 CHAIR ORTEGA: Okay, Ms. Ramirez moves the  
18 calendar with the November 18<sup>th</sup> date.

19 MS. HALSEY: Do you want to call the roll -- or  
20 do you want me to call the roll?

21 CHAIR ORTEGA: No.

22 Is there any second?

23 MEMBER MORGAN: Second.

24 CHAIR ORTEGA: All in favor?

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

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1 CHAIR ORTEGA: The calendar is adopted.

2 MS. HALSEY: Also, please check the tentative  
3 agenda items to see if your item is coming up over the  
4 course of the next few hearings.

5 The draft proposed decision for *Training for*  
6 *School Employee Mandated Reporters*, which was issued  
7 yesterday, and the *California Assessment of Student*  
8 *Performance and Progress* will be issued soon. And also,  
9 all of the mandate redeterminations -- or not all of  
10 them, sorry -- two of the mandate redeterminations  
11 currently pending are issued and set for the next  
12 hearing, and the other is tentatively set for January.

13 And then we have a number of IRCs coming up in  
14 December and January, including the five IRCs filed by  
15 the County of Santa Clara.

16 So please expect to receive draft proposed  
17 decisions on these for your review and comment  
18 approximately ten weeks prior to the hearing date.

19 And that's it, unless there's questions.

20 CHAIR ORTEGA: Any questions or comments?

21 *(No response)*

22 CHAIR ORTEGA: And I think, Ms. Halsey, you  
23 have one more thing before we go into closed session?

24 MS. HALSEY: Finally, before we adjourn for  
25 closed session, we would like to present Giny Chandler

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1 with a resolution, commemorating her career and  
2 contributions as senior commission counsel for the  
3 Commission on State Mandates.

4 Giny will be retiring next week after 25 years  
5 in public law.

6 Please join me in congratulating Giny and  
7 wishing her the best of luck in her retirement from  
8 State service.

9 MEMBER RAMIREZ: Hear, hear.

10 *(Applause)*

11 MS. SHELTON: Well, it's my pleasure to read  
12 the resolution that was signed by the Commission.

13 It says:

14 Whereas, Giny Chandler, Senior Commission  
15 Counsel, has distinguished herself as an outstanding  
16 and knowledgeable state employee for over ten years,  
17 Ms. Chandler earned her J.D. degree from Loyola Law  
18 School, with an emphasis in environmental law and has  
19 approximately 25 years of legal experience primarily  
20 focused on public employment and natural resources  
21 litigation.

22 Beginning her public law career, interning  
23 first for the Federal Public Defender's office and then  
24 for Metropolitan Water District, she went on to work  
25 for the Marin County Counsel's office and then the

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1 Humboldt County Counsel's office before coming to work  
2 for the State.

3 Through the course of her legal career,  
4 Ms. Chandler represented state and local governments in  
5 a broad variety of labor, environmental, and other  
6 public-law disputes before coming to the Commission on  
7 State Mandates.

8 Whereas, Ms. Chandler served as a senior  
9 commission counsel for over two years and completed  
10 complex legal analyses on over a dozen test claims,  
11 mandate redeterminations, parameters and guidelines  
12 amendments, and incorrect reduction claims, for  
13 presentation to the Commission, and successfully handled  
14 litigation challenging the Commission's decision on an  
15 incorrect reduction claim.

16 Whereas, she has advised and assisted with her  
17 expertise regarding the interpretation of the California  
18 Public Records Act, Bagley-Keene Open Meetings Act, and  
19 Robert's Rules of Order, as well as the protection of  
20 confidential information; and

21 Whereas, she has delighted her coworkers by  
22 sharing her Grandma Carol's ginger snaps and the bounty  
23 of her garden.

24 Whereas, Ms. Chandler will enjoy the transition  
25 from test claims to traveling, litigating to bicycling,

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1 and from governing to gardening.

2           Whereas, Ms. Chandler is being honored by the  
3 Commission on State Mandates in appreciation of her  
4 outstanding dedication and service to the State of  
5 California.

6           MS. CHANDLER: Thank you.

7           *(Applause)*

8           CHAIR ORTEGA: Thank you. Thank you for your  
9 service.

10           With nothing else to come before the public  
11 meeting, the Commission will meet in closed executive  
12 session pursuant to Government Code section 11126(e) to  
13 confer with and receive advice from legal counsel for  
14 consideration and action, as necessary and appropriate,  
15 upon the pending litigation listed on the published  
16 notice and agenda, and to confer with and receive advice  
17 from legal counsel regarding potential litigation.

18           The Commission will also confer on personnel  
19 matters pursuant to Government Code section 11126(a)(1).

20           We will reconvene in open session in  
21 approximately 15 minutes.

22           Thank you.

23           *(The Commission met in closed executive*  
24 *session from 11:24 a.m. to 11:30 a.m.)*

25           CHAIR ORTEGA: We will now reconvene into open



**REPORTER'S CERTIFICATE**

I hereby certify:

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

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

*In witness whereof*, I have hereunto set my hand on the 16<sup>th</sup> October 2015.



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