

SUBCOMMITTEE NO. 1 on Education



Subcommittee No. 1
Chair, Carol Liu
Member, Bob Huff
Member, Roderick Wright

Thursday, April 8, 2010
9:30 a.m. or
Upon Adjournment of Session
State Capitol, Room 3191

<u>Item</u>	<u>Departments</u>
6110	Department of Education
6870	California Community Colleges

Legislative Analyst’s Office – Overview of K-14 Education Mandates & Costs

- | | |
|---|----------------|
| Item 1. Background on K-14 Mandates and Costs (Information Only) | Page 2 |
| Item 2. Governor’s Budget Proposal – Ongoing K-14 Mandates | Page 8 |
| Item 3. Legislative Analyst’s Office – Legislative Options for K-14 Mandate Reform | Page 12 |
| Item 4. Governor’s Budget Proposal – K-12 High School Science Graduation Requirement Mandate | Page 20 |
| Item 5. Governor’s Budget Proposal – K-12 Mandate on Behavioral Intervention Plans | Page 24 |
| Item 6. Legislative Analyst’s Office – K-12 Flexibility Options | Page 29 |

Public Comment

Attachments

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

ITEM 1. K-14 Education Mandates and Costs (Information Only)

BACKGROUND:

State Mandate History. The California Constitution requires the state to reimburse local governments, including school districts, for certain state mandates. Section 6 of Article XIII B of the Constitution – added by Proposition 4 in 1979 -- provides that, with certain exceptions, whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall reimburse the local government for the costs of the new state-mandated activity.

State statute establishes the process for determining the existence of state mandates and providing local government reimbursements. Specifically, state law authorizes the Commission on State Mandates to hear and decide local government reimbursement claims and establishes procedures for making mandate determinations.¹ State law also establishes procedures for the State Controller’s Office to make annual payments to local governments for activities the Commission on State Mandates has deemed reimbursable state mandates.

In November 2004, state voters approved Proposition 1A, which requires the Legislature to appropriate funds in the annual budget to pay outstanding mandate claims, “suspend” the mandate, or “repeal” the mandate. However, these provisions apply to local governments only and – by definition – do not include school districts or community colleges.

Mandates Approval Process. For K-14 education, the mandate process begins when a K-14 local education agency --K-12 school district/county office of education or community college district -- files a test claim with the Commission on State Mandates. Local education agencies are required to submit claims within one year of the effective date of the statute (or executive order). The Commission hears the test case and issues a “Statement of Decision” determining whether a claim is a reimbursable state mandate. If a mandate is determined, the Commission begins the process determining mandate costs based upon mandate claims. In so doing, claimants propose “Parameters and Guidelines (Ps and Gs)” for determining mandate costs. Ps and Gs identify the mandated program, eligible claimants, period of reimbursement, reimbursable activities, and other necessary claiming information. The Commission then adopts the Ps and Gs, which are sent to the State Controller’s Office in order to develop claiming instructions for K-14 local agencies. At this point, K-14 local agencies can file claims. In the end, the Commission

¹ The Commission on State Mandates is composed of seven members: the State Controller; State Treasurer; Director of the Department of Finance; Director of the Office of Planning and Research; and a public member and two local elected officials appointed by the Governor, subject to Senate confirmation. Members serve four year terms.

estimates the costs of paying claims and reports the amount to the Legislature as the “Statewide Cost Estimate,” for inclusion in the annual budget.

If either the K-14 claimants or the State disagree with the Commission’s decisions during the mandate process, they can seek judicial review.

Problems with the Mandates Process: According to the LAO, the mandates process has significant, longstanding shortcomings. Test claims can take many years to be resolved. During this time, state fiscal liabilities increase and K-14 education agencies are not reimbursed for mandated activities. In addition, the LAO identifies the following major problems with the current K-14 mandate system.

Problems With Current K–14 Mandate System

- » Mandates often do not serve a compelling purpose.
- » Costs can be higher than anticipated.
- » Recent court ruling likely to make containing costs even more difficult.
- » Reimbursement rates can vary greatly without justification.
- » Reimbursement process can reward inefficiency.
- » Reimbursement process ignores effectiveness

Item 3 of the Subcommittee agenda provides more detail on these issues.

Recent Reforms to Process. Chapter 890, Statutes of 2004 (AB 2856/Laird) was enacted to simplify the mandate claiming process and reduce the number of audits. Chapter 890 authorized the Commission to adopt a “reasonable reimbursement methodology (RRM)” for state mandates. This methodology was intended to allow the utilization of unit costs based upon a representative local sample, rather than reliance on detailed local claims.

Chapter 329, Statutes of 2007 (AB 1222/Laird) provided further reforms to the mandates process. Specifically, Chapter 329:

- Redefines RRM. Revises the definition of a RRM to remove requirements for providing evidence of actual costs for 50 percent of eligible claimants; base costs on a representative sample of eligible claimants; and require consideration of variations in local costs;
- Allows Joint Development of RRM. Allows the Department of Finance and local agencies to develop a funding methodology and statewide estimate of costs for adoption by the Commission;
- Allows Department of Finance and local agencies to jointly request the Legislature declare a statute a state mandate, approve a funding methodology, and appropriate funds based on the methodology.

K-14 Education Mandates and Costs

Number of Approved Mandates and Costs. Per the LAO, the state currently requires K-14 education agencies to perform approximately 51 mandated activities (Appendix A). Of this total, 36 mandates are claimable by K-12 schools districts only; seven mandates are claimable by community colleges only; three are claimable by school districts and community colleges only; and five are claimable by all local government agencies – including school districts and community colleges.

The LAO has summarized the annual, ongoing costs for K-14 mandates in recent years in the chart below. In 2009-10, the annual costs for all K-14 education mandates total **\$416 million -- \$373 million** for K-12 districts and **\$43 million** for community colleges. The \$373 million for K-12 includes about **\$200 million** in new annual claims for the science graduation requirement mandate.

Annual Mandate Claims Costs

(dollars in millions)

	2007-08	2008-09	2009-10
K-12	\$ 360	\$ 366	\$ 373
Community Colleges	\$ 39	\$ 41	\$ 43
TOTAL	\$ 399	\$ 407	\$ 416

Source: Legislative Analyst's Office

Annual Budget Appropriations for Mandates. Once approved by the Commission, ongoing and new education mandates are identified (listed) in the annual budget.

Fund. The Legislature may appropriate funding for each mandate based upon the State Controller’s Office Statewide Cost Estimate Report.

Suspend. Alternatively, the Legislature may choose to “suspend” a mandate by eliminating funding in the budget and adding provisional language stating the mandate is suspended. When a mandate is suspended, local responsibilities for providing the mandate and state obligations for funding the mandate are also suspended. In recent years, five mandates applying to school districts (three of which also apply to community colleges) are suspended.

Repeal. The Legislature may also choose to repeal a mandate by eliminating funding in the budget and repealing the underlying statute.

Recent Budget Mandate Deferrals: In 2002-03, the Legislature adopted the practice of deferring payments for K-14 education mandates as a means of achieving state budget

savings. With this practice, annual appropriations are virtually eliminated (limited to \$1,000 per mandate) and full payments are deferred to future years, although local agency obligations to provide the mandated services continue. These unpaid, prior year payments have contributed to a growing state obligation that must be paid eventually, once claims are audited and approved. The state must also pay interest on overdue claims, based upon the rate established for the Pooled Money Investment Account.

More specifically, the Government Code (Section 17561.5) requires that accrued interest be incorporated into the payment of an initial mandate reimbursement if payment is made more than 365 days after the adoption of the statewide cost estimate for the specific mandate. Interest begins to accrue on the 366th day after adoption of the statewide cost estimate for an initial claim. Interest also accrues on unpaid claims for any mandate remaining on August 15 of each year -- following the filing deadline for that year's claim submission. As of June 30, 2009, the state owed **\$117.6 million** in accrued interest on school mandates.

Due to significant one-time funds available in 2006-07, the state was able to retire nearly \$1 billion – a substantial portion -- of prior-year K-14 mandate obligations at that time. However, even in 2006-07, the practice of deferring annual mandate payments continued.

While the Governor proposed suspension of most K-14 mandates in 2009-10, the final 2009-10 budget continued the recent practice of payment deferrals for most of these K-14 mandates.

Outstanding Mandate Obligations Total \$3.6 Billion. As a result of annual payment deferrals, the state will owe a total of **\$3.2 billion** in prior year K-14 mandate payments in 2009-10, per the LAO chart below. With the continued deferral of an estimated **\$416 million** in annual payments, the state will owe a total of **\$3.6 billion** in K-14 mandate claims at the end of 2009-10.

Outstanding K-14 Mandate Obligations Total \$3.6 Billion^a

(In Millions)

	2007-08	2008-09	2009-10
Outstanding K-12 claims	\$2,141	\$2,501	\$2,867
Ongoing cost of K-12 claims	360	366	373
Outstanding CCC claims	260	299	340
Ongoing cost of CCC claims	39	41	43
Total Outstanding Obligations	\$2,800	\$3,207	\$3,623
^a Excludes mandates still in the mandate determination process. Includes mandate relating to high school science graduation requirement.			

Mandates Pending Commission Approval and Costs. The Commission is currently considering approval of more than a dozen additional K-14 mandate claims at various stages of review. Two of these pending mandates could carry significant prior year and ongoing costs to the state. These include:

- **Graduation Requirement – Science Classes.** This is the costliest mandate per the LAO -- **\$200 million** per year. This mandate results from determination of a new high school graduation requirement that could result in significant prior-year and ongoing costs for the state. This is an existing mandate that was changed due to a 2004 court decision and subsequent Commission decision in 2008. (Item 4 of the Subcommittee agenda provides additional background and cost detail for this pending mandate.)
- **Behavior Intervention Services.** This is the second costliest mandate per the LAO -- **\$65 million** per year. The Administration is pursuing a court settlement agreement on this pending K-12 mandate related to behavior intervention plans for students with disabilities. As a part of that agreement, the Administration proposes to provide \$65 million in annual, ongoing special education appropriations to K-12 local educational agencies and \$510 million in one-time funds for prior-year payments, scheduled over a six year period. (Item 5 of the Subcommittee agenda describes the Governor’s settlement proposal in full.)

Newly Re-Established Mandates and Costs. A 2009 State Appellate Court decision struck down a statute directing the Commission to reconsider three, previously funded mandates related to Open Meetings (Brown Act), Mandate Reimbursement (Claiming) Process, and School Accountability Report Cards. The court decision will require the Commission to reinstate these three mandates, which will result in additional costs to the state. According to the Commission on State Mandates, no appeals were filed to the State Appellate Court decision; so the decision is final. Annual and prior year costs for these three mandates are summarized in the table below:

<i>In Millions</i>	Prior Year Costs	Annual Costs	TOTAL
Open Meetings Act	\$79	\$7	\$86
Mandate Reimbursement Process	155	15	170
School Accountability Report Cards	30	3.5	33.5
TOTAL	\$264	\$25.5	\$289.5

RECENT COURT DECISIONS.

- **Mandates Deferral Decision – San Diego County Superior Court (December 2008).** In November 2007, five school districts and the California School Boards Association sued the Department of Finance and the State Controller seeking payment of past mandate claims and an end to mandate payment deferrals.

The Court found that the practice of deferring payments for state-mandated programs is an unreasonable and unconstitutional restriction on school districts' rights. "Accordingly," the Court found, "the Legislature in the future is to comply with the Constitutional requirements of article XIII B section 6 by fully funding state mandated programs." This decision as not appealed by the Administration.

- **Reconsideration of Commission on State Mandate Decisions -- State Court of Appeal for Third District (March 2009).** This lawsuit challenges provisions of AB 138 (Chapter 72, Statutes 2005), a budget trailer bill that:

- 1) Directed the Commission to reinstate its decisions on three mandates – the Open Meetings Act, Mandate Reimbursement Process, and School Accountability Report Cards; and,

- 2) Amended state law to specify that the Commission should not find a reimbursable mandate in cases when a law or regulation is "reasonably within the scope of" a voter-approved measure.

The court ruled that the Legislature's direction to the Commission to reconsider mandate decisions was an unconstitutional violation of the separation of powers doctrine. The court voided the three mandate reconsiderations, thereby reestablishing these measures as reimbursable mandates. This decision as not appealed by the Administration.

AUDIT FINDINGS BY STATE CONTROLLER'S OFFICE.

The State Controller's Office (SCO) is required to conduct audits of education mandates within three years of mandate funding. Last year, the Senate Office of Oversight and Outcomes gathered information on education mandate audits of selected K-12 school districts from the SCO in prior years. This information – presented in Appendix B – covers State Controller audits for four education mandates: Habitual Truancy, Truancy Notification, Mandate Reimbursements, and Graduation Requirements. The audit period covers a several year period for each mandate and includes a small sample of school districts for each mandate. In summary, sample school districts claimed **\$35.8 million** for the four mandates; however, as a result of district audits, **\$20.4 million (57 percent)** of this amount was disallowed by the Controller's Office and returned to the state.

**ITEM 2. Governor's Budget Proposal for Ongoing K-14 Education Mandates
(Budget Items 6110-295 & 6870-295)**

DESCRIPTION: The Governor's January 2010 budget proposes to suspend most ongoing, state mandate payments and mandate requirements for K-14 education agencies in 2010-11. This action would result in estimated savings of about **\$200 million** annually. The Governor also proposes to add **\$14.5 million** in funding for three remaining education mandates he proposes to continue. These proposals were prompted by a 2008 court decision that found the Legislature's deferral of annual education mandate payments unconstitutional.

GOVERNOR'S BUDGET PROPOSAL:

The Governor proposes to suspend most ongoing state mandates for K-14 education and to continue three mandates. More specifically, beginning in 2010-11, the Governor proposes to:

- **Provide zero annual funding for 51 ongoing K-14 education mandates, thus suspending both state obligations to pay for mandated activities and local obligations to provide these mandated activities.** Per the Administration, the Governor's proposal would save an estimated **\$200 million** in 2010-11. According to the Administration, a recent court decision requires the state to either pay or suspend all education mandates. In addition, the Administration believes that suspension of annual mandate requirements will increase funding flexibility and potential savings for K-14 education agencies.
- **Provide \$13.4 million in annual funding for three education mandates, including an increase of \$7.7 million for mandated costs related to Inter-District and Intra-District transfers and \$6.8 million for mandated costs related to the California Higher School Exit Exam (CAHSEE).** According to the Department of Finance, the rationale for funding the CAHSEE mandate is that it satisfies an annual student testing requirement under No Child Left Behind (NCLB) and continued funding would ensure compliance with federal accountability requirements. Funding for Inter-District and Intra-District Transfer policies also satisfy federal requirements, specifically with regard to school choice for students who attend schools in Program Improvement. These transfer policies are also consistent with an Administration priority to ensure school choice options for all students and parents.
- **Continue suspension of five K-14 mandates that have been suspended in recent years.** These mandates include two claimable only by school districts (School Bus Safety I–II and County Treasury Withdrawals) and three claimable by both school districts and community colleges (Law Enforcement Sexual Harassment Training, Health Benefits for Survivors of Peace Officers and Firefighters, and Grand Jury Proceedings).

The Governor also proposed suspension of most K-14 education mandates in 2009-10, however, the proposal was not approved by the Legislature. Instead, the 2009-10 budget

continues the practice of deferring most annual K-14 mandate claims costs into future years by providing \$1,000 for each deferred mandate.

LAO COMMENTS/RECOMMENDATION:

The Governor's mandate reform proposal reduces state education mandate costs by roughly **\$200 million**. While the LAO believes that the Governor's plan reduces state mandate costs and is a better option than continuing to defer costs, the LAO has identified the following shortcomings with the Governor's plan to suspend most education mandates.

- **Suspension Only a Short-Term Solution.** Suspending mandates provides savings only in the budget year but does not provide permanent solutions. Given the recent court ruling, pressure to fund the annual ongoing cost of mandates will persist. Moreover, the cost of many mandates can be reduced on a long-term basis with simple amendments to state law. Especially given the relative ease of creating more lasting solutions, the Governor's budget misses an opportunity to eliminate the costs of ineffective mandates altogether.
- **Suspension Treats All Currently Mandated Activities Alike Regardless of Policy Merits.** The Governor's proposal does nothing to preserve the state policies that underlie some education mandates. For instance, while the graduation requirement mandate in our view would not justify its price tag reimbursed using the existing method, we believe that the state should not weaken its high school science requirements. In the past, lawmakers have found strategies to limit the high cost of some mandates while creating strong incentives for schools to perform valuable educational activities. By suspending mandates, the administration fails to create such incentives.
- **Suspension Creates Confusion for Districts.** Suspension also would lead to confusion among districts about what activities they are required to perform. Rather than actually repeal or amend sections of the Education Code, suspension through the budget act makes sections of law inoperative only for the year in which they are suspended. As a result, districts would be forced to cross-reference the budget act with the Education Code and lengthy CSM decisions to determine what activities they are still required to perform. Moreover, on a practical level, districts cannot dismantle costly programs for a single year if there is a chance the mandate will be reinstated the following year.

The LAO recommends an alternative approach for education mandate reform that relies on making determinations for individual mandates that would eliminate most mandates, continue some mandates, and modify other mandates. The LAO's alternative is covered in Item 3 of the Subcommittee agenda.

STAFF COMMENTS:

Governor's Plan Better Than Deferring Mandate Costs. Staff agrees with the LAO that the Governor's suspension plan reduces state mandate costs is a better option than continuing to defer costs. As a result of education mandate deferrals in recent years, the state will owe **\$3.6 billion** for K-14 education mandate claims by the end of 2009-10. (This amount includes \$2.3 billion for the science graduation mandate and \$1.3 billion for the remaining backlog of other education mandates.) This means that when state General Fund growth improves and funding is restored for schools, the state will be facing enormous mandate debts, in addition to revenue limit deficit factor restorations. Ironically, funding to restore important categorical funding streams will not be available because the state will be paying for mandates that in some cases may be less critical to student success.

Hard to Preserve Mandates While Many Important State Categorical Programs Are Subject to Funding Flexibility. While the state continues to defer most K-14 mandates, over 41 categorical programs are now subject to full funding flexibility for five years beginning in 2008-09. Under the categorical program flexibility, local districts are given discretion for allocating resources as most needed; however, school districts are not given flexibility over many state mandates that may be viewed as less essential to the Legislature.

However, Suspension Gives Unclear Message to the Field. As the LAO points out, suspension for one year gives school districts mixed signals. While districts are relieved of obligations, they may need to restore services in the next year. Maintaining staffing and services in this situation is tricky, at best.

Suspension Avoids Important Determinations by Legislature for Individual Mandates. Suspension has some appeal for stopping costs and providing school districts flexibility similar to what has been provided in the across-the-board categorical cut/flexibility program. Suspension also has some appeal for getting the mandates reform underway. However, the better policy approach is to have the Legislature – working together with the Administration – make individual determinations based upon agreed-upon criteria.

STAFF RECOMMENDATIONS: Staff recommends that the Legislature consider the LAO's proposal for more comprehensive mandate reforms. However, staff suggests that suspension of most K-14 mandates be viewed as a default – as an alternative to deferrals - to get mandate reforms started. Under this scenario, suspension can be viewed as a kind of “zero-basing” of mandates, if accompanied by provisions that required mandates to be re-approved by the Legislative policy committees now that the mandated costs are known.

SUGGESTED QUESTIONS:

1. Can you explain more fully *why* the Administration has proposed to suspend funding and requirements for most K-14 education mandates? As we understand, the Administration's primary reasons involve: (1) a recent court decision that found the Legislature's "deferral" of annual education mandate payments unconstitutional; and (2) a desire to increase funding flexibility and savings to local education agencies and stop the clock on mounting state mandate costs in the face of budget shortfalls.
2. Does the Administration plan to continue K-14 mandate suspension for one year or for a number of years? Does the Administration plan to eventually restore these mandates?
3. Under the Administration's suspension proposal, what effect will "stopping" and "starting" mandated services have on school districts and community colleges?
4. Would the Administration consider a longer mandated suspension period to meet its goals for flexibility and budget savings? For example, recent budget actions enacted categorical cuts and flexibility for most K-12 state categorical programs over a **five year period** beginning in 2008-09.
5. Because of the constitutional separation of powers, the 2008 San Diego County Superior Court Decision cannot force the Legislature to make budgetary appropriations. However, according to the LAO, the court decision increases pressure on the state to pay the annual ongoing costs of education mandates. Does the Administration agree? If the court cannot force the state to appropriate funds, could K-14 LEAs sue directly for relief from compliance based on this decision?
6. Estimates of annual K-14 education mandate costs rely on un-audited mandate claims. Reportedly, the State Controller's Office (SCO) routinely disallows a significant portion of annual claims as a result of its audits. Some evidence of this is provided in Appendix B of the agenda. What is the Administration's view of this issue?
7. The Governor's suspension proposal would result in **\$200 million** in direct state savings from local mandate costs. Are there other indirect savings associated with the Governor's proposal? For example, are there any audit savings for the State Controller's Office or other savings for the Commission on State Mandates?

ITEM 3. Legislative Analyst's Office -- Options for K-14 Education Mandate Reform

DESCRIPTION: Instead of suspending virtually all K-14 mandates in 2010-11, as proposed by the Governor, the LAO recommends that the Legislature adopt a more comprehensive reform package that evaluates each mandate and make determinations on a case-by-case basis. In so doing, the LAO makes recommendations to continue, eliminate, or modify these mandates in 2010-11. The LAO's recommendations would save the state approximately **\$363 million** annually by no longer requiring non-essential or ineffective services. The LAO would also fund more than **\$30 million** in ongoing mandates to support essential services.

BACKGROUND:

Existing Mandate System Has Well-Recognized, Longstanding Problems. The LAO believes that virtually every aspect of the K-14 mandate system is broken. More specifically, the LAO has identified the following longstanding problems with California's education mandate system:

- **Mandates Often Do Not Serve Compelling Purpose.** Mandated activities do not necessarily serve a more compelling purpose than other policies that are not mandated. Oftentimes, a law becomes a mandate not because it serves an essential function, but because the original legislation did not phrase its requirements very carefully. Further, many mandated activities are of altogether questionable value.
- **Costs Can Exceed Expectations.** Frequently, when an activity required by law is deemed a reimbursable mandate, the price of funding the activity exceeds anticipated costs. This mismatch can occur for several reasons. In some cases, the state can end up being required to reimburse local educational agencies (LEAs) for activities that were not intended to increase total education costs. In other cases, lawmakers do not anticipate the range of activities that eventually will be deemed reimbursable. In addition, costs can vary dramatically depending on the number of districts that file claims, the reimbursement period, the activities deemed allowable, and subsequent statutory decisions and legal rulings. Consequently, legislators cannot always predict the fiscal ramifications of their policy decisions.
- **Recent Court Ruling Likely to Make Containing Costs Even More Difficult.** A 2009 Appellate Court ruling found unconstitutional the Legislature's practice of referring mandates back to CSM in an attempt to reduce associated costs through "reconsideration." Specifically, the court ruled the Legislature cannot refer any previously decided mandate back to CSM without a consistent process for doing so. This is significant because legal developments after a mandate's initial determination can occasionally reduce the cost of a mandate and the Legislature has wanted a way to recognize these savings. Nonetheless, as a result of the 2009 ruling, CSM has no way to revise its decisions in light of new legal precedent until a new process is

developed that is consistent with the court’s findings. Thus, the recent ruling further limits the state’s options for lowering the cost of an established mandate.

- **LEAs Claim Vastly Different Reimbursement Amounts.** The mandate process also allows districts to claim widely different amounts and receive widely different reimbursement levels for performing the same activities. The variation often reflects local record keeping and claim-filing practices more than substantive cost differences in implementing policy objectives. The table below provides an example of the notable variation in reimbursement amounts. As shown in the chart below, reimbursements for science graduation requirements range from \$6 to \$264 per pupil—a vast difference. High school exit exam mandate claims range from \$3 to \$26 per pupil.

Mandate Reimbursement Claims Vary Widely

School District	2005–06 Claims Per Pupil ^a
Graduation Requirement	
Clovis Unified	\$264
Grossmont Union High	203
Los Angeles Unified	81
Visalia Unified	6
High School Exit Exam	
Colusa Unified	\$26
East Side Union High	18
Clovis Unified	8
Los Angeles Unified	3

^a Ranges in per-pupil claims differ by roughly the same magnitude when claims are averaged over several years

- **Reimbursement Process Can Reward Inefficiency.** Districts also receive more in mandate funding by claiming more activity, not by performing an activity efficiently. Many mandates are reimbursed based on the amount of time devoted to a required activity and the salary of the staff member performing it. In other words, the more time devoted to an activity and the higher the staff member’s rank, the greater the reimbursement.
- **Reimbursement Process Ignores Effectiveness -- No Accountability for Results.** The state also has little power to hold LEAs accountable for performing mandated activities effectively. The LEAs can claim expenses for performing an activity regardless of whether they achieve its underlying policy objectives. The state cannot avoid liabilities for ineffective implementation of a mandated activity.
- **Little Justification for Treating Mandates and Categorical Programs So Differently.** In stark contrast to the state’s treatment of K–14 mandates, the amended 2008–09 Budget Act removed requirements associated with more than 40 categorical programs that arguably serve more compelling purposes, such as requirements related to summer school, programs for suspended or expelled students, instructional materials, and professional development.

LAO RECOMMENDATIONS – OVERALL: Rather than suspending most K-14 mandates at once, the LAO recommends a more systemic approach to comprehensive K-14 mandate reform. More specifically, the LAO recommends reviewing mandates on a case-by-case basis and making determinations for each (see chart below.) For most mandates, the LAO recommends either funding or eliminating them, although some are eliminated while still preserving underlying policies that serve a compelling purpose. For a few mandates, however, the LAO recommends a hybrid approach whereby certain activities associated with the mandate would be funded and the remaining activities eliminated.

<i>(Dollars in Thousands)</i>		Annual Fiscal Effect^a	
Recommendation	Number of Mandates^a	Cost	Savings
K–12 Mandates			
Fund	11	\$26,379	—
Eliminate	19	—	\$271,052
Hybrid	6	7,165	16,934
Community College Mandates			
Fund	1	\$1	—
Eliminate	6	—	\$32,322
Hybrid	—	—	—
K–14 Mandates			
Fund	—	—	—
Eliminate	2	—	\$42,167
Hybrid	1	\$54	54
Totals	46	\$33,599	\$362,529
<small>^a Based on estimated 2009–10 claims. Excludes the five mandates that apply to all local governments and the Behavioral Intervention Plan mandate. Also excludes the five currently suspended mandates, which we recommend eliminating.</small>			

In 2010-11, the LAO’s recommendations would save the state approximately **\$363 million** annually by no longer requiring non-essential or ineffective services. The LAO would also fund almost **\$34 million** in ongoing mandates to support essential services.

In making determinations, the LAO utilizes the following criteria:

- Statute has resulted in a true mandate by requiring local governments to establish a new program or provide an increased level of service.
- The mandate serves a statewide interest.
- The mandate has produced results consistent with the Legislature’s intent and expectations.
- The benefits achieved by the mandate are worth the cost.
- The goal of the mandate cannot be achieved through a less-costly alternative.

Specific LAO recommendations for individual K-12 education and community colleges mandates are presented below. Appendix C includes excerpts from the LAO report entitled, *Education Mandates; Overhauling a Broken System*. These excerpts provide detail on each of the LAO’s recommendations.

K-12 Mandates

Mandate <i>(dollars in thousands)</i>	LAO Recommendation	Cost
High School Exit Exam	Fund	\$ 8,458
Immunization Records - Hepatitis B	Fund	\$ 6,160
Immunization Records – Original	Fund	\$ 4,821
Charter Schools I-III	Fund	\$ 2,325
Pupil Health Screenings	Fund	\$ 1,570
School District Fiscal Accountability Reporting	Fund	\$ 2,612
County Office Fiscal Accountability Reporting	Fund	\$ 404
Differential Pay and Reemployment	Fund	\$ 11
School District Reorganization	Fund	\$ 9
Pupil Safety Notices	Fund	\$ 6
Missing Children Reports	Fund	\$ 3
Truancy – Notification	Eliminate	\$ 15,900
Truancy - Habitual Truants	Eliminate	\$ 6,883
Notification to Teachers of Mandatory Expulsion	Eliminate	\$ 6,818
Scoliosis Screening	Eliminate	\$ 3,652
Physical Performance Tests	Eliminate	\$ 2,325
Law Enforcement Agency Notifications	Eliminate	\$ 1,894
Removal of Chemicals	Eliminate	\$ 1,289
Caregiver Affidavits	Eliminate	\$ 975
Pupil Residency Verification and Appeals	Eliminate	\$ 348
Expulsion Transcripts	Eliminate	\$ 13
Teacher Incentive Program	Eliminate	\$ 6
Physical Education Reports	Eliminate	\$ 2
Agency Fee Arrangements	Eliminate	\$ 75
High School Science Graduation Requirement	Keep policy	\$ 200,000
Stull Act	Keep policy	\$ 19,166
Inter/Intradistrict Attendance	Keep policy	\$ 5,792
Pupil Suspensions, Expulsions, and Expulsion Appeals	Keep policy	\$ 3,849
Criminal Background Checks I and II	Keep policy	\$ 1,713
Financial and Compliance Audits	Keep policy	\$ 427
Collective Bargaining	Keep policy	\$ 42,092
Annual Parent Notification	Hybrid	\$ 10,147
AIDS Prevention I-II	Hybrid	\$ 1,495
Comprehensive School Safety	Hybrid	\$ 5,041
Juvenile Court Notices II	Hybrid	\$ 1,230
Pupil Promotion and Retention	Hybrid	\$ 3,128
School Accountability Report Cards	Hybrid	\$ 3,057
CalSTRS Service Credit	Hybrid	\$ 108
TOTAL		\$ 363,804

Community College Mandates

Mandate (<i>dollars in thousands</i>)	LAO Recommendation	Cost
Sex Offenders: Disclosure by Law Enforcement	Fund	\$ 1
Law Enforcement College Jurisdiction Agreements	Eliminate	\$ 195
Sexual Assault Response Procedures	Eliminate	\$ -
Reporting Improper Governmental Activities	Eliminate	\$ 27
Agency Fee Arrangements	Eliminate	\$ 75
Enrollment Fee Collection and Waivers	Keep policy	\$ 20,000
Integrated Waste Management	Keep policy	Unknown
Health Fee/Services	Keep policy	\$ 12,100
Collective Bargaining	Keep policy	\$ 7,500
CalSTRS Service Costs	Hybrid	\$ 3,000
TOTAL		\$ 42,898

LAO RECOMMENDATIONS – NEWLY DETERMINED MANDATES. Chapter 1124, Statutes of 2002 (AB 3000, Committee on Budget), requires the LAO to review each mandate included in CSM’s annual report of newly identified mandates. Since the LAO’s last review, three new education mandates have been identified by CSM. The LAO recommends the following actions:

- Eliminate expanded hearing costs for students mandatorily expelled from school, leaving offenses that now result in a mandatory expulsion to a school district’s discretion, an approach that would automatically eliminate these expanded hearing costs.
- Utilize a hybrid approach for the new mandate involving reporting requirements placed on school districts and community colleges related to the California State Teachers’ Retirement System.
- Eliminate mandate involving the state’s Norm Referenced Test (NRT) that recently completed the entire CSM process. This mandate is longer claimable because the NRT was eliminated during the 2008-09 school year.

LAO RECOMMENDATIONS – MANDATE PROCESS: To help preserve certain policies while reducing costs, the LAO also recommends the state establish a new mandate reconsideration process. Toward this end, the Commission on State Mandates (CSM) already has proposed a new process whereby mandates impacted by changes in legal precedent, fact, or circumstance could be reconsidered. While the LAO has some concerns with specific components of CSM’s proposal (particularly with provisions disallowing reconsideration after a set number of years), CSM’s general approach addresses the court’s concerns. With a few refinements, the LAO recommends the Legislature adopt this reconsideration process. Establishing a new reconsideration process would mean the state could reduce mandate costs when certain activities are no longer reimbursable.

PENDING LEGISLATION: Bills introduced in the current legislative session that address education mandate funding and reforms include:

AB 2082 (Committee on Education). States intent of the Legislature that statutes creating a reimbursable state mandate on school districts be periodically reviewed, and that the Legislature consider recommendations on whether those statutes should be amended, repealed, or remain unchanged. The bill would require the Legislative Analyst to review and report on each reimbursable state mandate relating to local educational agencies that meets prescribed criteria. The bill would specify the information to be provided in the review and report, and would require that the review and report be provided to the chairpersons of the Assembly Committee on Education, the Senate Committee on Education, and the fiscal committees of the Assembly and the Senate, on or before the January 1 following the adjournment of the regular session of the Legislature for which the review was made.

STAFF COMMENTS:

LAO Finds Mandates System Broken in Virtually Every Way and Points to Need for Major Reforms. Staff supports LAO recommendation to initiate major reforms to the K-14 mandates system. While mandate suspension is a better alternative to deferral, system reform is the more appropriate policy choice.

LAO Also Highlights Major Problems with the Recent Deferral Process: At the very least, staff supports the recommendations of both the LAO and the Administration to stop the recent practice of deferring annual mandate payments. For school districts and community colleges, deferral means still having to perform hundreds of activities, which are often of little benefit to students, even amid steep budget cuts. For the state, deferral means the debt owed to schools will grow steeply and, without substantive reform, most mandated policies likely will continue to be implemented ineffectively and inefficiently.

LAO Highlights Disconnect Between Budget Treatment of Mandates and Categorical Programs. Staff supports the LAO's recommendation to make tough choices on categorical and mandate programs. The state has continued funding for K-14 mandates through the deferral process. Per the LAO, this approach is in stark contrast to the state's treatment of K-12 categorical funding, which beginning in the 2008-09 Budget Act, removed requirements associated with many categorical programs that may serve a more compelling purposes than many K-14 education mandates.

STAFF RECOMMENDATIONS: Staff supports the LAO's mandate reform proposal as an alternative to continuing deferrals of mandates or across-the-board suspension of most K-14 mandates.

Recommendations for Mandate Process Reforms: Staff supports the LAO recommendation to implement a mandate reconsideration process for the Commission on State Mandates, with a few refinements. For this reason, staff recommends that the

Subcommittee request that the Commission on State Mandates develop a specific proposal for consideration following May Revise.

Recommendations on Individual Mandate Reforms. If the Subcommittee supports mandate reform, staff could develop recommendations -- working with the Department of Finance and other stakeholders and using agreed-upon criteria -- on each of the LAO's mandate recommendations at a later hearing. If the Subcommittee supports this approach, staff recommends that the Subcommittee direct budget staff to develop specific recommendations for consideration following May Revise.

Along these lines, staff has developed some *preliminary* suggestions for community colleges mandates that the Subcommittee may want to consider prior to May Revise.

Community Colleges

1. *Sex Offenders: Disclosure by Law Enforcement:* Staff recommends funding this mandate.
2. *Sexual Assault Response Procedures:* Staff recommends funding this mandate
3. *Law Enforcement College Jurisdiction Agreements:* Staff recommends eliminating this mandate.
4. *Reporting Improper Governmental Activities:* Staff recommends eliminating this mandate.
5. *Agency Fee Arrangements:* Staff recommends eliminating this mandate.
6. *Integrated Waste Management:* Staff recommends suspending this mandate and suggests that the policy committee consider the need for this mandate.
7. *Health Fee/Services:* Staff recommends suspending this mandate and suggests that the policy committee consider the need for this mandate.
8. *Collective Bargaining:* Staff recommends suspending this mandate and suggests that the policy committee consider the need for this mandate.
9. *Enrollment Fee Collection and Waivers:* Staff recommends that the Subcommittee hold this item open.
10. *CalSTRS Service Costs:* Staff recommends that the Subcommittee hold this item open to gather more information about the impact of the proposed changes.

However, in considering implementation of the LAO's proposals, staff suggests that the Subcommittee consider the role of policy committees in this process. In particular, staff suggests that policy committees be involved in any legislation to either eliminate or modify mandates.

If the Subcommittee does not support more comprehensive reform, staff recommends two basic options for the Subcommittee to consider following May Revise. First, the Subcommittee could consider suspension of *most* mandates per the Governor's proposal, but extend suspension through 2012-13 -- consistent with the categorical flexibility reform timeframe -- and require mandates to be approved by legislative policy committees in order to continue after that time period. Second, the Subcommittee could fund *most* mandates in 2010-11. Staff believes -- as does the Administration and LAO -- that both options are preferable to continuing the mandate deferral process.

SUGGESTED QUESTIONS FOR LAO:

- 1.** The 2009 State Appellate Court decision invalidated Legislative directives for reconsideration of decisions by the Commission on State Mandates. Is it your view that the court decision leaves open the ability of the Legislature to establish a process in law that requires some periodic review or update of mandate decisions? Would such a process be beneficial in your view?
- 2.** AB 2855/Laird (Chapter 895; Statutes of 2004), eliminated eight education mandates. Are there lessons learned from this process that would be helpful in considering a more ambitious, case-by-case review for all K-14 mandates? What was the role of budget subcommittees and policy committees in this process?
- 3.** Please describe what impact the LAO alternative would have on the CalSTRS program. Could employee understanding of their benefits and rights be negatively impacted by these proposed changes?
- 4.** To your knowledge, have many local government mandates been suspended since Proposition 1A was passed by state voters in 2004 and what has the effect been on mandated services? Has the new law resulted in elimination or modification of other local government mandates?

ITEM 4: Governor's Proposal – High School Science Graduation Mandate

DESCRIPTION: The Administration believes that the science high school graduation mandate is not a reimbursable state mandate because funding is available to offset the costs of this requirement. As a result, the Governor's 2010-11 budget does not recognize the high school science graduation mandate, and thus does not eliminate or suspend it. Furthermore, the Administration is seeking a court decision to reject the reimbursement rate methodology adopted by the Commission on State Mandates. This action is intended to reduce the costs for the most expensive K-12 state mandate, which is estimated to cost **\$200 million** per year. In addition, there are roughly **\$2.3 billion** in prior year claims costs for this mandate.

BACKGROUND: As part of major education reform legislation in the early 1980s, the Legislature increased the state's high school graduation requirements. Among other changes, the law required that all students complete two high school science classes prior to receiving a diploma (the previous requirement was one science class). This change raised the total number of state-required courses from 12 to 13.

The costs associated with providing an additional science class were the basis of an eventual mandate claim. In 1987, CSM determined that providing an additional science class imposes a higher level of service on districts and, therefore, constituted a reimbursable mandate.

In 2004, a court ruling indicated that school districts had full discretion to increase their total graduation requirements and total instructional costs. Based on this 2004 ruling, CSM decided the state could not increase the number of courses it requires for graduation above 12 courses without providing reimbursement.

The LAO Analysis of the 1983–84 Budget Bill – published the year after the state increased graduation requirements -- anticipated minimal costs for this mandate. Nonetheless, based on a 2004 superior court ruling, which expanded the scope of reimbursable activities, annual claims are estimated to reach about **\$200 million**.

GOVERNOR'S BUDGET PROPOSAL:

The Governor's Budget does not suspend, eliminate, defer or provide any other funding for this mandate, because the Administration believes that the cost of the high school science graduation mandate is fully supported through the revenue limit for schools. This belief is at the heart of the Administration's lawsuit against the Commission on State Mandates regarding the reasonable reimbursement methodology (RRM) they adopted for this mandate.

More specifically, the Administration believes the RRM adopted by the Commission failed in at least four ways:

- It did not meet cost efficiency or accuracy requirements of an RRM.
- It did not consider savings and offsetting revenues.
- It failed to limit claims to actual costs.
- It inappropriately allowed for retroactive claims.

The Administration is not seeking to overturn the Commission’s original finding of a mandate. Imbedded in its dispute over the RRM, the Administration contends that this “mandate” is fully supported or “offset” by revenue limit funding provided to schools. The Administration points out that while not typical, there are examples of activities being found to be mandates, but offsetting revenues/fee authority/etc., render any actual claims moot. For these reasons, The Administration does not believe any amount of funding, or even suspension is required at this point. However, to the extent its lawsuit is rejected, the Administration understands it will have to revisit the issue of funding.

LAO COMMENTS: The LAO provides the following background on the High School Science Graduation requirement.

- **Court Interpretation Has Led to Great Increase in Estimated Mandate Costs.** The primary factor contributing to high mandate costs relates to a statutory provision that provides school districts with discretion in implementing the high school science graduation requirement. This provision was interpreted differently by various parties, until a 2004 court ruling indicated that school districts had full discretion to increase their total graduation requirements and total instructional costs. Based on this ruling, CSM decided the state could not increase the number of courses it requires for graduation above 12 courses without providing reimbursement. As a result, the state could be forced to pay the full cost of every additional science course for most districts as far back as 1995–96.
- **Absent Action, State Will Face High Price Tag.** The LAO estimates the state would face annual ongoing mandate costs of roughly **\$200 million** if it were to pay the full cost of an additional science course for every applicable LEA. In addition, we estimate retroactive costs would total approximately **\$2.3 billion** (resulting in part from the formula chosen by CSM as the basis for reimbursement).
- **Amend Statute to Avoid Prospective Costs.** The LAO recommends the Legislature avoid prospective science graduation requirement costs by clarifying how districts are to implement the graduation requirement. Specifically, the LAO recommends language clarifying that school districts shall ensure that any modification of coursework relating to the second science course requirement results neither in students needing to take a greater total number of courses for

graduation nor higher district costs. Such an approach has been used in previous test claims and affirmed by a California appellate court.

- **Statutory Change Would Have Minimal Programmatic Impact on Districts, Provide Flexibility in Containing Costs.** In practical terms, this change would have minimal programmatic impact on districts. This is because districts typically require at least a dozen additional year-long courses on top of the state's requirements for 13 year-long courses. Thus, even with the recommended statutory change, school districts still would have substantial discretion both to increase academic requirements beyond the state requirements and require electives. The statutory change also would provide districts with substantial discretion in determining how best to offset any potentially higher costs associated with a science course within their existing base program (consistent with the intent of the original legislation).
- **Addressing Retroactive Costs Is More Complicated.** While eliminating costs prospectively is relatively straightforward, addressing retroactive costs is somewhat more complicated. This is because the Legislature generally cannot apply clarifying statutory language retroactively, even when associated mandate costs have grown far beyond legislative intent. As a result, options available for addressing the **\$2.3 billion** backlog of graduation requirement claims are limited.

LAO RECOMMENDATION:

With regard to the ongoing costs of the mandate, the LAO recommends modifying the mandate to eliminate state mandated costs. Per the LAO, through a simple change to statute, the requirement that students take two science classes could be preserved at no cost to the state by clarifying that districts need to provide the additional science class as part of their regular course of study. This would save an estimated **\$200 million** per year.

With regard to the **\$2.3 billion** in prior-year claims costs for the science graduation mandate, the LAO suggests the Legislature consider three possibilities:

- (1) Support the Administration's efforts to appeal the Commission on State Mandate's decision;
- (2) Request the Commission CSM to base claims on documented costs rather than a formula; or
- (3) Pay all claims within available Proposition 98 resources.

STAFF COMMENTS:

Governor's Proposal Challenges Commission's Reimbursement Rate Methodology Valid. The Administration's lawsuit challenges the reasonable reimbursement methodology (RRM) adopted by the Commission on State Mandates for the science graduation mandate for several good reasons that have importance for state funding, including failure to meet cost efficiency or accuracy requirements; failure to consider

savings and offsetting revenues; failure to limit claims to actual costs; and inappropriate allowance for retroactive claims.

Governor’s Proposal May Have Effect of Deferring the High School Graduation Mandate. The Governor does not recognize the science graduation mandate in the budget. However, because the Governor does not suspend or eliminate the mandate, local claims and obligations, state costs would continue to accrue for this mandate -- at a rate of **\$200 million** per year – if the lawsuit is not successful. It may be better to suspend or eliminate the state mandated cost, while the Administration’s appeal of the Commission’s reimbursement rate methodology is pending.

STAFF RECOMMENDATION: Staff supports the Governor’s proposal to appeal the reimbursement rate methodology adopted by the Commission on State Mandates. The LAO also supports this proposal. The Governor’s proposal is critical to addressing an estimated **\$2.3 billion** in existing claims for this mandate and **\$200 million** in ongoing mandate claims costs.

At the same time, staff also supports the LAO recommendation to modify the science graduation mandate to preserve the underlying requirements, while eliminating the mandated cost. This is critical of the Administration’s lawsuit if unsuccessful. For this reason, staff recommends that the Subcommittee request the LAO to develop specific language for consideration following May Revise.

SUGGESTED QUESTIONS:

1. Is it the Administration’s intent to address the backlog of claims, as well as ongoing costs of the science graduation mandate, as a part of the lawsuit on the reasonable reimbursement methodology?
2. What does the Administration mean by needing to revisit mandate funding if their lawsuit on the reimbursement rate methodology is not successful?
3. The estimated cost of the science graduation mandate is huge – more than double all other K-12 mandates combined. In addition, the backlog of prior year costs covers more 15 years of claims. What does this mandate example say about the mandate process? For example, is it your sense that the Legislature was aware of these potential costs when it passed the change in graduation law?

ITEM 5. Governor’s Proposal for New K-12 Mandate – Behavioral Intervention Plan (6110-161-0001)

DESCRIPTION: The Governor’s January 2009-10 budget proposes to implement provisions of a settlement agreement with K-12 education agencies regarding a state mandate claim for Behavioral Intervention Plans (BIPs). Specifically, the Administration proposes (1) **\$65 million** in additional, ongoing funds for special education programs beginning in 2010-11; (2) **\$10 million** in one-time funds for administrative costs to county offices of education and special education local planning areas in 2010-11; and (3) **\$510 million** in one-time funds allocated on a per-pupil basis over a period of six years beginning in 2011-12.

The Legislative Analyst will present an alternative proposal that would eliminate ongoing funding for the BIP mandate – for annual savings of \$65 million -- and make changes to the BIP statute to better align its requirements with existing state and federal law.

GOVERNOR’S BUDGET PROPOSAL:

In December 2008/January 2009, the Administration and the local education agency (LEA) claimants -- San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education -- reached a settlement in the Behavioral Intervention Plans (“BIP”) Mandated Cost Claim and lawsuit, a claim dating from 1994. The settlement provides for an ongoing increase to special education funding and retroactive reimbursement to school districts, county offices of education, and special education local plan areas (“SELPAs”) for general fund use, contingent on LEA approval.

The settlement provides for the following funding:

- **\$510 million** payable to school districts as general fund reimbursement, in \$85 million installments over 6 years, from 2011-12 through 2016-17, based on average daily attendance (ADA) for 2007-08.
- **\$10 million** payable as general fund reimbursement in 2010-11 as follows:
 - \$1.5 million to county offices based on December 2007 county special education pupil counts
 - \$6.0 million to SELPAs based on December 2007 special education pupil counts
 - \$2.5 million to claimants and others for administrative costs incurred in pursuing the claim (legal costs).
- **\$65 million** added in 2010-11 as a **permanent increase** to the AB 602 special education funding base. Commencing in 2010-11, this amount will be subject to cost-of-living adjustment (COLA) growth to the extent it is added to AB 602 generally.

The settlement amounts are based on results from district and SELPA surveys conducted by the Department of Finance.

In January 2009, the Governor proposed the same settlement plan - with earlier implementation dates - as a part of his 2009-10 budget. This plan was not approved by the Legislature.

BACKGROUND: Federal law entitles children with disabilities to a “free and appropriate education” (FAPE) tailored to their unique needs. In order to achieve these goals, districts are responsible for providing special education and related services pursuant to an Individualized Education Program (IEP), which is developed by an IEP team -- including parents -- with special education expertise and knowledge of a child’s particular needs.

Chapter 959, Statutes of 1990 (AB 2586, Hughes), sought to regulate the use of behavioral interventions and encourage the use of positive behavioral strategies with special education students, as a part of the IEP process. In so doing, Chapter 959 required the State Board of Education (SBE) to adopt regulations that (1) specified the types of behavioral interventions districts could and could not use; (2) required IEPs to include, if appropriate, a description of positive interventions; and (3) established guidelines for emergency interventions.

The SBE adopted regulations that require districts to conduct a “functional assessment analysis” and develop a Behavioral Intervention Plan (BIP) for students with disabilities exhibiting serious behavior issues. SBE regulations also require districts to train staff to implement BIPs.

BIP Regulations Found to Constitute a State Mandate: In 1994, three school districts filed a claim arguing that BIP-related requirements constituted a reimbursable mandate. In reviewing the claim, the Commission on State Mandates staff found that state statute, “on its face, does not impose any reimbursable state mandated activities,” **however, regulations adopted pursuant to state law were found to constitute a state mandate.**

In 2000, the Commission on State Mandates heard the BIP test claim and ruled in favor of the districts. The Administration appealed this decision; however, rather than proceeding with the court appeal, the Administration reached a settlement with districts outside of the legal process in December 2008/January 2009.

LAO ANALYSIS/RECOMMENDATIONS: The LAO makes the following findings and recommendations about the BIP mandate:

Regulations Exceed Legislative Intent. Regulations adopted by SBE go beyond what the Legislature intended—being both more extensive and more prescriptive. Regulations adopted by SBE require districts to conduct a particular type of behavioral assessment—a

“functional assessment analysis” —followed by a particular type of behavioral intervention plan (BIP)—a systematic positive BIP—for students with disabilities exhibiting serious behavior issues that interfered with the implementation of his or her IEP. In addition, the regulations require districts to train staff on these strategies.

Federal Law Now Largely Achieves Original Legislative Goals. At the time BIP-related regulations were implemented, federal law was silent on the use of behavioral interventions. In 1997, however, federal law was amended to include behavioral interventions in the IEP process. Specifically, federal law now requires IEP teams to consider behavioral interventions, including positive behavioral interventions, when a student’s behavior impedes his or her learning or that of others. Additionally, if an IEP team determines that a behavioral intervention is needed to ensure a child receives a FAPE, the IEP team must include an intervention in that child’s IEP. Federal law, however, does not prescribe the type of behavioral intervention that IEP teams should include.

LAO Recommendation (Ongoing Costs) -- Eliminate Mandate by Better Aligning Regulations to Federal Law. Given that activities mandated by federal law are not reimbursable mandates for the state, the LAO recommends eliminating the BIP mandate because federal special education laws now largely overlap with state laws. Per the LAO, under state law, if a student with a disability exhibits behavior that impedes his or her Individualized Education Plan, school districts are required to perform three primary activities: (1) assess the student’s behavior using a “functional analysis assessment,” (2) implement a plan for addressing the behavior (the BIP), and (3) ensure teachers are properly trained to perform BIPs. After state laws and regulations were adopted, the federal government essentially chose to require the same primary activities (see figure below, which highlights federal regulations related to IDEA generally and BIPs specifically). As a result of the new changes in federal law, IDEA funding likely could be used to implement most, if not all, desired BIP activities. The LAO’s recommendation would save the state **\$65 million** in estimated annual ongoing costs.

New Federal Requirements Offer Sufficient Protection

Topic	Federal Rules and Regulations
Functional Analysis Assessments	The IDEA “requires the public agency to ensure that the child is assessed in all areas related to the suspected disability...If a child’s behavior or physical status is of concern, evaluations addressing these areas must be conducted.”
Behavioral Intervention Plans	The IDEA “emphasizes a proactive approach to behaviors that interfere with learning by requiring that, for children with disabilities whose behavior impedes their learning...the IEP team consider...the use of positive behavioral interventions. This provision should ensure that children who need behavior intervention plans to succeed in school receive them.”
Related Professional Development	The IDEA requires the state “to ensure that personnel are appropriately and adequately prepared and trained...(IDEA) specifically focuses on professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions and provide educational and behavioral evaluations, services, and supports.”

Given the high degree of overlap among state and federal law, most state BIP requirements could be eliminated with minimal impact on students per the LAO. However, given this mandate involves issues related to student safety, the LAO believes the state should use heightened care when repealing state requirements that duplicate federal law.

LAO Recommendation (Prior-Year Costs) -- State Likely Liable for Retroactive Claims. While the state can eliminate future BIP-related costs by amending regulations, it is likely still liable for past claims. Even if the Legislature takes action to amend existing regulations, districts have the right to pursue reimbursement for BIP-related costs incurred between 1993, the year regulations were implemented, and the date regulations are repealed. Since these activities occurred in the past, the state would likely be liable for the claim costs. The Administration estimates retroactive claims could reach **\$1 billion**. It has tentatively negotiated the amount down to **\$510 million**, which would be paid to districts in **\$85 million** increments over the course of six years, beginning in the 2011–12 fiscal year.

RELATED LEGISLATION: AB 661 (Torlakson) was introduced in 2009 to implement the settlement agreement between the Department of Finance and local educational agencies regarding the Behavior Intervention Plans mandate. Specifically, the measure increases the General Fund appropriations for special education by \$65 million annually on an ongoing basis; provides \$85 million in General Fund reimbursements annually for a six year period beginning in 2011-12; and appropriates \$10 million in one-time funds to county offices of education and special education local planning areas. Status: The bill was held in Assembly Appropriations Committee.

TRAILER BILL LANGUAGE: The Governor’s budget includes the \$65 million in ongoing funding in the special education 6110-161-0001 budget act item, and proposes trailer bill language to appropriate \$520 million in one-time funds required in the settlement agreement.

STAFF COMMENTS: The BIP mandate is the second costliest K-14 education mandate with annual costs estimated at **\$65 million** and prior-year costs estimated at **\$1 billion**. The Legislature is not a party to the Administration’s settlement proposal, and given its substantial state costs, staff suggests that the Subcommittee explore options for addressing both prior-year and ongoing BIP mandate costs. In particular, staff supports exploration of the LAO recommendations to eliminate BIP mandate costs moving forward – due to overlap with federal law -- while preserving the underlying statute in order to continue important protections for students.

STAFF RECOMMENDATIONS: As an alternative to the Governor’s settlement agreement for the BIP mandate, staff recommends that the Subcommittee:

- Direct the LAO to review prior-year BIP mandate claims costs and develop options for funding prior-year claims; and
- Direct the LAO – pursuant to their recommendation – to create a work group that includes special education experts to make recommendations for revising associated state laws and regulations. Per the LAO, the work group could help ensure new federal requirements are implemented effectively and state requirements are rolled back carefully, such that important existing protections for students and districts are not undermined.

SUGGESTED QUESTIONS:

1. For DOF, why did the Administration drop its appeal of the Commission’s ruling on the BIP mandate and decide to settle the issue outside of the Commission mandate process?
2. For DOF, the Administration’s settlement proposal includes **\$510 million** for prior year BIP payments - covers roughly half of the estimated, prior year claims for K-12 schools. How did the Administration arrive at this level of funding?
3. For DOF, would BIP payments be audited by the State Controller under the Administration’s settlement agreement?
4. For LAO, how has federal law changed regarding behavioral services to students with disabilities since the state BIP mandate was enacted?
5. For LAO, if the BIP mandate is eliminated, how can important protections for students with disabilities be retained? Is it possible to eliminate the BIP state mandate costs without eliminating necessary behavior plans, assessments, or services for students with disabilities deemed to be appropriate by the IEP team?
6. For LAO, is it possible to strengthen behavior service protections for students without incurring additional state costs? For example, could the state enact additional behavior intervention prohibitions to protect student safety without incurring state costs?
7. For CDE, how many students currently have a BIP statewide?
8. For CDE, how does the state currently monitor behavior services for these students to assure student safety?
9. For CDE, can the **\$1.2 billion** in new federal ARRA funds for special education be used as a source of funding for behavior services and related staff training?
10. For CDE, can federal special education personnel development grant funds to California, as authorized under IDEA, be used for positive behavior services training?

ITEM 6. Legislative Analyst’s Office –K-12 Local Flexibility Options

DESCRIPTION: The Legislative Analyst’s Office (LAO) recommends a number of additional flexibility options to help school districts deal with limited funding in 2010-11. The LAO will present these options to the Subcommittee. In addition, the LAO will summarize flexibility options added by the 2008-09 budget packages.

BACKGROUND:

New Flexibility Provisions for K-12 Schools. The February and July 2009 budget packages included a number of significant flexibility provisions intended to loosen program funding restrictions and to give school districts more control over spending decisions. Most of these flexibility provisions are in effect for a five year period -- from 2008-09 through 2012-13. The *2009-10 California Spending Plan*, published by the LAO in October 2009, includes the following summary of these new flexibility provisions.

Figure 6

K-12 Flexibility Provisions Included in 2008-09 and 2009-10 Budgets

2008-09 to 2012-13 (Unless Otherwise Noted)

Provision	Description
Flexibility in Use of Categorical Program Funding	Creates categorical "flex item" whereby districts can use funds from roughly 40 programs for any purpose.
Lesser Penalties for Exceeding K-3 Class Size Reduction Program Guidelines	Allows districts to exceed 20 students per K-3 classroom without losing as much funding as under previous penalties.
Reduced Requirement for Routine Maintenance Deposit	Lowers the percentage districts must set aside for maintenance of school buildings from 3 percent to 1 percent of expenditures. Districts with facilities in good repair are exempt from any set-aside requirement.
Elimination of Local Spending Requirement to Qualify for State Deferred Maintenance Match	Eliminates requirement that districts spend their own funds on deferred maintenance in order to qualify for state dollars.
Access to Categorical Fund Balances	Allows districts to spend leftover categorical funding from 2007-08 or prior years for any purpose (except in seven programs). (2008-09 and 2009-10 only.)
Postponement of Instructional Material Purchase Timeline	Postpones requirement that districts purchase new instructional material packages.
Reduced Instructional Time Requirements	Provides school districts option to reduce length of school year by as many as five days.
Sale of Surplus Property	Allows districts to use the proceeds of surplus property sales for any purpose if property was purchased entirely with local funds.

Impact of Flexibility Provisions. The LAO is collecting data that indicates that K-12 school districts are starting to take advantage of the new flexibility provisions added by the 2009 budget packages. The LAO has provided the following findings from their surveys of school districts on the impact of flexibility:

- **Facilitating Local Planning Processes.** Over two-thirds of respondents reported that categorical flexibility made it somewhat or much easier to craft and implement their district's strategic plan.
- **Facilitating Budget Decisions.** A majority of respondents also indicated categorical flexibility made it easier to: develop and balance their budgets, focus on local priorities, make hiring and layoff decisions, and fund programs for struggling or at-risk students.
- **Districts Reprioritizing Categorical Funds.** Data suggest districts are beginning to shift funding away from most of the "flexed" categorical programs. Data suggest funds are being redirected to classroom instruction.
- **Increasing Class Sizes.** Many districts are taking advantage of the ability to increase K-3 class sizes without losing all incentive funding, and indications are that even more will do so in 2010-11.
- **Reducing Local Special Education Expenditures.** About 60 percent of survey respondents report reducing their local contributions to special education in response to increased federal IDEA funds. [The federal American Recovery and Reinvestment Act allows local educational agencies to reduce their local contributions to special education by up to half of any increase in federal Individuals with Disabilities Act (IDEA) funding.]
- **Accessing Prior-Year Balances.** By close of 2008-09, districts had spent almost all funds remaining from 2007-08.
- **Few Districts Shortened 2009-10 School Year.** Despite the option to reduce instructional time, most districts did not shorten the school year in 2009-10.

LEGISLATIVE ANALYST'S K-12 FLEXIBILITY PROPOSALS:

LAO Recommends Providing Districts More Flexibility. The LAO recommends that the Legislature adopt the following additional flexibility options for K-12 schools, in addition to the education mandate reforms covered in the Subcommittee agenda today. (The Governor proposes several options for Community Colleges that will be covered in a future Subcommittee agenda.)

- **Include Additional Programs in K-12 Flexibility Program**
- **K-3 Class Size Reduction (CSR).** The LAO recommends that the K-3 CSR program be added to the K-12 cut/flex program, which currently covers approximately 40 categorical programs. In so doing, the LAO recommends that districts receive funding equal to their 2007-08 allocation less 20 percent—which

would equate to funding levels for other programs in the categorical cut/flex program. Districts would continue to receive funding regardless of class size increases. This proposal would result in K-3 CSR savings of **\$382 million** in 2010-11, compared to \$550 million in reductions proposed by the Governor.

- **Home-to-School Transportation (HTS).** The HTS transportation program was excluded from the flexibility program provisions in 2009 because at the time the program was being funded with special funds that had to be used for transportation purposes. Under the Governor's 2010–11 proposals, the HTS program is funded with Proposition 98 monies. As such, the LAO sees no reason to continue to treat this program differently from most other K–12 programs. The LAO therefore recommends adding the program and its associated funding (roughly **\$500 million**) to the flex item.
- **After School Education and Safety (ASES).** The LAO recommends that the Legislature ask voters to repeal the existing restriction that roughly **\$550 million** in K–12 funds be used solely for after school services. Specifically, the LAO recommends the Legislature place a measure on the ballot to repeal Proposition 49 (which created the automatic ASES funding requirement), and, if it passes, to add the ASES program into the flex item.

➤ **Consolidate Funding From Similar Programs.**

- **English Learner Programs - Shift English Learner Acquisition Program (ELAP) Into Economic Impact Aid (EIA).** Currently, ELAP must be used to provide services to English learner (EL) students in grades 4 through 8. The LAO recommends merging ELAP and its associated funding (**\$50 million**) into the more broad-based EIA program, which supports various activities benefiting EL and low-income students. This change would grant districts flexibility to spend the funds on EL and low-income students of any grade level, depending on their areas of greatest need.
- **Career Technical Education (CTE) Programs - Streamline Funding to Focus on Student Outcomes.** To better coordinate the state's fractured CTE system and increase local flexibility, the LAO recommends combining **\$427 million** in funding from five career technical education programs into one item. These five programs include two programs in the categorical flexibility item -- Regional Occupational Centers and Programs and Specialized Secondary Programs -- and three current stand-alone programs -- Partnership Academies, Apprenticeship, and Agricultural Vocational Education. Once consolidated, the LAO recommends eliminating programmatic requirements in favor of monitoring related student outcomes. By holding districts more accountable for student engagement and outcomes, the state could ensure students receive the positive benefits of CTE while providing more flexibility to districts in developing effective high school programs.

➤ **Relax or Remove Local Requirements.**

- **Contracting Out--Ease restrictions on contracting out for non-instructional services (approve Governor's policy proposal).** The Governor's proposal amends existing law governing contracting out for personal services to remove provisions that currently: (1) disallow approval of contracts solely on the basis of cost savings; and (2) disallow contracts if it causes displacement of school employees who previously provided the services. This new authority would become effective for personal services contracts entered into after January 1, 2011.
- **Teacher Personnel.** Remove requirements that districts give laid-off teachers higher priority and pay for substitute teaching positions. This proposal would: (1) allow districts to choose substitutes from entire pool of candidates on basis of needs and effectiveness rather than seniority of laid-off teachers, and (2) allow districts to determine substitute teacher pay rate rather than requiring districts to pay pre-layoff salary rate.
- **Quality Education Investment Act (QEIA).** Allow QEIA schools qualifying for federal school improvement funding to be subject only to federal requirements, and therefore free from state QEIA requirements. Annual appropriations for the K-12 QEIA programs total \$402 million.

LAO Also Recommends Aligning State Department Staff Levels With Categorical Flexibility Decisions. Despite the state's decision last year to essentially eliminate the programmatic and funding requirements associated with roughly 40 state categorical programs, the state has made no corresponding changes to California Department of Education (CDE) staffing for those programs. Per the LAO, CDE now has hundreds of staff members assigned to administering programs that the state is not now operating. To reflect the impact of consolidating categorical programs on state operations, the LAO recommends decreasing CDE's budget by **\$10 million** and eliminating roughly 150 positions. This issue will be explored at a future hearing.

RELATED LEGISLATION:

AB 548 (Chesbro). Makes changes to the current flexibility provisions for the Class Size Reduction program to address anomalies surrounding base year calculations that limit the amount of funding school districts may receive for the program. This bill is estimated to cost between \$30 and \$100 million. **Status:** Senate Education Committee.

SB 1298 (Hancock). Prohibits a district from withdrawing from Regional Occupational Centers and Programs if doing so would negatively impact the career technical education services received by high school pupils of other school districts in the region. The bill further requires that funds appropriated in the budget for the ROP/C program be expended in accordance with the regional plan for occupational course sequences. **Status:** Senate Education Committee.

STAFF COMMENTS:

- **Most LAO Recommendations for K-12 Flexibility Covered in Other Subcommittee Agendas.** The CSR and contracting out proposals were heard at the Subcommittee's March 11 hearing. Staff recommended support of the LAO proposal to move the CSR program into the categorical cut/flexibility program. However staff did not recommend support for the contracting out proposal, based upon recent actions by the Legislature.
- The LAO's teacher personnel proposals will be covered at a future hearing that also covers the Governor's final teaching proposals, once available. The ASES proposal will be covered in child care hearing on April 22. The LAO's QEIA proposal will be heard at the Subcommittee's April 29 hearing as a part of the federal funds discussion. The LAO's proposal to reduce CDE categorical staffing will also be heard on April 29.
- **Moving Additional Categorical Programs into Flexibility Program Has Merit.** Per LAO, districts are utilizing class size reduction flexibility as a means of meeting budget shortfalls, without eliminating instructional programs. While the Home-to-School Transportation has benefited from transfers into its program in the past, school districts should not be restricted from making adjustments to this program in order to preserve their instructional programs. Additional flexibility for the K-3 Class Size Reduction and Home-to-School Transportation – consistent with flexibility provided for more than 40 other categorical programs – makes sense in another tight budget year for school districts.
- **Moving Some Programs Out of Flexibility Program May Have Merit, But Could Invite Efforts to Protect Other Programs.** The LAO suggests moving two programs out of the categorical cut/flexibility program – Regional Occupational Centers and Programs and Specialized Secondary Programs. The LAO also suggests moving the English Language Acquisition program – currently in the categorical cut-only program – to the Economic Impact Aid program, which is protected from cuts or flexibility. This raises the possibility of moving other programs out of the cut/flexibility program that would be deemed high priority due to their impact on students.

LAO Recommends Adoption of Three Administration Proposals.

- **Facilitate Contracting Out.** Proposes to ease restrictions on contracting out for non-instructional services (linked to \$300 million revenue limit reduction).
- **Modify Substitute Teacher Policies.** Proposes to remove requirements that districts give laid off teachers priority for substitute positions and pay them at pre-layoff rates.

- **Streamline Teacher Personnel Processes.** Proposes a number of changes to teacher layoff, tenure, and dismissal processes. (The Administration has indicated it is now proposing these changes through policy legislation rather than in a budget trailer bill.)

STAFF RECOMMENDATIONS: Staff makes the following recommendations for the three LAO flexibility proposals not covered in other Subcommittee agendas. Staff suggests the Subcommittee take action on these issues following May Revise:

- **Include Home-to-School Transportation in K-12 Flexibility Item.** Staff recommends support. (As a part of the March 11 Subcommittee agenda, staff also recommended support of the LAO proposal to transfer the K-3 CSR program into the K-12 flexibility program.)
- **Shift Funds for English Language Acquisition Program into Economic Impact Aid Program.** Staff recommends support.
- **Consolidate Funds for Career Technical Education in Single Block Grant.** Staff recommends support.

Staff makes two additional flexibility recommendations, beyond those recommended by the LAO, for the Subcommittee to consider following May Revise.

- **Remove California High School Exit Exam (CAHSEE) Supplemental Services program from categorical flexibility.** This program provides supplemental services for students who have not passed CAHSEE and, if they do not pass, will not graduate from high school with a diploma. This is a high stakes program that falls squarely on students. Without supplemental services, some students may not be able to graduate. This recommendation would move CAHSEE Supplemental Services to the cut-only program.
- **Move Cal-SAFE child care component from categorical flexibility program into the Child Care and Development Program.** The Child Care and Development program is a stand-alone program, which is not subject to cut/flexibility provisions. However, the Cal-SAFE program, which provides child care for teen mothers so that they can remain in school, is subject to categorical cut/flexibility provisions. Due to current waiting lists for the Child Care and Development program, there are no assurances that the children of teen mothers can be served. This proposal would shift about \$25 million in Cal-SAFE child care funds to the Child Care and Development program and set these funds aside for teen mothers who are enrolled in school. School completion has policy benefits for the teen mothers and their children, and is generally viewed as good fiscal policy for preventing future state costs.

SUGGESTED QUESTIONS:

1. What has the LAO learned about the utilization of categorical flexibility from its surveys of school districts?
2. Can the Department of Education provide information on the number and characteristics of high school seniors who did not pass CAHSEE in 2009-10?
3. Can the Department provide information on the number of teen mothers currently receiving child care via the Cal-SAFE program? Does the Department also collect data on the number of teen mothers who have dropped out of school?

Appendix A

Comprehensive List of K–14 Mandates^a

Claimable Only by K–12 School Districts (36)	
Included in 2009–10 Budget Act	
AIDS Prevention Instruction I–II	Notification to Teachers of Mandatory Expulsion
Annual Parent Notification	Physical Education Reports
Caregiver Affidavits	Physical Performance Tests
Charter Schools I–III	Pupil Health Screenings
Comprehensive School Safety Plans	Pupil Promotion and Retention
County Office of Education Fiscal Accountability Reporting	Pupil Residency Verification and Appeals
Criminal Background Checks	Pupil Suspensions, Expulsions, and Expulsion Appeals
Criminal Background Checks II	Removal of Chemicals
Differential Pay and Reemployment	School District Fiscal Accountability Reporting
Expulsion Transcripts	School District Reorganization
Financial and Compliance Audits	Scoliosis Screening
Graduation Requirements	Teacher Incentive Program
Habitual Truants	Additional Claimable Mandates
Immunization Records	High School Exit Examination
Immunization Records—Hepatitis B	Missing Children
Intradistrict Attendance	Pupil Safety Notices
Juvenile Court Notices II	School Accountability Report Cards
Law Enforcement Agency Notifications	Stull Act
Notification of Truancy	
Claimable Only by Community Colleges (7)	
Included in 2009–10 Budget Act	
Health Fee/Services	Additional Claimable Mandates
Law Enforcement College Jurisdiction Agreements	Enrollment Fee and Waiver
Sex Offenders: Disclosure by Law Enforcement	Integrated Waste Management
	Reporting Improper Governmental Activities
	Sexual Assault Response Procedures
Claimable by Both School Districts and Community Colleges (3)	
Included in 2009–10 Budget Act	
Collective Bargaining	Additional Claimable Mandates
	Agency Fee Arrangements
	California State Teachers’ Retirement System Service Credit
Claimable by Local Governments (5)	
Included in 2009–10 Budget Act	
Mandate Reimbursement Process	Additional Claimable Mandates
Public Safety Officers Procedural Bill of Rights	Absentee Ballots
	Open Meetings Act
	Threats Against Peace Officers
^a In addition to these 51 mandates, two mandates claimable only for school districts (School Bus Safety I–II and County Treasury Withdrawals) and three mandates claimable for both school districts and community colleges (Law Enforcement Sexual Harassment Training, Health Benefits for Survivors of Peace Officers and Firefighters, and Grand Jury Proceedings) have all been suspended in recent years.	

School district	Audit Period	District claimed	Amount allowed	Amount rejected	Amount to be returned to state*
Habitual Truant					
Anaheim City	7/00-6/03	\$ 312,197	\$ -	\$ 312,197	\$ 312,197
Compton Unified	7/98-6/01	\$ 686,444	\$ 616,479	\$ 69,965	\$ -
Los Angeles Unified	7/99-6/01	\$ 2,262,604	\$ 586,228	\$ 1,676,376	\$ 936,747
San Bernardino City Unified	7/00-6/03	\$ 880,881	\$ -	\$ 880,881	\$ 526,956
Stockton Unified	7/01-6/03	\$ 390,894	\$ 92,803	\$ 298,091	\$ 298,091
West Contra Costa Unified	7/99-6/02	\$ 697,851	\$ 61,511	\$ 636,340	\$ 636,340
Mandate Reimbursement					
Los Angeles Unified	7/99-6/01	\$ 1,179,775	\$ 1,097,893	\$ 81,882	\$ 81,882
Notification of Truancy					
Colton Joint Unified	7/99-6/02	\$ 438,174	\$ -	\$ 438,174	\$ 357,568
Compton Unified	7/98-6/01	\$ 615,945	\$ -	\$ 615,945	\$ 497,865
East Side Union	7/03-6/07	\$ 865,273	\$ 839,615	\$ 25,658	\$ -
Fresno Unified	7/99-6/02	\$ 943,847	\$ 525,676	\$ 418,171	\$ 234,552
Kern High School	7/00-6/03	\$ 418,643	\$ 418,643	\$ -	\$ -
Moreno Valley Unified	7/99-6/02	\$ 667,854	\$ 64,808	\$ 603,046	\$ 396,038
Oakland Unified	7/98-6/00	\$ 312,804	\$ -	\$ 312,804	\$ 312,804
Ontario-Montclair	7/01-6/04	\$ 348,851	\$ -	\$ 348,851	\$ 348,851
Riverside Unified	7/00-6/02	\$ 399,535	\$ 68,888	\$ 330,647	\$ -
San Bernardino Unified	7/00-6/03	\$ 877,640	\$ -	\$ 877,640	\$ 529,148
San Juan Unified	7/99-6/02	\$ 578,710	\$ 470,268	\$ 108,442	\$ 34,709
Santa Ana Unified	7/00-6/03	\$ 736,013	\$ 26,596	\$ 709,417	\$ 160,685
Stockton Unified	7/01-6/04	\$ 612,896	\$ 542,192	\$ 70,704	\$ 70,704
Sweetwater Union High	7/00-6/02	\$ 501,643	\$ 472,974	\$ 28,669	\$ -
Graduation Requirements					
Clovis Unified	7/98-6/02	\$ 8,053,465	\$ 4,116,233	\$ 3,937,232	\$ 2,498,848
Fresno Unified	7/99-6/02	\$ 1,809,941	\$ -	\$ 1,809,941	\$ 531,558
Los Angeles Unified	7/99-6/01	\$ 5,760,711	\$ -	\$ 5,760,711	\$ 1,479,636
San Diego Unified	7/99-6/02	\$ 5,492,915	\$ 5,492,915	\$ -	\$ -
TOTAL		\$ 35,845,506	\$ 15,493,722	\$ 20,351,784	\$ 10,245,179

* The amount auditors direct to be returned to the state varies depending upon how much money the state has already given to school districts. An additional note: Two audits of the Stull Act mandate are under way, according to the controller's office, but have not been completed.

Source: State Controller's Office

Appendix C

Appendix A

LAO Recommends Funding a Dozen Mandates

(In Thousands)

Mandate	Requirements	Annual Cost ^a
K-12 Mandates		
High School Exit Exam	Cover excess costs for administering the California High School Exit Exam.	\$8,458
Immunization Records—Hepatitis B	Request, record, and follow-up on documentation that student is immunized against: hepatitis B, measles, mumps, rubella, diphtheria, tetanus, and pertussis (whooping cough). Exclude students from school if documentation is not provided within a set period.	6,160
Immunization Records—Original		4,821
Charter Schools I-III	Review petitions for charter schools and charter renewals, notify charter schools of reasons for charter revocation, and administer facility rentals.	2,325
Pupil Health Screenings	Inform parents that students must have a health screening before enrollment in kindergarten or first grade, follow up with parents to ensure compliance, and exclude any pupil without a screening after 91 days in school from attending for at most five days.	1,570
School District Fiscal Accountability Reporting/ County Office Fiscal Accountability Reporting	Counties must annually certify that district budgets are financially sound and follow specific timelines for certification and public review of budgets. Includes district compliance activities.	2,612 404
Differential Pay and Reemployment	Maintain a list of certificated employees who have exhausted all sick leave and process paperwork to return that employee to work upon recovery.	11
School District Reorganization	Counties must send district reorganization petitions to the State Board of Education, make petitions public, and review petitions based on established criteria.	9
Pupil Safety Notices	Inform parents when a school does not meet certain safety standards, including for lead, and provide an interpreter anytime a parent does not speak English and wishes to discuss certain safety issues, such as child abuse.	6
Missing Children Reports	Post notices of missing children provided by law enforcement. Notify law enforcement if another school requests the student's records.	3
Community College Mandates		
Sex Offenders: Disclosure by Law Enforcement	Campus police must register students who are sex offenders and live on campus.	\$1

^a Based on estimated 2009-10 claims. Costs could increase to the extent more districts file claims given our recommendation to simplify the reimbursement process.

Appendix B

LAO Recommends Eliminating Most Education Mandates

(In Thousands)

Mandate	Requirements	Likely Impact on Students and Teachers	Annual Savings ^a
K-12 Mandates			
Truancy	Notification—Develop truancy procedures. Identify students absent or tardy three or more times as truant. Use a form letter to inform parents their child has been classified as truant.	Minimal impact expected. Almost all mandate costs are generated by form letters, which are reimbursed at a rate of \$17 each and do not substantively increase parent involvement or reduce dropouts. Further, the federal No Child Left Behind Act already requires districts to develop extensive policies for increasing parental involvement.	\$15,900
	Habitual Truants—If a student is truant three or more times: verify prior truancies, inform the parents using a form letter, and request a conference with the parent. After these steps, classify the student as habitually truant.		6,883
Notification to Teachers of Mandatory Expulsion	Document and maintain information on all students in the past three years who have committed suspendable or expellable offenses. Inform teachers of students who have engaged in such activities.	Minimal impact expected. Keeping teachers and students safe is one of the primary responsibilities of any principal. Moreover, compelling liability concerns provide a stronger incentive than a mandate to inform teachers.	6,818
Scoliosis Screening	Screen all female students in grade seven and male students in grade eight for scoliosis. Train staff as needed. Report results to state departments.	Minimal impact expected. Rigorous studies show these tests are costly and do a poor job of identifying students in need of further treatment.	3,652
Physical Performance Tests	Purchase equipment, train staff, conduct assessments, analyze assessment data, and respond to state agency requests associated with administering physical fitness tests in grades five, seven, and nine.	Minimal impact expected. The state already requires two years of physical education in high school and has well-developed curriculum standards for middle school. Data are not used to improve education practices.	2,325
Law Enforcement Agency Notifications	File a report with law enforcement whenever a student violates particular sections of state Penal Code. Maintain records of those reports.	Minimal impact expected. Most districts already inform law enforcement of crimes committed on campus, in part due to compelling liability concerns.	1,894
Removal of Chemicals	Hire consultants to inventory chemicals in science classrooms, review those inventories, and remove all chemicals that are outdated but have not yet become dangerous as defined in Health and Safety Code.	No impact expected. Health and Safety Code requires the removal of dangerous chemicals. Potential lawsuits resulting from harm to students create greater incentives for compliance than a mandate.	1,289
Caregiver Affidavits	For a student living with a caregiver residing in the district: prepare affidavit procedures and approve valid affidavits to allow the student to attend local schools. Perform related administrative tasks.	Minimal impact expected. Schools legally allowed to enroll these students. Attendance funding provides sufficient incentive to prepare an affidavit.	975

(Continued)

APPENDIX

Mandate	Requirements	Likely Impact on Students and Teachers	Annual Savings ^a
Pupil Residency Verification and Appeals	Verify student's residency in the district and U.S. citizenship at times other than annual residency verification, especially if concerns arise over the validity of residency documentation provided. Conduct appeals for students deemed not to be legal residents.	Minimal impact expected. No compelling reason exists to mandate the district verify residency outside of the annual residency period or upon the student's arrival at the district. Districts are still free to perform these activities at their discretion.	\$348
Expulsion Transcripts	Districts cannot charge students for the cost of providing a transcript for expulsion hearings if the family is low-income or the county reverses the district's decision.	Minimal impact expected. Costs are minimal and districts already frequently provide this service when a student's family cannot afford it.	13
Teacher Incentive Program	Inform teachers of a \$10,000 state incentive to receive National Board Certification. Certify to the National Board that the teacher is employed by the district. Submit the application to the California Department of Education.	Minimal impact expected. Additional funding from the state to attract and train qualified teachers is itself sufficient incentive for districts to participate.	6
Physical Education Reports	Report to the California Department of Education on whether students receive 200 minutes of physical education instruction every two weeks.	No impact expected. The state already receives this information as part of its broader district compliance and audit processes.	2
Community College Mandates			
Law Enforcement College Jurisdiction Agreements	Campus police must develop and update (as needed) agreements with local law enforcement agencies concerning which agency has responsibility for investigating violent crimes occurring on campus.	No impact expected. Campus police have already adopted agreements. New statute could allow them to keep in place such policies (or update at their discretion).	\$195
Sexual Assault Response Procedures	Districts must adopt policies and procedures on campus response if students are sexually assaulted.	No impact expected. Districts have already adopted procedures. New statute could allow them to keep in place such policies (or update at their discretion).	—
Reporting Improper Governmental Activities	Districts must pay for all costs of State Personnel Board hearings (as well as certain other related activities) if an employee files a complaint with the Board alleging retaliation by the district for whistleblowing.	Minimal impact expected. State law already provides protections and legal recourses for CCC whistleblowers. By eliminating requirement, CCC would be treated the same as K-12.	27
Shared K-12 and Community College Mandates			
Agency Fee Arrangements	Deduct bargaining unit fees from employees' paychecks. Provide the local bargaining unit representative with any new employee's home address.	No impact expected. Districts involved in bargaining likely already do these activities. Unions can also bargain to have these activities included in contracts.	\$75

^a Based on estimated 2009-10 claims.

Appendix C

LAO Recommends Preserving Core Policies Underlying Some Mandates

(In Thousands)

Mandate	Requirements	Likely Impact on Students and Teachers	Annual Savings ^a
K-12 Mandates			
High School Science Graduation Requirement	Require two science classes for graduation (rather than one). Acquire space and equipment for additional science classes. Acquire and produce related instructional materials. Pay teacher salary costs for an additional science course.	No impact expected. A simple statute clarification can eliminate the mandate while preserving the requirement.	\$200,000
Stull Act	Evaluate certificated instructional personnel related to: adherence to curricular objectives and students' progress on state assessments. Review tenured teachers that receive an unsatisfactory evaluation on a yearly basis.	No impact expected. Core evaluation requirements are not part of the mandate. Assessment requirements are covered in other Education Code sections. Districts have a compelling interest in evaluating teachers, including those with previously unsatisfactory performance.	19,166
Inter/Intradistrict Attendance	Prepare policies regarding student transfer. Develop a random selection process for transfers. Determine school site capacity prior to transfer. Study the impact of any transfer on racial and ethnic balances. Within-district transfers are required, but across-district transfers are optional and only require county office oversight.	Minimal impact expected. Within district transfers are required for failing schools under No Child Left Behind and across-district transfers are already optional.	5,792
Pupil Suspensions, Expulsions, and Expulsion Appeals	Automatically suspend students for certain offenses and recommend students for expulsion for certain offenses. Hold expulsion appeals and follow due process. Perform all related administrative activities.	Minimal impact expected. Leave suspension and expulsion decisions to local discretion—most serious offenses likely would still result in suspension or expulsion. (Students expelled for identified offenses would still generate higher funding at community and community day schools.)	3,849
Criminal Background Checks I and II	Conduct criminal background checks prior to hiring all certificated personnel and contractors. Purchase necessary electronic fingerprinting equipment. Prepare all related district policies. Exchange information with the Department of Justice and other law enforcement agencies.	No impact expected. Districts already charge fees for some of these services—the state could allow them to charge fees for all related services.	1,713
Financial and Compliance Audits	Conduct activities required to comply with new audit procedures, submit corrective plans to county offices, respond to requests for financial information, and review audits publicly.	No impact expected. State could streamline the audit process and requirements to correspond with the recent consolidation of state categorical programs.	427

(Continued)

APPENDIX

Mandate	Requirements	Likely Impact on Students and Teachers	Annual Savings ^a
Community College Mandates			
Enrollment Fee Collection and Waivers	Districts must collect enrollment fees and waive fees for certain students (such as financially needy students).	No impact expected. Create a strong incentive for districts to perform these administrative duties by reducing districts' General Fund support by the amount of fee revenues that they decline to collect.	\$20,000
Integrated Waste Management	Districts must divert from landfills a specified percentage of their solid waste through reduction, recycling, and compacting activities. Develop and report annually on their ability to meet solid-waste division goals.	Minimal impact expected. Statewide cost estimate scheduled for January 2010. To the extent that savings and revenues fully offset all costs that districts incur from required activities, retain the mandate. If significant cost, treat CCC the same as K-12 school districts, which are encouraged—but not required—to comply with diversion goals. Like K-12 schools, likely that colleges would participate anyway in waste-division programs.	Unknown
Health Fee/Services	Each district is required to provide students at least the level of health services it provided in 1986-87. Fee districts may charge for health services is capped.	No impact expected. Continue to require districts to provide same level of health services, but eliminate mandate costs by allowing districts to assess a fee amount that covers the full cost to provide current service levels.	12,100
Shared K-12 and Community College Mandates			
Collective Bargaining	Determine appropriate bargaining units and representatives. Hold and certify elections for unit representatives. Negotiate contracts and make them public. Participate in impasse proceedings. Administrate and adjudicate contract disputes.	No impact expected. Recent court decisions suggest most collective bargaining requirements should no longer be considered a mandate. Upon adoption of new reconsideration process, laws could remain unchanged while drastically reducing the associated cost to the state.	\$42,092

^a Based on estimated 2009-10 claims.

Appendix D**In a Few Cases, LAO Recommends a Hybrid Approach***(In Thousands)*

Mandate and Required Activities	Annual Fiscal Effect ^a	
	Fund	Eliminate
Annual Parent Notification		
Inform parents of:		
High school exit exam requirement	\$335	—
Right to exempt students from HIV prevention classes	395	—
Right of students to take necessary medications and receive school support	395	—
Right of student to refuse immunizations and other medical treatment	395	—
Alternative education options	335	—
Sexual harassment policies ^b	—	\$6,712
Local school discipline rules	—	395
Excusable absences	—	395
Dates of in-service training for teachers	—	395
Fingerprinting program for school staff	—	395
Subtotals	(\$1,855)	(\$8,292)
AIDS Prevention I-II		
Provide all middle school students with HIV prevention instruction	\$396	—
Provide professional development on HIV instruction	314	—
Provide all high school students with additional HIV prevention instruction	—	\$396
Notify parents of right to exempt students from HIV instruction	—	75
Provide instructional materials on HIV instruction	—	194
Keep relevant sections of Education Code available for parents	—	120
Subtotals	(\$710)	(\$785)
Comprehensive School Safety		
Develop a schoolwide safety plan ^c	\$151	—
Review and annually update safety plan ^c	—	\$4,890
Subtotals	(\$151)	(\$4,890)
Juvenile Court Notices II		
Maintain private record of students' juvenile court notices	\$154	—
Transfer notices to students' subsequent schools	461	—
Destroy records when student turns 18 years-old	154	—
Distribute notices to teachers	—	\$308
Provide juvenile courts with school's mailing address	—	154
Subtotals	(\$769)	(\$461)
Pupil Promotion and Retention		
Notify parent of teacher's recommendation to retain a student	\$480	—
Discuss recommendation with parent	480	—
Provide appeals process for student recommended for retention	480	—
Provide supplemental instruction for students underperforming on state tests	—	\$563
Provide supplemental instruction for students recommended for retention	—	563
Develop local policies on promotion and retention	—	563
Subtotals	(\$1,439)	(\$1,689)

(Continued)

APPENDIX

Mandate and Required Activities	Annual Fiscal Effect ^a	
	Fund	Eliminate
School Accountability Report Cards		
Schools must report the following information to the state and parents:		
Salaries paid to teachers and staff	\$408	—
Current year dropout rate	203	—
Student assessment data	407	—
Total number of instructional minutes and days	204	—
Average class size	408	—
Credentialing status and qualifications of staff members	407	—
Suspension and expulsion rates	204	—
School average Scholastic Aptitude Test scores when reported ^d	—	\$408
School days devoted to staff development ^d	—	204
Degree to which pupils prepared to enter workforce ^d	—	204
Subtotals	(\$2,241)	(\$816)
California State Teachers' Retirement System (CalSTRS) Service Credit		
Submit sick leave records to CalSTRS for audit purposes	\$18	—
Provide information to CalSTRS regarding reemployment of military personnel	18	—
Certify number of unused excess sick days to CalSTRS for retiring members	18	—
Inform new staff of eligibility for membership in the Defined Benefit Program.	—	18
Alert new employee of right to make an election to CalSTRS or CalPERS and make available written information on the plans	—	18
Maintain new employees' written acknowledgment information was received	—	18
Subtotals	(\$54)	(\$54)
Total Estimated Annual Fiscal Effect	\$7,219	\$16,988
^a Based on estimated 2009-10 claims. ^b Requirement would not be eliminated entirely, but costs would be reduced substantially by alerting parents of right to obtain sexual harassment policies from the school by request rather than printing entire policy in the notification letter. ^c Proposal would fund cost of developing an initial plan, submitting it to the district, consulting with local law enforcement, conferring with other schools, assessing the current status of school crime, and developing strategies to comply with current safety laws. Any update to the plan would be left to district discretion. ^d Alternatively, state could use these data reporting requirements to collect more useful data rather than simply eliminate the cost.		

Appendix E

Likely Minimal Impact From Eliminating Individual Requirements

Mandate and Required Activities	Likely Impact of Elimination on Students and Teachers
Annual Parent Notification	
Inform parents of:	
Sexual harassment policies	No impact expected. The majority of costs can be eliminated by informing parents of their right to obtain sexual harassment policies rather than printing the entire policy in the notification.
Local school discipline rules	No impact expected. Clarify districts cannot take disciplinary action against a student unless the student was informed about local rules in advance. This technical change eliminates state costs.
Excusable absences	No impact expected. Clarify schools cannot take any attendance-related disciplinary action against a student without verifying reasons for absence.
Dates of in-service training for teachers	No impact expected. Districts already have a compelling incentive to let parents know which days students are not required to attend school.
Fingerprinting program for school staff	No impact expected. Effectiveness of finger-printing programs and background checks are not contingent on parents' awareness of the programs.
AIDS Prevention I-II	
Provide a second HIV prevention course to all high school students	Minimal impact expected. All middle and high school students would still receive at least one course on HIV awareness and prevention. High school health content standards cover HIV multiple times. Data suggest the vast majority of high schools provide health classes.
Notify parents of right to exempt students from HIV instruction	No impact expected. Already included in annual parent notification.
Provide instructional materials on HIV instruction	No impact expected. Middle and high school content standards include detailed information on HIV prevention. Schools already receive funding for instructional materials.
Keep relevant sections of Education Code available for parents	No impact expected. If a parent wants a copy of the relevant Education Code from the district, it can be accessed online and printed.
California State Teachers' Retirement System (CalSTRS) Service Credit	
Inform new staff of benefit eligibility Alert new employee of right to make an election to CalSTRS or CalPERS Maintain employees' written acknowledgment	No impact expected. All of these requirements could be achieved by allowing CalSTRS and CalPERS to charge districts that file benefits information after the deadline the cost of processing the material.

(Continued)

APPENDIX

Mandate and Required Activities	Likely Impact of Elimination on Students and Teachers
Comprehensive School Safety	
Review and annually update safety plans ^a	Minimal impact expected. Schools would still be required to update their plans if they determine the original plan is no longer sufficient to protect student safety. Liability concerns create a stronger incentive than the mandate to update safety plans.
Juvenile Court Notices II	
Distribute notices to teachers	Minimal impact expected. Similar to Notification to Teachers of Mandatory Expulsion, schools already have strong incentives to alert teachers when students are expelled or commit a crime.
Provide juvenile courts with school's mailing address	No impact expected. Courts can find this information online.
Pupil Promotion and Retention	
Provide supplemental instruction for students underperforming on state tests or recommended for retention	Minimal impact expected. Accountability systems provide incentives for improving student performance and already require supplemental instruction. Also, research suggests an hourly after-school model often does not reach students most in need of help.
Develop local policies on promotion and retention	No impact expected. Districts already develop these policies. Moreover, protecting students' due process rights requires districts to have a rational basis for making retention decisions.
School Accountability Report Cards	
Schools must report the following information to the state:	
School average Scholastic Aptitude Test scores when reported	Minimal impact expected. Districts only collect data for students who report scores. As a result, scores are not representative of the student body.
School days devoted to staff development	No impact expected. Requirement does not tell families or the state anything about the quality of professional development.
Degree to which pupils prepared to enter workforce	No impact expected. The state has not found an effective way to measure or operationalize this reporting requirement.
^a Includes cost of developing a plan, submitting it to the district, consulting with local law enforcement, conferring with other schools, assessing the current status of school crime, and developing strategies to comply with current safety laws.	