

ITEM 14
PROPOSED PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS

Education Code Sections 44395 and 44396

Statutes 1998, Chapter 331

Teacher Incentive Program (99-TC-15)

San Diego Unified School District, Claimant

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EXECUTIVE SUMMARY

The test claim legislation (Ed. Code, §§ 44395, subds. (b) and (c), and 44396, subd. (c)) establishes a program for providing \$10,000 merit awards for public school teachers (one time per teacher) who are certified by the National Board for Professional Teaching Standards, and requires school districts to administer the program, which is conducted by the California Department of Education (CDE). On February 27, 2003, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that the test claim legislation constitutes a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.

Staff Analysis

Staff reviewed the proposed parameters and guidelines and the comments filed, and made technical and substantive revisions to the proposed parameters and guidelines in accordance with the test claim legislation, Statement of Decision, and at the request of the Department of Finance and the State Controller's Office. Following is a summary of the proposed parameters and guidelines, as modified by staff:

Eligible Claimants

Any school district, as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of the mandate is eligible to claim reimbursement. A charter school is not an eligible claimant.

Period of Reimbursement

The period of reimbursement begins on January 1, 1999 and is ongoing for most reimbursable activities. However, in accordance with the test claim legislation, for the activity of notification to teachers, reimbursement ends on July 4, 2000.

Reimbursable Activities

The following activities are reimbursable:

One-Time Activity Per Teacher

- Informing teachers about the National Board for Professional Teaching Standards Certification Incentive Program and how they can acquire the necessary application

and information materials distributed by the CDE, including the cost of copying and distributing the information to teachers.

Ongoing Activities

- Accepting the applications, reviewing the applications, and certifying that the applicant is employed by the district or a charter school, and that the applicant has met all necessary criteria.
- Submitting the application to CDE for review and approval.
- Distributing a one-time merit award of ten thousand dollars (\$10,000) for each teacher who is certified by the National Board for Professional Teaching Standards and whose application is approved by CDE. The costs are the time spent to process the awards through the fiscal control and payroll department, similar to processing regular payroll.

On December 5, 2003, a draft staff analysis and proposed parameters and guidelines, as modified by staff, were issued to the claimant, affected state agencies, and interested parties for comment. No comments on staffs' modifications to the proposed parameters and guidelines were received.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9. Staff further recommends that the Commission authorize staff to make any non-substantive corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

San Diego Unified School District

Chronology

03/05/03 Commission issues Statement of Decision
05/08/03 Claimant submits proposed parameters and guidelines
06/13/03 Department of Finance (DOF) submits comments
06/23/03 Claimant submits response to DOF comments
11/21/03 State Controller's Office (SCO) submits comments
12/05/03 Draft staff analysis and proposed parameters and guidelines issued
01/08/04 Final staff analysis and proposed parameters and guidelines issued

Background and Summary of the Claim

Education Code sections 44395, subdivisions (b) and (c), and 44396, subdivision (c) established a program for providing \$10,000 merit awards for public school teachers (one time per teacher) who are certified by the National Board for Professional Teaching Standards, and require school districts to administer the program, which is conducted by the California Department of Education (CDE).

On February 27, 2003, the Commission on State Mandates (Commission) adopted its Statement of Decision¹ finding that Education Code sections 44395, subdivisions (b) and (c), and 44396, subdivision (c), constitute a reimbursable state-mandated program or higher level of service for school districts within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514 for the following new activities:

- Inform teachers employed by the school district, or by charter schools affiliated with the district, about the National Board for Professional Teaching Standards Certification Incentive Program and how they can acquire the necessary application and information materials distributed by the CDE. (The CDE shall distribute to school districts information about the certification process established by the National Board for Professional Teaching Standards along with the application materials and instructions for the merit award program.) (Ed. Code, § 44395, subd. (c).)²
- Upon receipt of an application for the National Board for Professional Teaching Standards Certification Incentive Program, certify that the applicant is employed by the

¹ Exhibit A.

² As added by Statutes 1998, chapter 331, operative January 1, 1999. Reimbursement for this activity concludes July 4, 2000, due to substantive amendment by Statutes 2000, chapter 70, operative July 5, 2000.

district or a charter school operating under a charter granted by the school district and that the applicant has met all the criteria established pursuant to Education Code section 44395, subdivision (b). (Ed. Code, § 44396, subd. (c).)³

- Submit the application to the CDE for its review and approval. (Ed. Code, § 44396, subd. (c).)
- Use state-apportioned funds to provide a one-time merit award of ten thousand dollars (\$10,000) to each teacher whose application is approved by the CDE. (Reimbursement is limited to the administrative costs of distributing the award.) (Ed. Code, § 44396, subd. (d).)

Discussion

Staff reviewed the claimant's proposed parameters and guidelines⁴ and the comments received. Staff made non-substantive, technical changes for purposes of clarification, consistency with language in parameters and guidelines adopted since January 2003, and conformity to the Statement of Decision and statutory language. Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines:

II. Eligible Claimants

In comments dated November 21, 2003, the State Controller's Office (SCO)⁵ requests that charter schools be added as eligible claimants. Staff finds that charter schools are not eligible for reimbursement. Government Code section 17519 defines "school district" to mean "any school district, community college district, or county superintendent of schools." While charter schools may be defined as school districts for some purposes in the Education Code, charter schools are not included in the Government Code definition that governs the mandates process. "In analyzing a question involving reimbursement under section 6, the definitions contained in California Constitution, article XIII B, and in the legislation enacted to implement it must be deemed controlling."⁶ Therefore, staff clarified that charter schools are not eligible claimants.

III. Period of Reimbursement

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 29, 2000. The claimant proposes that the period of reimbursement begin on July 1, 1998. However, in this case, the test claim legislation did not become operative until January 1, 1999. Therefore, staff revised the period of reimbursement to begin on January 1, 1999.

In the Statement of Decision, the Commission found that the activity of notifying teachers of the mandated program becomes permissive on July 5, 2000. In a letter dated June 13, 2003, the Department of Finance (DOF)⁷ and the SCO proposed that the parameters and guidelines be

³ As added by Statutes 1998, chapter 331, operative January 1, 1999.

⁴ Exhibit B.

⁵ Exhibit C.

⁶ *City of San Jose v. State of California* (1996) 45 Cal. App.4th 1802, 1815.

⁷ Exhibit D.

revised to clarify that in conformance with the Statement of Decision, reimbursement for this activity end on July 4, 2000. The DOF and the SCO are correct. Staff included language that reimbursement for this activity ends on July 4, 2000.

The claimant proposes language in this section indicating that a school district shall not be required to implement or give effect to a mandated program during any fiscal year, and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if the mandated program has been suspended in the Budget Act. The SCO recommends that this language be deleted, since it only refers to the 2002-2003 Budget Act that suspended the *School Bus Safety II* and *School Crimes Reporting II* programs. However, the SCO recommends that language be included that would provide a mechanism to suspend the period of reimbursement for this mandate if it is suspended in future Budget Acts.

Government Code section 17581 states that no *local agency* shall be required to implement or give effect to any mandated program during any fiscal year that the program has been suspended in the Budget Act. Government Code section 17581.5 contains this language for *school districts*, but only for the two education programs named above. There is no statutory authority to suspend other education mandates. Therefore, staff did not include language in the proposed parameters and guidelines to suspend the period of reimbursement if the program is suspended in future Budget Acts.

IV. Reimbursable Activities

Notification to Teachers

The *Teacher Incentive Program* mandate requires school districts to notify teachers about this program and how to acquire the necessary application distributed by the CDE. The claimant proposes this as an on-going activity. However, the statute allows awards to be granted only one time per teacher. Therefore, staff revised this language so that school districts may be reimbursed for providing notification one time per teacher.

As stated previously, this section of the test claim legislation became permissive on July 5, 2000. Therefore, staff clarified that this activity is only reimbursable until July 4, 2000.

The claimant proposes reimbursement for the cost of copying and distributing the information to teachers. The DOF indicated that copying and distribution costs should be minimal. In its response, dated June 23, 2003,⁸ the claimant counters that “for the claimant alone distribution of the information will involve over 7,000 teachers spread out over 165 different sites.” Staff finds that copying and distributing the information is reasonably necessary because it is the primary manner in which the school districts could carry out the program. Therefore, staff included it as a reimbursable activity.

The claimant also proposes reimbursement for responding to questions. The DOF comments that the majority of responses to questions should come from the CDE. Staff agrees with DOF. CDE is responsible for conducting the *Teacher Incentive Program* mandate, and thus, responses to questions about the program should come from CDE. Therefore, staff deleted this activity.

The claimant proposes the activity of informing teachers about the program and the activity of ensuring that teachers are informed about the program. Staff deleted the activity of ensuring that the teachers are informed about the program because it is duplicative.

⁸ Exhibit E.

Accepting, Reviewing, and Certifying Applications

The SCO states that the activities of accepting and reviewing applications should be deleted because they were not identified in the test claim and are outside the scope of reimbursable activities. Staff disagrees. The Statement of Decision states that upon receipt of an application, the school district must certify that the applicant is an employee of the district and has met the required criteria. Therefore, the activities of accepting the applications and reviewing them are found in the Statement of Decision, and were not deleted.

The DOF proposes that the activities of accepting and reviewing the applications be merged with the activity of conducting the certification. Staff agrees that merging these activities would make the parameters and guidelines easier to understand, and made the revision proposed by DOF.

For the activity of certifying that an applicant has met all the criteria, the DOF suggests that it be restricted to reimbursement for requiring teachers, when submitting applications, to provide evidence of compliance with the program requirements and to provide a copy of the certification document from the National Board for Professional Teacher Standards. The claimant responds that although the DOF may have suggestions, it is not their function to construct additional activities.

As stated previously, CDE conducts this program. DOF's proposed language may conflict with CDE's application and certification requirements. Therefore, staff did not include DOF's proposed language.

The claimant's proposed language also states that the activities required to comply with the review and certification of teacher applications are completing "the district incentive award application form from (CDE) that requires obtaining information from the district's database." Staff deleted this language because there is no evidence in the record to show that this is a reimbursable activity.

Award Distribution

The *Teacher Incentive Program* mandate requires school districts to process any \$10,000 checks that are awarded to teachers. The SCO proposes that this section be amended to mirror the language adopted in the Statement of Decision. Staff revised this section to conform to the Statement of Decision. The DOF states that costs for this activity should be minimal since the process is similar to processing regular payroll payments, and to minimize costs, language should be added to clarify that to the extent possible, awards should be distributed during a regular pay cycle to minimize fiscal control and payroll processing costs. Since DOF's proposed revisions do not specify or clarify a reimbursable activity, but rather, provide a suggestion regarding how to distribute awards, staff did not include the proposed language.

Administrative Duties

The claimant proposes reimbursement for reviewing the test claim legislation. The DOF states that reviewing legislation is not reimbursable because it is an on-going duty of school districts. This activity is not in the test claim legislation or in the Statement of Decision. And, it is an incidental activity. It is not reasonably necessary to carry out the program. Accordingly, staff finds that the activity of reviewing the test claim legislation is not reimbursable, and deleted the activity from the proposed language.

The claimant proposes reimbursement for developing policies and procedures and training staff on the additional duties required to carry out the mandate. DOF and the SCO state that developing policies and procedures and training should be deleted because they were not in the test claim legislation or Statement of Decision.

Staff agrees. Although the claimant alleges that developing policies and procedures and training staff is required to implement the mandate, the Commission did not find these to be reimbursable activities in the Statement of Decision, nor required by the test claim statute. Further, staff finds that these activities are not necessary to comply with the *Teacher Incentive Program* mandate, because it is administered primarily by CDE. Therefore, these activities were removed.

Finally, staff removed Section V. A.4., and V. A.5. that allow reimbursement for fixed assets and equipment and travel costs. There is no need for travel costs under this program. Any fixed assets costs should be minimal and can be absorbed under indirect costs.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 9. Staff further recommends that the Commission authorize staff to make any non-substantive corrections to the parameters and guidelines following the hearing.