

**ITEM 15 B**  
**FINAL STAFF ANALYSIS**  
**PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES**

Education Code Section 35 160.5, Subdivision (c)  
Statutes 1993, Chapter 161  
Statutes 1993, Chapter 915

*Intradistrict Attendance*  
05-PGA-53 (CSM-4454)

State Controller's Office, Requestor

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**EXECUTIVE SUMMARY**

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Intradistrict Attendance* program (CSM 4454) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

Test Claim Decision and Background

In 1995 the Commission determined that the *Intradistrict Attendance* program constitutes a state mandate, and adopted parameters and guidelines for the program.

In 2003, upon recommendation from the Bureau of State Audits, direction from the Legislature, and an SCO request, the Commission adopted amendments to parameters and guidelines in the *School Bus Safety II* program that clarified the source documentation claimants are required to retain to support their reimbursement claims, and the language regarding records retention that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, commonly referred to as "boilerplate language," has been included in all parameters and guidelines adopted since 2003. In addition, section 1183 of the Commission's regulations require parameters and guidelines to include instruction on claim preparation, notice of the SCO's authority to audit claims, and the amount of time documentation must be retained during the audit period.

The SCO is now requesting that the 49 sets of parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

The SCO's request was issued for comment. Department of Finance and the petitioners in *Clovis Unified School District et. al. v. Westly et al.*, (Third District Court of Appeal, Case No. C061696), a case challenging the use of the contemporaneous source document rule, each filed comments on the SCO's proposal. The comments will be discussed below.

This analysis pertains only to the request to amend the *Intradistrict Attendance* program. The staff analyses for the other 48 programs will be presented separately.

There is one issue for the Commission's consideration:

- **Should the parameters and guidelines be amended to add the current “boilerplate language”?**

After consideration of the comments from Department of Finance, and the comments from the petitioners in the *Clovis* case, staff recommends that the Commission adopt the proposed amendments to the parameters and guidelines.

The Department of Finance filed comments stating it was neutral on the SCO’s request.

The petitioners in the *Clovis* case object to the SCO request on the following grounds:

- The contemporaneous source document rule and its requirement of “contemporaneous” source document records to support costs claimed is unrealistic and inconsistent with the day-to-day operations of school and community college districts.
- The Commission should not take action on the request until the court fully resolves the issue.
- If the Commission does take action on this request, the amendments should affect reimbursement claims filed prospectively and should in no way validate the SCO’s prior application of the contemporaneous source document rule.

On October 30, 2009, in connection with the 2009 BSA Audit, the Commission adopted an implementation plan to complete the State Controller’s Office Request for Amendment of 49 sets of parameters and guidelines to include the proposed “boilerplate language.” Included in this agenda item was a copy of the Clovis petitioners’ letter requesting that the matter be delayed until the court fully resolves the issue.

The implementation plan scheduled the proposed amendment to the *Intradistrict Attendance* parameters and guidelines on the January 29, 2010 agenda. Commission staff issued the draft staff analysis on December 18, 2009. No comments were filed, and no changes were made to the proposed amendments to the parameters and guidelines. Therefore, staff is issuing this final staff analysis and noticing it for hearing on January 29, 2010, at which time, the Clovis petitioners may request that the Commission continue the matter.

Regarding the substantive issues raised by the Clovis petitioners, the contemporaneous source document and records retention language is consistent with section 1183.1, subdivision (a) (5) and (6), of the Commission’s regulations, which require that the parameters and guidelines contain the following information:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller’s authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

Moreover, the proposed language for source documentation and records retention is the same as the language in parameters and guidelines adopted by the Commission since 2003 for other state-mandated programs.

Finally, the Commission has no discretion regarding the period of reimbursement of amendments made to the parameters and guidelines, as suggested by the *Clovis* petitioners. Government Code section 17557, subdivision (d), as it existed when the SCO request was filed on April 7, 2006, establishes the period of reimbursement for the proposed amendments to these parameters and guidelines as follows:

A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, *shall establish* reimbursement eligibility for that fiscal year. (Emphasis added.)

Although the Commission has the authority to adopt amendments to the parameters and guidelines, once an amendment is adopted, the period of reimbursement is established by law in Government Code section 17557. In this case, if the Commission amends the parameters and guidelines for this program, the amendments would be effective beginning in the 2005-2006 fiscal year.

Staff finds that the parameters and guidelines for the *Intradistrict Attendance* program should be amended to insert the source documentation and records retention language requested by the SCO because it would conform the parameters and guidelines for this program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations. Therefore, staff included the language requested by the SCO.

### **Staff Recommendation**

Staff recommends that the Commission:

- Adopt the SCO's proposed amendments to the parameters and guidelines for the *Intradistrict Attendance* program, beginning on page 13.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## STAFF ANALYSIS

### Requestor

State Controller's Office

### Chronology

02/22/1994	San Diego Unified School District files test claim
01/19/1995	The Commission on State Mandates (Commission) adopts the Statement of Decision
05/24/1995	Commission adopts parameters and guidelines
01/23/2003	The Commission, upon the recommendation of the Bureau of State Audits, direction from the Legislature, and upon request from the State Controller's Office (SCO), adopts amendments to the <i>School Bus Safety II</i> parameters and guidelines to include "boilerplate language" that details the documentation necessary to support reimbursement claims. After this date, all adopted parameters and guidelines contain this language
04/07/2006	SCO requests the parameters and guidelines for 49 mandated programs adopted prior to 2003 also be amended to include boilerplate language, including the <i>Intradistrict Attendance</i> program analyzed here
04/27/2006	Commission deems SCO's request for amendment of parameters and guidelines complete and issues for comment
07/23/2009	Commission reissues SCO's request for amendment of parameters and guidelines for comment
08/18/2009	Department of Finance files comments
10/15/2009	Petitioners in <i>Clovis Unified School District et al. v. Westly et al. case</i> (Clovis, Fremont, Norwalk-La Mirada, Newport Mesa, San Juan, and Riverside Unified School Districts, Sweetwater Union High School District, and San Mateo County, El Camino, Santa Monica, and State Center Community College Districts) file comments
10/15/2009	Bureau of State Audits (BSA) releases a follow-up audit report ("State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities"), which recommends that the Commission implement its work plan to address the Controller's request to amend the boilerplate language.
10/30/2009	Commission approves plan for implementing BSA's recommendations, setting this matter for the January 29, 2010 hearing.
12/18/2009	Commission staff issues draft staff analysis

### Background

This is a request filed by the SCO to amend the parameters and guidelines for the *Intradistrict Attendance* program (CSM-4454) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

### Test Claim Decision and Parameters and Guidelines

San Diego Unified School District filed a test claim on February 22, 1994 alleging that Education Code section 35 160.5, subdivision (c), paragraph (1) as added by Statutes, 1993, chapter 161, and amended by Statutes 1993, chapter 915, impose a new program or higher level of service for school districts by requiring the governing board of each school district, on or before July 1, 1994, to prepare and adopt rules establishing and implementing a policy of open enrollment within the district for residents of the district.

On January 19, 1995, the Commission adopted a Statement of Decision for the *Intradistrict Attendance* program, concluding that the test claim statutes constituted a reimbursable state-mandated program upon school districts pursuant to section 6, article XIII B of the California Constitution.<sup>1</sup> On May 24, 1995, the Commission adopted parameters and guidelines on the *Intradistrict Attendance* program.<sup>2</sup>

### Boilerplate Language

On March 28, 2002, the Bureau of State Audits (BSA) issued an audit report on the *School Bus Safety II* program, stating that the parameters and guidelines do not impose sufficient requirements regarding the documentation required to support reimbursement claims, and thus, insufficient documentation was being submitted to support claims.<sup>3</sup> The report recommended, among other things, that the Commission work with the SCO, other affected state agencies, and interested parties to make sure the language in the parameters and guidelines and the claiming instructions for the *School Bus Safety II* program reflects the Commission's intentions as well as the SCO's expectations regarding supporting documentation. On June 10, 2002, the SCO proposed that parameters and guidelines be amended to clarify what documentation is necessary to support reimbursement claims and what records must be retained to support audits initiated by the SCO.

Based on BSA's audit findings and recommendations, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in *School Bus Safety II*, to detail the documentation necessary to support reimbursement claims.

On January 23, 2003, upon recommendation from BSA, direction from the Legislature, and the SCO's request, the Commission adopted the following language regarding source documentation and records retention to the *School Bus Safety II* parameters and guidelines:<sup>4</sup>

#### *Reimbursable Activities*

*To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents*

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B

<sup>3</sup> Exhibit C.

<sup>4</sup> The Commission also adopted other boilerplate language that is not relevant to this request.

*may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.*

*Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.*

*The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.*

#### *Record Retention*

*Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter\* is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.*

The Commission has included this language, commonly referred to as "boilerplate language," in all parameters and guidelines adopted on or after January 23, 2003.

#### SCO Request to Amend Parameters and Guidelines

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs that were adopted prior to 2003 be amended to also include the boilerplate language regarding source documentation and records retention that was adopted by the Commission in 2003.<sup>5</sup>

The parameters and guidelines for the *Intradistrict Attendance* program is one of the 49 programs the SCO is requesting be amended.

#### October 15, 2009 BSA Audit Report

Commission staff initially delayed recommendations on the SCO request to amend the parameters and guidelines until related litigation, which is described below, was completed. On October 15, 2009, the BSA released its follow-up audit report ("State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities") recommending that the Commission address the Controller's

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\* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

<sup>5</sup> Exhibit D.

request to amend the boilerplate language and implement its work plan. On October 30, 2009, the Commission adopted the work plan for implementing the BSA recommendations, including the plan to hear the SCO requests to amend the parameters and guidelines.

Related Litigation (Clovis Unified School Dist., et al. v. State Controller)

*Clovis Unified School Dist., et al. v. State Controller* involves a challenge by school districts and community college districts on reductions made by the State Controller's Office to reimbursement claims for several mandated programs.<sup>6</sup> The school districts argue that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.

*Trial Court Ruling.* On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid as an underground regulation *if* the contemporaneous source document requirement was not in the Commission's parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller's claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents.

*Court of Appeal Filings (Third District Court of Appeal, Case No. C061696).* Notices of appeal and cross-appeal have been filed by the SCO, the community college districts, and the school districts, and opening briefs have been filed. The appeal on the issue of the validity of the contemporaneous source documentation requirement remains pending.

**Comments on the Proposal**

On April 27, 2006, the Commission issued the SCO's request to amend the parameters and guidelines for comment. No comments were filed.

On July 23, 2009, the Commission reissued the proposal for comment. On August 18, 2009, Department of Finance submitted comments.<sup>7</sup> Finance stated it was neutral on the proposal, because the request to include boilerplate language in the parameters and guidelines for the 49 programs would allow the Controller to complete audit related tasks more efficiently, and provide the claimant with more information and record retention requirements, as well as the statute of limitations for audits.

On October 15, 2009, petitioners in the *Clovis Unified School District*<sup>8</sup> case submitted comments.<sup>9</sup> Petitioners state that the SCO's request to amend the parameters and guidelines is

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<sup>6</sup> The Commission is not a party to this action.

<sup>7</sup> Exhibit E.

<sup>8</sup> Clovis, Fremont, Norwalk-La Mirada, Newport Mesa, San Juan, and Riverside Unified School Districts, Sweetwater Union High School District, and San Mateo County, El Camino, Santa Monica, and State Center Community College Districts.

actually a request to add the contemporaneous source document language to parameters and guidelines that are the subject of the *Clovis* case, specifically the *Collective Bargaining* and *Intradistrict Attendance* programs. Petitioners argue that the SCO's efforts should be rejected, or at the very least, deferred until completion of the appellate proceedings. Petitioners state:

As the Commission is aware, the Sacramento Superior Court issued a Judgment in the above-reference litigation in February of this year, in which the Court ruled that SCO's utilization of the contemporaneous source document rule and requirement ("CSDR") to impose reimbursement claim audit reductions in the Collective Bargaining and Intradistrict Attendance Programs, was an unlawful practice, i.e., an invalid underground regulation violative of the Administrative Procedure Act ("APA"). The Court's Judgment is based on the fact that the SCP applied the CSDR to reduce reimbursable costs claimed by school and community college district claimants, where although the SCO first added the CSDR to its general claiming instructions in the fall of 2003, the Collective Bargaining and Intradistrict Programs' Ps & Gs did not and still do not contain a *contemporaneous* source document requirement to support costs claimed. As such, the Judgment decrees that the CSDR, as applied by the SCO in Collective Bargaining and Intradistrict Attendance Program reimbursement claim audits, violates the APA as an underground regulation, and audit reductions based on same are invalid, void and unenforceable. The Court's Judgment and accompanying Peremptory Writ prohibits the SCO from utilizing the CSDR in audits of Collective Bargaining and Intradistrict Attendance Program reimbursement unless and until the CSDR is adopted pursuant to the APA, added to the programs' Ps & Gs, or otherwise made lawful under the statutes and laws governing the SCO's auditing authority, and orders the SCO to reverse the improper CSDR-based audit reductions imposed in Collective Bargaining and Intradistrict Attendance Program audits for all affected audits that did not become final prior to the three year limitations period before the filing of the related petitions in the litigation. The SCO's challenge to the Court's ruling, as well as related appeals by the Petitioners, are now pending before the Court of Appeal, Case No. C061696.

[¶]

The SCO's surreptitious efforts should be rejected or at the very least, deferred until completion of appellate proceedings. First, it is the Petitioners' position the CSDR [contemporaneous source document rule] and its requirement of *contemporaneous* source document records to support costs claimed, is unrealistic and inconsistent with the day-to-day operations of school and community college districts, and will severely impact the districts' rightful entitlement to reimbursement for the costs of mandated activities. Second, the Commission should not address or take action on the SCO's request to amend program Ps&Gs to include the CSDR until the pending appeals in *Clovis Unified School District et al. v. Westly et al.*, Sacramento County Superior Court Case No. 06CS00748, and Court of Appeal case No. C061696, are fully resolved in the judicial process. Third, if the Commission does in fact address and take action on the SCO's requested CSDR-amendments, such amendments will affect *costs claimed and reimbursement claims filed* prospectively *only* and in no way validates or makes lawful the SCO's prior unlawful application of the CSDR to costs claimed and reimbursement claims filed where the CSDR was not included in the relevant state mandate programs' Ps&Gs. This final conclusion is based on fundamental legal principles of due process, notice, and fairness, as well as the practical recognition that it is metaphysically

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<sup>9</sup> Exhibit F.



impossible to go back in time and create “contemporaneous” documentation to support costs claimed and reimbursement claims filed, where no such requirement existed when such reimbursable events and activities took place.

Commission staff issued the draft staff analysis on December 18, 2009.<sup>10</sup> No comments were filed.

## **Discussion**

The proposed amendments to the parameters and guidelines raise the following issue for determination by the Commission:

**Issue:                Should the parameters and guidelines be amended to add the Commission’s current “boilerplate language”?**

In 2003, following recommendation from the BSA and direction from the Legislature, the SCO requested, and the Commission adopted amendments to parameters and guidelines to the *School Bus Safety II* program that clarify the source documentation claimants are required to retain to support their reimbursement claims, and the language regarding records retention that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, as detailed on pages 5 and 6 of this analysis, has been included in all parameters and guidelines adopted since 2003.

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs approved before 2003, including the program at issue here, also be amended to include the source documentation and record retention language that has been included in all parameters and guidelines adopted since 2003.<sup>11</sup>

The school district petitioners in the *Clovis Unified School District* lawsuit object to the request on the following grounds:

- The contemporaneous source document rule and its requirement of “contemporaneous” source document records to support costs claimed is unrealistic and inconsistent with the day-to-day operations of school and community college districts.
- The Commission should not take action on the request until the court fully resolves the issue.
- If the Commission does take action on this request, the amendments should affect reimbursement claims filed prospectively and should in no way validate the SCO’s prior application of the contemporaneous source document rule.

For the reasons below, staff recommends that the Commission adopt the proposed amendments to the parameters and guidelines.

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<sup>10</sup> Exhibit G.

<sup>11</sup> The SCO only requested that the portions of the boilerplate language regarding source documentation and records retention be added to the parameters and guidelines for the 49 programs. There are other sections of the boilerplate language regarding the remedies available before the Commission, and the legal and factual basis for the parameters and guidelines. Staff did not include these sections because the SCO did not request that they be included.

On October 30, 2009, in connection with the BSA Audit, the Commission adopted an implementation plan to complete the State Controller's Office Request for Amendment of 49 sets of parameters and guidelines to include the proposed "boilerplate language." Included in this agenda item was a copy of the Clovis petitioners' letter requesting that the matter be delayed until the court fully resolves the issue.

The implementation plan scheduled the proposed amendment to the *Intradistrict Attendance* parameters and guidelines on the January 29, 2010 agenda. Therefore, staff is issuing this final staff analysis and noticing it for hearing on January 29, 2010, at which time, the Clovis petitioners may request that the Commission continue the matter.

Regarding the substantive issues raised by the Clovis petitioners, staff finds that the contemporaneous source document and records retention language is consistent with section 1183.1, subdivision (a) (5) and (6), of the Commission's regulations, which require that the parameters and guidelines contain the following:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

Moreover, the proposed language for source documentation and records retention is the same as the language in parameters and guidelines adopted by the Commission since 2003 for other state-mandated programs.

Finally, the Commission has no discretion regarding the period of reimbursement of amendments made to the parameters and guidelines, as suggested by the *Clovis* petitioners. Government Code section 17557, subdivision (d), as it existed when the SCO request was filed on April 7, 2006, establishes the period of reimbursement for the proposed amendments to these parameters and guidelines as follows:

A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. (Emphasis added.)

Today, Government Code section 17557, subdivision (d), similarly states that "[a] parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year."

Although the Commission has the authority to adopt amendments to the parameters and guidelines, once an amendment is adopted, the period of reimbursement is established by law in Government Code section 17557. The Commission does not have discretion with respect to the period of reimbursement. In this case, if the Commission amends the parameters and guidelines for this program, the amendments would be effective beginning in the 2005-2006 fiscal year.

Therefore, staff finds that it is appropriate to approve the SCO's request, and has made the following proposed modifications to the parameters and guidelines:

Therefore, staff finds that it is appropriate to approve the SCO's request, and has made the following proposed modifications to the parameters and guidelines:

## V. REIMBURSABLE COSTS

Staff inserted the following boilerplate language regarding source documentation, as requested by the SCO:

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

*Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.*

*The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.*

At the request of the SCO, staff inserted the following boilerplate language regarding records retention.

## VII. ~~SUPPORTING DATA RECORDS RETENTION~~

*Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.*

### **Staff Recommendation**

Staff recommends that the Commission:

- Adopt the proposed amendments to parameters and guidelines for the *Intradistrict Attendance* program, beginning on page 13.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.



Proposed Amendments: January 29, 2010

Adopted: May 24, 1995

J:mandates/pgs/2005/05pga17/05pga53/pgadraft

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Education Code Section 35 160.5, Subdivision (c)

Statutes 1993, Chapter 161, ~~Statutes of 1993~~

Statutes 1993, Chapter 915, ~~Statutes of 1993~~

*Intradistrict Attendance*

05-PGA-53 (CSM 4454)

I. SUMMARY OF THE SOURCE OF THE MANDATE

Chapter 161, Statutes of 1993, added Education Code section 35 160.5, subdivision (c), to require the governing board of each school district, on or before July 1, 1994, to prepare and adopt rules establishing and implementing a policy of open enrollment within the district for residents of the district, which provides that: the parent or guardian of each school age child who is a resident in the district may select the schools the child shall attend; once the intradistrict transfer is selected, evaluating the transfer to ascertain the impact of the transfer upon the maintenance of appropriate racial and ethnic balances among the respective schools; intradistrict attendance in excess of school site attendance area capacity shall be determined by a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance; and, no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

Chapter 915, Statutes of 1993, amended Education Code section 35 160.5, subdivision (c), to specify that the intradistrict attendance program does not apply to school districts of only one school or school sites serving different grade levels and that the school district shall determine the capacity of the schools of the district.

II. COMMISSION ON STATE MANDATES DECISION

The Commission on State Mandates, in the Statement of Decision adopted at the January 19, 1995 hearing determined that Education Code section 35 160.5, subdivision (c), paragraph (1) and as added by Chapter 161, Statutes of 1993 and amended by Chapter 915, Statutes of 1993, imposes a new program or higher level of service for school districts within the meaning of Section 6, Article XIII B of the California Constitution.

The Commission determined that the following provisions of Education Code Section 35 160.5, subdivision (c), paragraphs (1) and established costs mandated by the state pursuant to Government Code section 175 14, by requiring school districts (with some statutorily defined exceptions) to:

- 1) Prepare and adopt rules and regulations, and establish a policy of open enrollment for pupils of the district on or before July 1, 1994, pursuant to paragraph (1) of subdivision (c).
- 2) Establish and operate a random selection process in excess of schoolsite capacity pursuant to item (B) of paragraph (2) of subdivision (c).
- 3) Determine the attendance area capacity of the schools in its district, pursuant to item (B) of paragraph (2) of subdivision (c).
- 4) Evaluate each selected request for intradistrict attendance for its impact on district racial and ethnic balances pursuant to item (A) of paragraph (2) of subdivision (c).

In addition, other changes made to Education Code section 35 160.5, subdivision (c), paragraph of Chapter and Chapter 9 do not impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government Code section 175 14.

### III. ELIGIBLE CLAIMANTS

Any school district” , as defined in Government Code section 175 19, except for county offices of education and community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

### IV. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was submitted on February 22, 1994, therefore all mandated costs incurred on or after January 1, 1994 (the operative date of the two statutes), for implementation of Education Code Section 35 160.5, subdivision (c), paragraphs (1) and are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 17561 (d) (3) of the Government Code, all claims for reimbursement of initial years’ costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.. If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise provided for by Government Code section 17564.

### V. REIMBURSABLE COSTS

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created

at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge."

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

#### A. SCOPE OF THE MANDATE

School districts shall be reimbursed for the costs incurred for the governing board of each school district, on or before July 1, 1994, to adopt rules establishing and implementing a policy of open enrollment within the district for residents of the district which provides that: the parent or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend; once the intradistrict transfer is selected, evaluating the transfer to ascertain the impact of the transfer upon the maintenance of appropriate racial and ethnic balances among the respective schools; intradistrict attendance in excess of schoolsite capacity as established by the district shall be determined by a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance; and, no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

#### B. REIMBURSABLE ACTIVITIES

For each eligible school district, the direct and indirect costs of labor, supplies and services incurred for the following mandate components are reimbursable:

- 1) Policy and Procedures Preparation and adoption of rules and procedures regarding the intradistrict open enrollment plan for the district.
- 2) Random Selection Process Establishing and operating a random, unbiased selection process in excess of schoolsite capacity for intradistrict transfers which also insures that no pupil who currently resides in the attendance area of a school will be displaced by pupils transferring from outside the attendance area.
- 3) Schoolsite Capacity Determining the total enrollment and program capacity of each school in the district.
- 4) Impact on Demographics Evaluating each selected intradistrict transfer to

ascertain the impact of the requested transfer upon the maintenance of appropriate racial and ethnic balances among the respective schools.

## VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

### A. REPORTING BY COMPONENTS

Claimed costs must be allocated according to the four components of reimbursable activity described in Section V. B.

### B. SUPPORTING DOCUMENTATION

Claimed costs should be supported by the following information:

- 1) **Employee Salaries and Benefits** Identify the employee(s) and their job classification, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.
- 2) **Materials and Supplies** Only the expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.
- 3) **Contracted Services** Give the name(s) of the contractor(s) who performed the service(s). Describe the activities performed by each named contractor, and give the number of actual hours spent on the activities. Show the inclusive dates when services were performed and itemize all costs for those services.
- 4) **Allowable Overhead Cost** School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

### C. COST ACCOUNTING STATISTICS

The State Controller is directed to include in its claiming instructions each year the requirement that claimants report to the State Controller the following statistics for the purpose of establishing a database for potential future reimbursement based on prospective rates:



VII. SUPPORTING DATA RECORD RETENTION

~~For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, these documents must be retained by the agency submitting the claim for a period of no less than four years after the end of the calendar year in which the reimbursement claim is filed, and made available on the request of the State Controller.~~

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section V, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., service fees collected, federal funds, other state funds, etc., shall be identified and deducted from this claim. The Commission has not specifically identified any specific offsetting savings from state or federal sources applicable to this mandate.

IX. REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those cost mandated by the state contained herein.

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.