

ITEM 11
PROPOSED PARAMETERS AND GUIDELINES
STAFF ANALYSIS

Education Code Sections 44977 and 44978.1

Statutes 1998, Chapter 30

Differential Pay and Reemployment (99-TC-02)

Palmdale School District, Claimant

EXECUTIVE SUMMARY

On July 31, 2003, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Differential Pay and Reemployment (99-TC-02)*. The Commission found that Education Code sections 44977 and 44978.1 constitute a new program or higher level of service and impose a state-mandated program on school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.

Staff Analysis

The claimant submitted proposed parameters and guidelines on September 12, 2003. Comments on the claimant's proposal were received from the State Controller's Office (SCO) dated October 24, 2003, and the Department of Finance (DOF) dated October 27, 2003. Staff issued the draft staff analysis and proposed parameters and guidelines on April 2, 2004. The claimant submitted comments on the draft staff analysis on April 16, 2004, and DOF commented on the draft staff analysis on April 26, 2004.

Staff reviewed the claimant's proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification and conformity to the statement of decision and test claim legislation.

Substantive modifications were made to the claimant's proposed parameters and guidelines as follows:

II. Eligible Claimants

Staff clarified that charter schools are not eligible claimants.

III. Period of Reimbursement

Staff modified this section to state the correct reimbursement period for this mandate. Staff also modified the language regarding the time frame for submitting claims. If the Commission adopts this language, it will be included in all future parameters and guidelines.

IV. Reimbursable Activities

Staff modified this section to add language requested by the SCO and DOF to clarify what is included in the reimbursable activities. Staff also deleted training and notification and placement

Hearing Date: May 27, 2004

activities, finding that because these activities were not included in the test claim legislation or Statement of Decision, they are not reasonably necessary to carry out the mandate and go beyond the scope of the Decision.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by Commission staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Claimant

Palmdale School District

Chronology

07/31/03 Commission on State Mandates (Commission) adopted Statement of Decision
09/12/03 Claimant submitted Proposed Parameters and Guidelines
10/24/03 State Controller's Office (SCO) submitted comments
10/27/03 Department of Finance (DOF) submitted comments
04/02/04 Commission staff issued Draft Staff Analysis and Proposed Parameters and Guidelines
04/16/04 Claimant submitted comments on Draft Staff Analysis
04/26/04 DOF submitted comments on Draft Staff Analysis
05/07/04 Commission staff issued Final Staff Analysis and Proposed Parameters and Guidelines

Background and Summary of the Claim

On July 31, 2003, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Differential Pay and Reemployment* (99-TC-02). The Commission found that Education Code sections 44977 and 44978.1 constitute a new program or higher level of service and impose a state-mandated program on school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.¹ Accordingly, the Commission approved this test claim for the following reimbursable activities:

- When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity for shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.) (Ed. Code, § 44977.)
- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.) (Ed. Code, § 44978.1.)
- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the re-employment paperwork, but not reimbursement of salary and benefits for the employee once they return to work.) (Ed. Code, § 44978.1.)

¹ Exhibit A.

Discussion

Staff reviewed the claimant's proposal² and the comments received. Staff made non-substantive, technical changes at the request of state agencies, 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 October 24, 2003, SCO requests that this section be clarified to state that charter schools are not eligible claimants.³ 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."⁴ Therefore, staff clarified that charter schools are not eligible claimants.

III. Period of Reimbursement

As noted by SCO, this section, as proposed, incorrectly states the period for eligible claimants to file reimbursement claims. 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 August 23, 1999. Therefore, costs incurred for compliance with Statutes 1998, chapter 30, are eligible for reimbursement on or after July 1, 1998. However, the test claim legislation for this mandate was not operative until January 1, 1999. Therefore, costs incurred for compliance with Statutes 1998, chapter 30 are eligible for reimbursement on or after January 1, 1999. Staff modified this section accordingly.

SCO also notes that under Government Code section 17561, subdivision (d)(1)(A), the time frame for submitting claims for reimbursement of initial fiscal year costs is 120 days from the issuance date for the claiming instructions. At SCO's request, staff clarified this language. If the Commission adopts this language, it will be included in all future parameters and guidelines.

IV. Reimbursable Activities

Reemployment Lists

In comments dated October 27, 2003,⁵ and its response to the draft staff analysis dated April 26, 2004,⁶ DOF interprets the activity of changing the process of calculating differential pay from running concurrently to consecutively with accumulated sick leave to only include a one-time modification of policies, procedures, and forms, and for a one-time modification of

² Exhibit B.

³ Exhibit C.

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

⁵ Exhibit D.

⁶ Exhibit F.

computer programs to compute differential pay and to track reemployment lists. Staff agreed that DOF's proposed revisions would make the proposed parameters and guidelines more specific and would reduce confusion regarding what is and is not reimbursable. Therefore, staff modified this section accordingly.

DOF commented that the one-time activity of establishing a reemployment list for identified certificated employees should only include a one-time data input to track reemployment lists, which would include the review and processing of the information to ensure that reemployment lists contain accurate data. SCO requested that the language specifically state that this activity applies to certificated employees who are not medically able to resume their position following the exhaustion of all sick leave and the five-month differential pay period. Staff agreed that the revisions proposed by the SCO and DOF would make the proposed parameters and guidelines more specific and reduce confusion regarding what is and is not reimbursable. Therefore, staff modified the language accordingly.

DOF states that the ongoing activity of maintaining separate reemployment lists for identified certificated employees should include only minimal staff time for periodically updating the lists. SCO requested that the language specifically state that this activity applies to certificated employees who are not medically able to resume their position following the exhaustion of all sick leave and the five-month differential pay period. Staff agreed with DOF and the SCO and modified the language accordingly. DOF also requested that language be added that contemporaneous time sheet records should be used to establish accurate documentation of such time. All parameters and guidelines adopted by the Commission contain language stating that to be eligible for reimbursement, only actual costs may be claimed, and that actual costs must be traceable and supported by source documents that show the validity of such costs when they were incurred (Section IV. Reimbursable Activities, first paragraph). Because this existing language is similar to the language requested by DOF, staff did not include DOF's proposed revision.

Staff also found no information in the record to indicate that there is more than one reemployment list, therefore staff deleted the requirement to maintain a "separate" list.

Notification and Placement

DOF suggested that the notification and placement activities be deleted since they were not included in the Statement of Decision as a reimbursable activity. SCO stated that placement costs are broad and vague and requested clarification for this activity. Staff finds that since that notification and placement was not included in the Statement of Decision it is not reasonably necessary to carry out the mandate, and goes beyond the scope of the Statement of Decision. Therefore staff deleted the notification and placement activities.

Training

DOF requested that training be deleted since it was not stated as a reimbursable activity in the Statement of Decision. SCO recommended that staff training be limited to a one-time activity. Staff finds that training was not stated as a reimbursable activity in the test claim legislation or the Statement of Decision. Therefore training is not reasonably necessary to carry out the mandated activities, and goes beyond the scope of the Decision. Therefore, staff deleted training. The claimant submitted comments on the draft staff analysis, stating that they concur with the SCO's position that training is a necessary requirement to implement a new law and

should be a one-time activity.⁷ Staff reiterates that training cannot be reimbursed because it goes beyond the scope of the Statement of Decision.

Staff Recommendation

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁷ Exhibit G.

PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Education Code Sections 44977 and 44978.1

Statutes 1998, Chapter 30

Differential Pay and Reemployment (99-TC-02)

I. SUMMARY OF THE MANDATE

On July 31, 2003, the Commission on State Mandates (Commission) adopted ~~theits~~ Statement of Decision for *Differential Pay and Reemployment (99-TC-02)*. The Commission found finding that Education Code sections 44977 and 44978.1 ~~constitute~~impose a new program or higher level of service and impose a state-mandated program on~~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. Accordingly, the Commission approved this test claim for the following reimbursable activities:

~~Specifically, the Commission approved this test claim for the increased costs of performing the following specific new activities:~~

- When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity ~~required to for~~ shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.) (Ed. Code, § 44977.)
- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.) (Ed. Code, § 44978.1.)
- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the re-employment paperwork, but not ~~reimbursement of the costs of~~ salary and benefits for the employee once they return to work.) (Ed. Code, § 44978.1.)

II. ELIGIBLE CLAIMANTS

Any “school district,” as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 175~~53~~7 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 August 23, 1999. Therefore, costs incurred for compliance with Statutes

1998, Chapter 30, are potentially eligible for reimbursement on or after July 1, ~~2000~~1998. However, since Statutes 1998, chapter 30, was not operative until January 1, 1999, only costs incurred on or after January 1, 1999 are eligible for reimbursement.

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 Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal years² costs shall be submitted to the State Controller within 120 days of the issuance date for-of the claiming instructions ~~by the State Controller~~.

If the total costs for a given fiscal year do not exceed \$1000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. 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 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, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. 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.

For each eligible claimant, the following activities are ~~eligible for~~ reimburs~~able~~ment:

A. One-Time Activities

~~A.1. One-time administrative activity required to~~ Cchange the process for calculating the five-month differential pay period from running concurrently to consecutively with accumulated sick leave. Reimbursement for this activity is solely for the administrative modification of existing policies , procedures, and forms, and modification of computer programs to compute differential pay.⁸

~~B.2. One-time activity to~~ Eestablish a reemployment list for identified certificated employees who are not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period.⁹

⁸ Education Code section 44977.

⁹ Education Code section 44978.1.

Reimbursement for this activity is solely for the administrative modification of existing policies, procedures, and forms, and modification of computer programs to establish and track reemployment lists.¹⁰

~~C. Staff training to teach staff the new calculation process~~

~~D. Training appropriate staff to establish and keep current the two reemployment lists for identified certificated employees~~

E.B. On-going Activities¹¹

~~1. Ongoing cost of staff to maintain a separate reemployment lists for identified certificated employees who are not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period. Reimbursement for this activity is limited to minimal staff time for periodically updating the reemployment lists.~~

~~F.2. Costs of processing the reemployment paperwork, including the time spent on notification and placement costs involved in having a for a “medically able” certificated employee person to return to work an available position for which he or she is credentialed and qualified. Salary and benefits for the employee upon return to work are not reimbursable.~~

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

1. Salaries and ~~B~~enefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied. ~~Only the pro-rata portion of materials and supplies used to implement the reimbursable activities can be claimed.~~

¹⁰ Education Code section 44977.

¹¹ Education Code section 44978.1.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. **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 chapter¹² 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

¹²This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate ~~received~~ from any source, including, but not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.