

ITEM 10A
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO
CONSOLIDATED PARAMETERS AND GUIDELINES

ANNUAL PARENT NOTIFICATION

05-PGA-45

Consolidation of:

Education Code Section 35291
Education Code Section 48980, Subdivisions (a), (b), (c) (e) (g), (h), (i)(j), (l), and (m)
Education Code Section 48900.1
Education Code Section 49063, Subdivision (k)
Education Code Section 58501

Statutes 1975, Chapter 448
Statutes 1977, Chapter 36
Statutes 1977, Chapter 965
Statutes 1979, Chapter 236
Statutes 1980, Chapter 975
Statutes 1981, Chapter 469
Statutes 1985, Chapter 459
Statutes 1986, Chapter 87
Statutes 1986, Chapter 97
Statutes 1987, Chapter 1452
Statutes 1988, Chapter 65
Statutes 1988, Chapter 1284
Statutes 1990, Chapter 10
Statutes 1990, Chapter 403
Statutes 1992, Chapter 906
Statutes 1993, Chapter 1296
Statutes 1997, Chapter 929

Statutes 1998, Chapter 846, Section 19
Statutes 1998, Chapter 1031, Section 1
Statutes 1999, Chapter 1X, Section 3
Statutes of 2000, Chapter 73, Section 1

Interdistrict Transfer Requests: Parent's Employment (CSM-4445 (portion))
Notification to Parents: Pupil Attendance Alternatives (CSM 4453)
Annual Parent Notification (CSM 4461)
Schoolsite Discipline Rules (CSM 4462 (portion))
Pupil Suspensions: Parent Classroom Visits (CSM 4474 (portion))
Alternative Schools Annual Notification (CSM 4488)
Annual Parent Notification - Staff Development (CSM 97-TC-24)
Annual Parent Notification: 1998-2000 Statutes (99-TC-09 and 00-TC-12)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Annual Parent Notification* program (CSM-4455, 4453, 4461, 4462, 4474, 4488, 97-TC24, 99-TC-09 and 00-TC-12) 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.

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 that clarified what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language 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 parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

This analysis pertains only to the request to amend the *Annual Parent Notification* 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"?**

The SCO's request to amend these parameters and guidelines would be effective beginning with the 2005-2006 fiscal year. On April 26, 2006, the Commission adopted amendments to the *Annual Parent Notification* parameters and guidelines that cover the 2005-2006 fiscal year. The Commission included the boilerplate language regarding records retention for these parameters and guidelines. The language regarding documentation for actual costs is not necessary since claimants must file for reimbursement using a reasonable reimbursement methodology, and may not file for reimbursement of actual costs. Therefore, no further amendments are necessary.

Staff Recommendation

Staff recommends that the Commission deny the SCO's request to add proposed amendments to the *Annual Parent Notification* parameters and guidelines since these amendments were previously included on April 26, 2006.

STAFF ANALYSIS

Requestor

State Controller's Office

Chronology

09/25/1997	Commission on State Mandates (Commission) adopts Statement of Decision
02/29/1998	Commission adopts parameters and guidelines
11/30/1998	Commission adopts statewide cost estimate
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>Annual Parent Notification</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
04/09/2010	Commission staff issues draft staff analysis
05/06/2010	Department of Finance files comments

Background

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Annual Parent Notification* program (CSM-4455, 4453, 4461, 4462, 4474, 4488, 97-TC24, 99-TC-09 and 00-TC-12) 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 Decisions and Parameters and Guidelines

Numerous test claims have been filed and approved over the years that require school districts to provide notification to parents on subjects including, but not limited to, pupil attendance alternatives, interdistrict transfer requests, high school exit examinations, and staff development. Since 1997, the Commission has consolidated the parameters and guidelines for these notification programs into one set of parameters and guidelines titled "*Annual Parent Notification*."¹

The parameters and guidelines include a uniform cost allowance or reasonable reimbursement methodology (RRM) for reimbursement. Prior to 2006, the parameters and guidelines also stated that additional reasonable costs or exceptional costs may be reimbursed in addition to the RRM.

¹ Exhibit A.

The Commission amended the parameters and guidelines on April 26, 2006, deleting the language regarding exceptional costs. The Commission's staff analysis stated:

Substantive language on filing actual cost reimbursement claims is deleted because it is not relevant to reimbursement based on a reasonable reimbursement methodology. A reasonable reimbursement methodology is based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. No changes are made to the description of reimbursable activities.

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.² 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:³

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, 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

² Exhibit B.

³ The Commission also adopted other boilerplate language that is not relevant to this request.

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 2003.⁴

The parameters and guidelines for the *Annual Parent Notification* program is one of the 49 programs the SCO is requesting be amended.

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.⁵

In its comments, 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.

No other comments were filed on the SCO proposal.

Commission staff issued the draft staff analysis on April 9, 2010.⁶ On May 6, 2010, the Department of Finance submitted comments concurring with staff’s recommendation to deny the request because the amendments have previously been updated.⁷

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

⁴ Exhibit C.

⁵ Exhibit D.

⁶ Exhibit E.

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

This case 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.⁸ 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.

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"?

The SCO is requesting that the parameters and guidelines be amended to include the boilerplate language regarding documentation of actual costs, and records retention.

As stated previously, the Commission adopted the boilerplate language regarding records retention for these parameters and guidelines in 2006. The language regarding documentation for actual costs is not necessary since claimants must file for reimbursement using a RRM, and may not file for reimbursement of actual costs. Therefore, no further amendments are necessary.

Staff Recommendation

Staff recommends that the Commission deny the SCO's request to add proposed amendments to the *Annual Parent Notification* parameters and guidelines since these amendments were previously included on April 26, 2006.

⁷ Exhibit F.

⁸ The Commission is not a party to this action.