

COMMISSION ON STATE MANDATES

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July 13, 2006

Mr. Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: **Final Staff Analysis and Proposed Parameters and Guidelines**
Agency Fee Arrangements (00-TC-17, 01-TC-14)
Clovis Unified School District, Claimant
Statutes 1980, chapter 816; Statutes 2000, chapter 893; Statutes 2001, chapter 805
Government Code sections 3543, 3546, and 3546.3

Dear Mr. Petersen:

The final staff analysis and proposed parameters and guidelines are enclosed.

Hearing

This matter is set for hearing on **July 28, 2006**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

ITEM 20
PROPOSED PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS

Government Code Sections 3543, 3546, and 3546.3

Statutes 1980, Chapter 816

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

Agency Fee Arrangements (00-TC-17, 01-TC-14)

Clovis Unified School District, Claimant

EXECUTIVE SUMMARY

On December 9, 2005, the Commission adopted the Statement of Decision for *Agency Fee Arrangements* (00-TC-17, 01-TC-14). The Commission found that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 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:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)²
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)³
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last

¹ Exhibit A.

² As added by Statutes 2000, chapter 893, operative January 1, 2001.

³ As amended by Statutes 2001, chapter 805, operative January 1, 2002.

date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)⁴

The Commission concluded that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

Discussion

In an effort to expedite the parameters and guidelines process, staff prepared and issued the draft parameters and guidelines on December 14, 2005. The proposed reimbursable activities were limited to those approved in the Statement of Decision.

In comments dated December 30, 2005⁵, the claimant offered no additional reimbursable activities, no reasonable methods of complying with the mandate and stated that the approved activities are not sufficiently related to any workload unit which could reasonably support a statewide reimbursement methodology. The claimant also stated objections to the boilerplate language to preserve appeal rights and suggested technical amendments for clarification.

In comments dated January 6, 2006⁶, the State Controller's Office (SCO) stated that some activities should be identified as one-time activities and requested changes to the boilerplate language.

Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language. Substantive changes were made to Section I. Summary of the Mandate, Section II. Eligible Claimants, and Section IV. Reimbursable Activities.

Staff Recommendation

Staff recommends that the Commission adopt the draft parameters and guidelines, as prepared 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.

⁴ As amended and operative on January 1, 2001.

⁵ Exhibit B.

⁶ Exhibit C.

Claimant

Clovis Unified School District

Chronology

- 06/27/01 Claimant files original test claim (00-TC-17)
- 05/15/02 Claimant files test claim amendment (01-TC-14)
- 12/09/05 Commission on State Mandates (Commission) adopted Statement of Decision
- 12/14/05 Commission Staff issued draft parameters and guidelines
- 12/30/05 Claimant files comments on draft parameters and guidelines
- 01/06/06 State Controller's Office (SCO) files comments on draft parameters and guidelines
- 06/07/06 Draft staff analysis and proposed parameters and guidelines issued
- 07/07/06 Final staff analysis and proposed parameters and guidelines issued

Background and Summary of the Claim

On December 9, 2005, the Commission adopted the Statement of Decision for *Agency Fee Arrangements* (00-TC-17, 01-TC-14). The Commission found that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.⁷ Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)⁸
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)⁹
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last

⁷ Exhibit A.

⁸ As added by Statutes 2000, chapter 893, operative January 1, 2001.

⁹ As amended by Statutes 2001, chapter 805, operative January 1, 2002.

date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)¹⁰

The Commission concluded that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

Discussion

In an effort to expedite the parameters and guidelines process, staff prepared and issued the draft parameters and guidelines on December 14, 2005. The proposed reimbursable activities were limited to those approved in the Statement of Decision.

In comments dated December 30, 2005¹¹, the claimant offered no additional reimbursable activities, no reasonable methods of complying with the mandate and stated that the approved activities are not sufficiently related to any workload unit which could reasonably support a statewide reimbursement methodology. The claimant also stated objections to the boilerplate language to preserve appeal rights and suggested technical amendments for clarification.

In comments dated January 6, 2006¹², the SCO stated that some activities should be identified as one-time activities and requested technical changes to the boilerplate language.

Staff made non-substantive, technical changes for purposes of clarification, consistency with language in parameters and guidelines, and conformity to the Statement of Decision and statutory language. The SCO requested numerous technical changes to language that is common to all parameters and guidelines (boilerplate language). Staff did not make these changes so that this set of parameters and guidelines remains consistent with other parameters and guidelines adopted by the Commission. Substantive changes were made to the following sections of the draft parameters and guidelines:

I. Summary of the Mandate

The claimant requested that “K-14 school districts” be changed to “school districts, county offices of education, and community college districts” for clarity. Staff agreed and modified the language accordingly. These changes also satisfied changes requested by the SCO.

II. Eligible Claimants

As requested by the claimant, staff modified this section to clarify that school districts, county offices of education, and community college districts are eligible claimants. The SCO requested that language be added to specify that charter schools are not eligible claimants. Staff added a sentence stating that “charter schools are not eligible claimants” for the following reasons:

- Charter schools are not eligible for mandate reimbursement because they are not part of the definition in Government Code section 17519, which defines “school district” for

¹⁰ As amended and operative on January 1, 2001.

¹¹ Exhibit B.

¹² Exhibit C.

purposes of mandate reimbursement, as “any school district, community college district, or county superintendent of schools.”

- Charter schools are initiated by petition of either parents or teachers; and thus, are created voluntarily. No state mandate requires them to exist. In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735, the court held that in eight of the nine programs at issue, the claimants were not entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. Consequently, based on the reasoning in the *Kern* case, charter schools are not entitled to reimbursement under article XIII B, section 6.

IV. Reimbursable Activities

The SCO requested that the language describing reimbursable activities be revised to make it easier to understand for claimants when they file reimbursement claims, and requested that the reimbursable activities be designated as one-time or ongoing. Staff agrees that the SCO’s proposed revisions would make the language easier to understand for the claimants and made their proposed changes. However, staff did not designate activities as one-time or ongoing since neither the test claim statutes nor the Statement of Decision limit any activities to a one-time status.

The SCO further requested that “training packets” be deleted from the common language used to describe acceptable documentation since training is not a reimbursable activity. Staff agreed and deleted this language. Staff also modified this section to clearly identify the activities that are not reimbursable.

Staff Recommendation

Staff recommends that the Commission adopt the draft parameters and guidelines, as prepared 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.

PROPOSED DRAFT PARAMETERS AND GUIDELINES,
AS MODIFIED BY STAFF

Government Code Section 3546

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

Agency Fee Arrangements (00-TC-17/01-TC-14)

Clovis Unified School District, Claimant

I. SUMMARY OF THE MANDATE

On December 9, 2005, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for ~~K-14~~ school districts, county offices of education, and community college 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 ~~specific~~ new/reimbursable activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)

The Commission also found that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Any school district, [county office of education, or community college district](#), as defined in Government Code section 17519, that 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 17557, subdivision (c), ~~as amended by Statutes 1998, chapter 681,~~ states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Clovis Unified School District filed the test claim on June 27, 2001, establishing eligibility for fiscal year 1999-2000. However, the operative dates of Government Code section 3546, as added by Statutes 2000, chapter 893, and California Code of Regulations, title 8, sections 34030 and 34055 is January 1, 2001. Therefore, costs incurred pursuant to Government Code section 3546, as added by Statutes 2000, chapter 893, and California Code of Regulations, title 8, sections 34030 and 34055 are reimbursable on or after January 1, 2001. The operative date of Statutes 2001, chapter 805 is January 1, 2002; therefore, costs incurred pursuant to Statutes 2001, chapter 805 is reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs of 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 year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, 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, ~~training packets,~~ 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 reimbursable:

1. Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).) (*Reimbursement period begins January 1, 2001.*)
 - a. [Deduction of the fair share service fee from the wages and salary of the employee who is in the bargaining unit upon receiving notice from the exclusive representative.](#)
 - b. [Payment of the collected amount of the fair share service fee to the employee organization.](#)
2. School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).) (*Reimbursement period begins January 1, 2002.*)
 - a. [Provision of the bargaining unit member's home address by the school district employer to the exclusive representative of a public school employee.](#)
3. Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).) (*Reimbursement period begins January 1, 2001.*)
 - a. [Providing a list of the names of employees and their job titles or classifications within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement.](#)

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 Benefits

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.

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, in 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.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

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 chapter¹ 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 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 ~~REVENUES~~ SAVINGS AND REIMBURSEMENTS

Any offsetting ~~savings~~ revenues 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 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 test claim decision 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 (d), and California Code of Regulations, title 2, section 1183.2.

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

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.