

ITEM 6
REVISED FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 49069.3, 49069.5, 49076.5, 76234

Statutes 1989, Chapter 593
Statutes 1993, Chapter 561
Statutes 1998, Chapter 311
Statutes 2005, Chapter 67;

Student Records
02-TC-34

Riverside Unified School District and Palomar Community College District, Co-Claimants

EXECUTIVE SUMMARY

On July 2, 2010, Commission staff issued the final staff analysis for this matter, indicating that no comments were filed on the draft staff analysis. On July 16, 2010, the State Controller's Office submitted comments recommending nonsubstantive technical amendments to the draft parameters and guidelines. Staff concurs with the State Controller's recommendations and included the technical amendments to the draft parameters and guidelines.

Background

This test claim addresses access to and privacy of the records of pupils in kindergarten through 12th grade (K-12) school districts and students in community colleges.

On May 29, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon school districts and community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

On June 4, 2009, the Commission issued the Statement of Decision and draft parameters and guidelines. Staff included the activities approved by the Commission in the Statement of Decision. Staff also clarified under Section VII. Offsetting Revenues and Reimbursements, that revenues resulting from the fee authority set forth in Education Code section 49065 is applicable to this program, and any revenue resulting from this fee authority is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil records.

Therefore, staff finds that the draft parameters and guidelines accurately reflect the activities approved in the Statement of Decision, and made no changes to the draft parameters and guidelines we issued.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines, beginning on page 5.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimants

Riverside Unified School District and Palomar Community College District.

Chronology

06/23/2003	Claimants files test claim with the Commission on State Mandates (Commission)
05/29/2009	Commission adopts Statement of Decision
06/04/2009	Commission issues Statement of Decision and draft parameters and guidelines
07/02/2010	Commission issues final staff analysis and draft parameters and guidelines
07/16/2010	State Controller's Office (SCO) submits comments on draft parameters and guidelines

Summary of the Mandate

On May 29, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon school districts and community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities for school districts:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3 (Stats. 2000, ch.67).)
2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001 through December 31, 2003).)
3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001 through December 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)
5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or

to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a) (Stats. 1993, ch.561).)

The Commission also found the fee authority to charge a fee that does not exceed the actual cost of furnishing copies of any pupil records, set forth in Education Code section 49065, is applicable to the state-mandated programs described above. This fee authority does not extend to furnishing the first two transcripts of former pupils' records, or the first two verifications of various records of former pupils, or the search for or retrieval of any pupil record. Therefore, any revenue resulting from the fee authority set forth in Education Code section 49065 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil records.

The Commission also approved this test claim for the following reimbursable activity for community college districts:

1. Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234 (Stats. 1989, ch. 593).)

Discussion

Government Code section 17557 and Section 1183.11 of the Commission's regulations require the claimant to submit proposed parameters and guidelines following the Commission's adoption of a Statement of Decision approving a mandated program. Section 1183.12 provides an alternative "expedited" process where the Commission drafts the proposed parameters and guidelines and issues them with the Statement of Decision.

On June 4, 2009, the Commission used the alternative process and issued the Statement of Decision and draft parameters and guidelines.¹ Staff included the activities approved by the Commission in the Statement of Decision. Staff also clarified under Section VII. Offsetting Revenues and Reimbursements, that revenues resulting from the fee authority set forth in Education Code section 49065 is applicable to this program, and any revenue resulting from this fee authority is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil records.

Comments on the Draft Parameters and Guidelines

On July 16, 2010, the SCO filed comments on the draft parameters and guidelines.² The SCO recommended the Commission correct and clarify statutory citations. Commission staff agreed, and made the changes proposed by SCO.

Staff finds that the draft parameters and guidelines accurately reflect the activities approved in the Statement of Decision, and made no changes to the draft parameters and guidelines we issued.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines, beginning on page 5.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ Exhibit A.

² Exhibit B.

DRAFT PARAMETERS AND GUIDELINES

Education Code Sections 49069.3, 49069.5, 49076.5, 76234

Statutes 1989, Chapter 593

Statutes 1993, Chapter 561

Statutes 1998, Chapter 311

Statutes 2000~~5~~, Chapter 67;

Student Records

02-TC-34

Riverside Unified School District and Palomar Community College District, Co-Claimants

I. SUMMARY OF THE MANDATE

On May 29, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon school districts and community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities for school districts:

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3 (Stats. 2000, ch. 67).)
2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001 through December 31, 2003).)
3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subs. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001 through December 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)
5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a) (Stats. 1993, ch. 561).)

The Commission also approved this test claim for the following reimbursable activity for community college districts:

1. Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234 (Stats. 1989, ch. 593).)

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, including 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 17557, subdivision (e), 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. The Riverside Unified School District and Palomar Community College District filed the test claim on June 23, 2003, establishing eligibility for reimbursement for fiscal year 2001-2002. Therefore, costs incurred for complying with the mandated activities are reimbursable on or after July 1, 2001. However, the 2003 amendments to section 49069.5 removed two activities. Therefore as indicated above, reimbursement for two activities ends on December 31, 2003.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. 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.
3. Pursuant to Government Code section 17560, subdivision (a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c) between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days

following the issuance date of the revised claiming instructions to file a claim.

(Government Code section 17560, subdivision (b).)

5. 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.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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:

A. K-12 School Districts

1. Provide access to records of grades and transcripts, and any individualized education plans of a current or former pupil under the jurisdiction of a foster family agency to the foster family agency. (Ed. Code, § 49069.3 (Stats. 2000, ch. 67).)
2. Cooperate with the county social service or probation department to ensure that a pupil's education record is transferred to the receiving local education agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement and upon the request of a county social service or probation department, a regional center for the developmentally disabled, or other placing agency. (Ed. Code, § 49069.5, subd. (b) (Stats. 1998, ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)
3. Cooperate with the county social service or probation department to ensure that educational background information for a pupil's health and educational record is transferred to the receiving local educational agency in a timely manner after the K-12 school district has been informed of the pupil's next educational placement.

Educational background information transferred pursuant to Education Code section 49069.5, subdivision (c), includes but is not limited to: (1) a health and education summary as described in Welfare and Institutions Code section 16010 (Stats. 2001, ch. 353); (2) the location of the pupil's records; (3) the last school and teacher of the pupil; (4) the pupil's current grade level; and (5) any information deemed necessary to enable enrollment at the receiving school, to the extent allowable under state and federal law. (Ed. Code, § 49069.5, subds. (c) and (d) (Stats. 1998., ch. 311.) (Period of reimbursement July 1, 2001-Dec. 31, 2003).)

4. Transfer the educational and health record of a pupil in foster care to the pupil's new local educational agency within five working days of receipt of information regarding the new educational placement of the pupil. (Ed. Code, § 49069.5, subd. (e) (Stats. 1998, ch. 311).)
5. Release any information it has specific to a particular pupil's identity and location that relates to the transfer of that pupil's records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information. (Ed. Code, § 49076.5, subd. (a) (Stats. 1993, ch. 561).)

B. Community College Districts

1. Inform the alleged victim of sexual assault or physical abuse (as defined by Ed. Code, § 76234), within three days of the results of any disciplinary action by the community college and the results of any appeal, whenever there is included in any student record information concerning any disciplinary action taken by a community college concerning the alleged sexual assault or physical abuse. (Ed. Code, § 76234 (Stats. 1989, ch. 593).)

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 AND REIMBURSEMENTS

Any offsets 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.

The Commission found the fee authority to charge a fee that does not exceed the actual cost of furnishing copies of any pupil records, set forth in Education Code section 49065, is applicable to the state-mandated programs here. This fee authority does not extend to furnishing the first two transcripts of former pupils' records, or the first two verifications of various records of former pupils, or the search for or retrieval of any pupil record. Therefore, any revenue resulting from the fee authority set forth in Education Code section 49065 is offsetting revenue and shall be deducted from the costs claimed for furnishing pupil records.

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

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

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.

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.