

ITEM 7
INCORRECT REDUCTION CLAIM
FINAL STAFF ANALYSIS

Penal Code Sections 628.2 and 628.6;
Title V, California Code of Regulations, Sections 700-704;
Statutes 1984, Chapter 1607; Statutes 1988, Chapter 78; Statutes 1989, Chapter 1457;
Statutes 1992, Chapter 759; Statutes 1995, Chapter 410;
California Department of Education, Guidelines for School Crimes Reporting;

School Crimes Reporting II

Fiscal Year 2002-2003

(07-9703-I-01, 07-9703-I-02, 07-9703-I-03, 07-9703-I-04, 07-9703-I-05, 07-9703-I-06,
07-9703-I-07, 07-9703-I-08)

Bonita Unified School District, Fullerton Joint Union High School District, San Ysidro School
District, Castro Valley Unified School District, Encinitas Union Elementary School District,
Carlsbad Unified School District, San Diego County Office of Education,
Rosedale Union Elementary School District, Claimants

EXECUTIVE SUMMARY

These consolidated incorrect reduction claims raise common questions of law and fact and were returned by the State Controller's Office for the same reason. In all claims, the claimant filed annual reimbursement claims for compliance with the *School Crimes Reporting II* program for fiscal year 2002-2003. The State Budget Act of 2002 specifically identified "*School Crimes Reporting II*" as a suspended program for which reimbursement would not be provided during fiscal year 2002-2003. (Stats. 2002, ch. 379, Item 6110-295-0001.) The State Controller's Office returned the reimbursement claims without conducting an audit on the ground that the program was suspended for fiscal year 2002-2003.¹

¹ For fiscal year 2002-2003, the following amounts were claimed for reimbursement: Bonita Unified School District claimed reimbursement in the amount of \$2,167; Fullerton Joint Union High School District claimed reimbursement in the amount of \$3,834; San Ysidro School District claimed reimbursement in the amount of \$1,303; Castro Valley Unified School District claimed reimbursement in the amount of \$15,929; and Encinitas Union Elementary School District claimed reimbursement in the amount of \$915; Carlsbad Unified School District claimed reimbursement in the amount of \$3,933; San Diego County Office of Education claimed reimbursement in the amount of \$1,622; and Rosedale Union Elementary School District claimed reimbursement in the amount of \$3,749. (See Exhibit A.)

All claimants allege, however, that Government Code section 17581.5, the statute governing the suspension of the *School Crimes Reporting II* program, did not become effective and operative until September 30, 2002 (Stats. 2002, ch. 1167, eff. Sept. 30, 2002), and therefore, they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, the effective date of Government Code section 17581.5.

Conclusion

For the reasons stated in the analysis below, staff concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Crimes Reporting II* program for the limited time period from July 1, 2002, through September 29, 2002 (the time period for which no statutory authority existed to relieve school districts of the duty to comply with the mandate). In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

The claimants and the State Controller's Office have filed comments concurring with the staff analysis.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and remand the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines for the School Crimes Reporting program that were adopted on September 28, 2000, for the limited time period from July 1, 2002, through September 29, 2002.

STAFF ANALYSIS

Chronology

01/13/04 through 06/07/04	Reimbursement claims filed
07/05/06	Controller notifies claimants of reductions
10/31/07 through 11/07/07	Claimants filed incorrect reduction claims (Exhibit A)
11/13/07	Incorrect reduction claims issued for comment
05/13/10	Incorrect reduction claims consolidated pursuant to Government Code section 17558.8 and section 1185.4 of the Commission's regulations
07/22/10	Draft staff analysis issued (Exhibit B)
07/30/10	Claimants file comments concurring with the draft staff analysis (Exhibit C)
08/13/10	State Controller's Office requests postponement of hearing and extension of time to file comments on draft staff analysis
08/18/10	Controller's request to postpone hearing is denied, and extension to file comments granted to August 30, 2010
08/20/10	State Controller's Office files comments concurring with the draft staff analysis (Exhibit D)

Introduction

These consolidated incorrect reduction claims raise common questions of law and fact and were returned by the State Controller's Office for the same reason. In all claims, the claimant filed annual reimbursement claims for compliance with the *School Crimes Reporting II* program for fiscal year 2002-2003. The State Budget Act of 2002 specifically identified "*School Crimes Reporting II*" as a suspended program for which reimbursement would not be provided during fiscal year 2002-2003. (Stats. 2002, ch. 379, Item 6110-295-0001.) The State Controller's Office returned the reimbursement claims without conducting an audit on the ground that the program was suspended for fiscal year 2002-2003.²

All claimants allege, however, that Government Code section 17581.5, the statute governing the suspension of the *School Crimes Reporting II* program, did not become effective and operative

² For fiscal year 2002-2003, the following amounts were claimed for reimbursement: Bonita Unified School District claimed reimbursement in the amount of \$2,167; Fullerton Joint Union High School District claimed reimbursement in the amount of \$3,834; San Ysidro School District claimed reimbursement in the amount of \$1,303; Castro Valley Unified School District claimed reimbursement in the amount of \$15,929; and Encinitas Union Elementary School District claimed reimbursement in the amount of \$915; Carlsbad Unified School District claimed reimbursement in the amount of \$3,933; San Diego County Office of Education claimed reimbursement in the amount of \$1,622; and Rosedale Union Elementary School District claimed reimbursement in the amount of \$3,749.

until September 30, 2002 (Stats. 2002, ch. 1167, eff. Sept. 30, 2002), and therefore, they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, the effective date of Government Code section 17581.5.

For the reasons stated in the analysis below, staff concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Crimes Reporting II* program from July 1, 2002, through September 29, 2002 (the time period for which no statutory authority existed to relieve school districts of the duty to comply with the mandate). In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

History of the Program

In 1984, the Legislature enacted the original school crimes reporting program and made amendments to the program in 1988 and 1989. In 1990, the Commission approved the *School Crimes Statistics Reporting and Validation* test claim (CSM 4371), which included the 1984, 1988, and 1989 Penal Code statutes and the Department of Education's "Standard School Crime Reporting Form." Parameters and guidelines for that test claim were adopted in 1991, and authorized reimbursement for on-site data collection, data compilation and reporting to the Department of Education, reporting and providing information to each school site about the program, and compliance with state agency reviews. Subsequent amendments to the statutes were made in 1992.

In 1994, the Legislature directed the Department of Education to revise the reporting procedures due to inconsistent data reported by the schools. In 1995, the Department of Education adopted regulations (Cal. Code Regs., tit. 5, §§ 700-704) and "Guidelines for School Crimes Reporting" to comply with the Legislature's directive.

In 1997, the *School Crimes Reporting II* test claim (97-TC-03) was filed on the 1992 and 1995 statutory amendments, and the Department of Education's regulations and guideline for the program. The Commission approved the *School Crimes Reporting II* test claim on March 30, 2000, recognizing that the activities mandated in the first test claim, *School Crimes Statistics Reporting and Validation*, continued to be mandated by the statutes, regulations and guideline pled in *School Crimes Reporting II*. The activities, however, were modified and made more specific, and the regulations and guideline required the completion of a new California Safe Schools Assessment (CSSA) form. Thus, on September 28, 2000, the Commission consolidated the parameters and guidelines for *School Crimes Statistics and Reporting and Validation* (CSM 4371) with *School Crimes Reporting II* (97-TC-03), adding new reimbursable activities, and amending the language regarding the existing reimbursable activities to conform to the current law pled and approved in *School Crimes Reporting II*. Thereafter, the claiming instructions for the consolidated program were entitled simply "*School Crimes Reporting II*."

On December 9, 2005, the Commission set aside the consolidated parameters and guidelines, effective October 7, 2005, because the Legislature repealed Penal Code sections 628.2 and 628.6. Thus, beginning October 7, 2005, reimbursement was not required for this program.

Issue: Did the State Controller's Office incorrectly return and reduce the claims of the school district claimants?

Government Code section 17561, subdivision (b), authorizes the State Controller's Office to audit the claims filed by local agencies and school districts and to reduce any claim for

reimbursement of state-mandated costs that the State Controller's Office determines is excessive or unreasonable.

Government Code Section 17551, subdivision (d), requires the Commission to hear and decide a claim that the State Controller's Office has incorrectly reduced payments to the local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (b) of Section 17561.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the Statement of Decision to the State Controller's Office and request that the costs in the claim be reinstated.

In the present case, the State Budget Act of 2002 was chaptered on September 5, 2002. The 2002 Budget Act, in Item 6110-295-0001, appropriates \$0 for the "*School Crimes Reporting II*" program, and states in provision 4.5 the following:

Pursuant to *section 17581 of the Government Code*, mandates identified in the appropriation schedule of this item with an appropriation of \$0 and included in the language of this provision are specifically identified by the Legislature for suspension during the 2002-2003 fiscal year:

- (1) School Bus Safety II (Ch. 624, Stats. 1992, Ch. 831, Stats. 1994, Ch. 739, Stats. 1997).
- (2) School Crimes Reporting II (Ch. 759, Stats. 1992, Ch 410, Stats 1995).
(Emphasis added.)

Although the State Budget Act of 2002 purports to suspend the *School Crimes Reporting II* program, the plain language of the Budget Act raises several legal issues.

The State Budget Act of 2002 appropriates \$0, but does not suspend or make the program voluntary

The State Budget Act of 2002 cites to Government Code section 17581, which is the suspension statute for *local agencies*.³ Government Code section 17581 provides in relevant part that "[n]o local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if" (1) the statute or executive order has been determined by the Legislature, the Commission, or the court to be a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, and (2) the statute or executive order, or the Commission's claim number, has been specifically identified by the Legislature in the State Budget Act as being one for which reimbursement is not provided for that fiscal year. Under such circumstances, Government Code section 17581, subdivision (c), authorizes a local agency that "elects to implement or give effect" to the suspended program the authority to assess fees in an amount that does not exceed the costs reasonably borne by the local

³ Government Code section 17518 defines "local agency" to mean "any city, county, special district, or other political subdivision of the state."

agency. Thus, under Government Code section 17581, the Legislature relieves the local agency of the duty to comply with the mandated program during fiscal years in which no money is appropriated for the program and the program is specifically identified as being suspended by the Legislature.⁴ The state-mandated program becomes voluntary and not mandated by the state during the period of suspension.

Government Code section 17581, however, does not apply to school districts.⁵ Subdivision (b) of Government Code section 17581 expressly states that “[t]his section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution [Proposition 98].”

Thus, although the State Budget Act of 2002 appropriated \$0 to school districts for the “*School Crimes Reporting II*” program and identified the program in the State Budget Act for suspension for fiscal year 2002-2003, there was no statutory authority relieving school districts of the duty to comply with the mandated program. Unlike the provision for local agencies in Government Code section 17581, there was nothing in the law expressly stating that school districts were not required to implement or to give effect to the *School Crimes Reporting II* program for fiscal year 2002-2003. Thus, the program remained mandated by the state at the start of the fiscal year and school districts were required by law to comply with the mandate. Under such circumstances, reimbursement is required by article XIII B, section 6 of the California Constitution.

Based on the rules of statutory construction, Government Code section 17581.5 suspends the School Crimes Reporting Program beginning September 30, 2002

Effective September 30, 2002, section 17581.5 was added to the Government Code “in order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time.” (Stats. 2002, ch. 1167, Assem. Bill No. 2781, §§ 37, 55.) Government Code section 17581.5 provides that school districts shall not be required to implement specified education mandates when they are suspended by the Legislature during a fiscal year. Section 17581.5, as added in 2002, stated the following:

- (a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
 - (1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
 - (2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and

⁴ *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 300-301.

⁵ Government Code section 17519 defines “school district” to mean “any school district, community college district, or county superintendent of schools.”

it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

- (1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992, Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).
- (2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and chapter 410 of the Statutes of 1995).

Although Government Code section 17581.5 became effective on September 30, 2002, the plain language of the statute, with respect to the *School Crimes Reporting II* program, is vague and ambiguous for two reasons. First, Government Code section 17581.5 as enacted in 2002 did not relieve school districts of the duty to comply with “executive orders.” Subdivision (a) of section 17581.5 states only that “school districts shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) ...” (Emphasis added.) This language is different than the local agency suspension statute, Government Code section 17581, subdivision (a), which expressly states that “[n]o local agency shall be required to implement or give effect to any statute or executive order” when the program is suspended. (Emphasis added.) Unless properly suspended for a fiscal year, Article XIII B, section 6 requires reimbursement for activities mandated by executive order.⁶

Second, the plain language of Government Code section 17581.5, subdivision (b), which lists the suspended programs for schools, and the State Budget Act of 2002 do not fully identify the mandated program for *School Crimes Reporting II* to include the executive orders that were approved in the claim. Government Code section 17581.5, subdivision (b), and the State Budget Act of 2002 refer to the program as “School Crimes Reporting II” and list only the statutes pled in that test claim (Ch. 759, Stats. 1992, Ch 410, Stats 1995). The parameters and guidelines and claiming instructions for the program that existed at the time the State Budget Act of 2002 and Government Code section 17581.5 were enacted also included activities mandated by the following executive orders: Title 5, California Code of Regulations, sections 700-704; and California Department of Education Guidelines for School Crimes Reporting.⁷

⁶ Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds whenever the Legislature “or any state agency” mandates a new program or higher level of service on local government. Government Code section 17514 defines “costs mandated by the state” to include “executive orders” that mandate a new program or higher level of service on local government. Government Code section 17516 defines an “executive order” to include “any order, plan, requirement, rule, or regulation issued by ... any agency, department, board, or commission of state government.”

⁷ These mandated activities, as cited in the Statement of Decision for *School Crimes Reporting II*, include the following:

- Develop a system to ensure all crimes are systematically reported. (1995, 1997 CDE Guidelines.)

Thus, the issue is whether Government Code section 17581.5 properly relieved school districts of the duty to comply with the mandated activities in *School Crimes Reporting II*, beginning September 30, 2002.

For the reasons below, staff finds that school districts were relieved of the duty to comply with the *School Crimes Reporting II* program beginning September 30, 2002, through the remaining 2002-2003 fiscal year.

Although the language in Government Code 17581.5, as originally added, is not clear with respect to duty to comply with the executive orders in the *School Crimes Reporting II* program, subsequent amendments to the statute help to clarify what the Legislature intended when it enacted Government Code section 17581.5 and applied the section to the *School Crimes Reporting II* program in 2002. Pursuant to the rules of statutory construction, when the Legislature amends a statute to clarify existing law, the clarification may be applied to actions

-
- Determine/investigate whether incidents are reportable using the definitions in section 700, subdivision (b), and the guidelines in section 702. (Cal. Code Regs., tit. 5, § 701, subd. (a)(1).)
 - Train staff to complete the new school crime reporting form. (Cal. Code Regs., tit. 5, § 701, subd. (a)(1); 1995, 1997 CDE Guidelines.)
 - Cross-check forms with other records to ensure that all reportable incidents have been recorded. (1995, 1997 CDE Guidelines.)
 - Review CSSA Forms to ensure accuracy and make corrections as required. (1995, 1997 CDE Guidelines.)
 - Retain the individual reports of incidents of crime and supporting documentation for three years. (Cal. Code Regs., tit. 5, §§ 701, subd. (a)(2), 702, subd. (b); 1995, 1997 CDE Guidelines.)
 - Make data and staff available during the validation process. (Cal. Code Regs., tit. 5, § 702, subd. (b); 1995, 1997 CDE Guidelines.)
 - Notify CSSA of the district's reporting process option by July 1 of each year. (1995, 1997 CDE Guidelines.)
 - Designate a CSSA Representative to develop and administer the school crimes reporting system. (Pen. Code, § 628.6; 1995, 1997 CDE Guidelines.)
 - Cross-check each incident report for accuracy and follow-up with school personnel if errors are discovered. (1997 CDE Guidelines.)
 - Retain supporting documentation for the school crime reports for three years. These records include, but are not limited to, expulsion reports, maintenance reports, and other documents to verify economic loss, if applicable. (Cal. Code Regs., tit. 5, § 702, subd. (b); 1995, 1997 CDE guidelines.)
 - Certify the accuracy of completed reports. (Cal. Code Regs., tit. 5, § 704; 1995, 1997 CDE Guidelines.)
 - Make the CSSA Representative and school crime data available during validation proceedings. (Cal. Code Regs., tit. 5, § 702, subd. (b); 1995, 1997 CDE Guidelines.)

predating the enactment of the amendment without being considered a retroactive application of the law. The clarified law is merely a statement of what the law has always been.⁸

In 2004, the Legislature amended Government Code section 17518.5 by clarifying that the suspension applied to the entire 97-TC-03 *School Crimes Reporting II* test claim program. The language was amended as follows:

(b) This section applies only to the following mandates:

(1)

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and chapter 410 of the Statutes of 1995).⁹

As indicated above, the parameters and guidelines and claiming instructions for the 97-TC-03 *School Crimes Reporting* program included mandates from statutes and executive orders.

In addition, the Legislature amended Government Code section 17581.5 in 2007 by moving the list of suspended programs to subdivision (c) and rewriting subdivision (b) to require the Department of Finance to notify school districts of any statute “or executive order” that is suspended in the fiscal year as follows:

Within 30 days after enactment of the Budget Act, the Department of Finance shall notify school districts of any statute *or executive order*, or portion thereof, for which reimbursement is not provided for the fiscal year pursuant to this section. (Emphasis added.)¹⁰

Although the requirement to notify school districts of the suspended program is new, the 2007 amendment clarified that the Legislature specifically intended to suspend mandates required by executive orders.

Accordingly, with the enactment of Government Code section 17581.5 on September 30, 2002, staff finds that school districts were relieved of the duty to comply with the *School Crimes Reporting II* program beginning September 30, 2002, through the remaining 2002-2003 fiscal year. Staff further finds that the school district claimants are entitled to reimbursement for the state-mandated activities in *School Crimes Reporting II* program for the limited time period from July 1, 2002, through September 29, 2002, and that the State Controller’s Office incorrectly returned and reduced the claims of the school district claims.

⁸ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243, where the court stated the following: “If the amendment merely clarified existing law, no question of retroactivity is presented. ‘[A] statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment’ “because the true meaning of the statute remains the same.’” (Exhibit E.)

⁹ Statutes 2004, chapter 316 (AB 2851). (Exhibit E.)

¹⁰ Statutes 2007, chapter 329, section 13 (AB 1222). (Exhibit E.)

CONCLUSION

Staff concludes that the school district claimants are entitled to reimbursement for the state-mandated activities in the *School Crimes Reporting II* program for the limited time period from July 1, 2002, through September 29, 2002. In this respect, the State Controller's Office incorrectly returned and reduced the claims of the school district claimants.

Staff Recommendation

Staff recommends that the Commission adopt this analysis and remand the reimbursement claims back to the State Controller's Office for further review and reinstatement of the costs eligible for reimbursement pursuant to the parameters and guidelines for the *School Crimes Reporting* program that were adopted on September 28, 2000, for the limited time period from July 1, 2002, through September 29, 2002.