

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE REQUEST TO REVIEW CLAIMING  
INSTRUCTIONS:

Five Amended Parameters and Guidelines  
Adopted January 29, 2010:

*Collective Bargaining*, 05-PGA-48;  
*Habitual Truant*, 05-PGA-51;  
*Intradistrict Attendance*, 05-PGA-53;  
*Juvenile Court Notices*, 05-PGA-54;  
*Health Fee Elimination*, 05-PGA-69;

Twelve Amended Parameters and Guidelines  
Adopted March 26, 2010:

*Caregiver Affidavits*, 05-PGA-46;  
*County Office of Education, Fiscal  
Accountability*, 05-PGA-47;  
*Financial Compliance Audits*, 05-PGA-49;  
*Graduation Requirements*, 05-PGA-50;  
*Law Enforcement Agency Notices*,  
05-PGA-55; *Physical Education Reports*,  
05-PGA-60; *Physical Performance Tests*,  
05-PGA-61; *Pupil Health Screenings*,  
05-PGA-63; *Pupil Residency Verification  
and Appeal*, 05-PGA-64; *Removal of  
Chemicals*, 05-PGA-66; *School District  
Fiscal Accountability Reporting*, 05-PGA-67;  
*Law Enforcement Jurisdiction Agreements*,  
05-PGA-70; and

Three Amended Parameters and Guidelines  
Adopted May 27, 2010:

*Notification of Truancy*, 05-PGA-56;  
*Notification to Teachers: Pupils Subject to  
Suspension or Expulsion*, 05-PGA-57;  
*Pupil Suspensions, Expulsions, and  
Expulsion Appeals*, 05-PGA-65.

Filed on June 28, 2010 by

Castro Valley Unified School District,  
Grossmont Union High School District, San Jose  
Unified School District, San Diego County  
Office of Education, Gavilan Joint Community  
College District, San Mateo County Community  
College District, State Center Community  
College, Requestors.

Case No.: 09-RCI-01

*Request to Review Claiming Instructions for  
Amendments to Boilerplate Language*

STATEMENT OF DECISION  
PURSUANT TO GOVERNMENT CODE  
SECTION 17571; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLES 6 and 7,  
SECTIONS 1186, 1187, 1188.1, 1188.2

*Adopted December 1, 2011*

## STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above entitled matter.



Nancy Patton, Acting Executive Director

Dated: December 7, 2011

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STATE OF CALIFORNIA

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*Adopted December 1, 2011*

## STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this request to review claiming instructions during a regularly scheduled hearing on December 1, 2011. Mr. Keith Petersen appeared on behalf of the requesters. Ms. Jill Kanemasu appeared for the State Controller's Office.

This request to review claiming instructions is filed pursuant to Government Code section 17571, which gives the Commission jurisdiction to hear a request filed by a local agency or school district to review claiming instructions issued by the State Controller's Office to determine if the claiming instructions conform to the parameters and guidelines.

The law applicable to the determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to approve the request to review the claiming instructions for 14 of the 20 above-captioned programs at the hearing by a vote of 5 to 0.

### Summary of the Findings

This is a request to review claiming instructions for parameters and guidelines that were amended by the Commission in 2010 to update boilerplate language. Government Code section 17558<sup>1</sup> requires the State Controller's Office to issue claiming instructions within 60 days after parameters and guidelines are amended. This 60-day limit has expired for the parameters and guidelines that were amended. To date, the Controller has not issued revised claiming instructions.

On June 28, 2010, requestors filed a request for the Commission to review the existing claiming instructions. A draft staff analysis was issued on July 19, 2011. The Commission received no comments on the draft staff analysis. A final staff analysis was issued on October 12, 2011. At that point the State Controller's Office correctly pointed out that the Commission only amended 14 of the 20 sets of parameters and guidelines named in this request. Six of the requests to amend parameters and guidelines discussed here were denied by the Commission, and therefore, for those six sets, no revised claiming instructions are required. Pursuant to Government Code section 17571, the Commission directs the State Controller's Office to issue revised claiming instructions for the following 14 of the 20 sets of amended parameters and guidelines:

1. *Collective Bargaining*, 05-PGA-48;
2. *Habitual Truant*, 05-PGA-51;
3. *Intradistrict Attendance*, 05-PGA-53;
4. *Juvenile Court Notices*, 05-PGA-54;
5. *Health Fee Elimination*, 05-PGA-69;
6. *County Office of Education, Fiscal Accountability*, 05-PGA-47;
7. *Financial Compliance Audits*, 05-PGA-49;
8. *Physical Education Reports*, 05-PGA-60;
9. *Physical Performance Tests*, 05-PGA-61;
10. *Pupil Residency Verification and Appeal*, 05-PGA-64;
11. *Law Enforcement Jurisdiction Agreements*, 05-PGA-70;

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<sup>1</sup> All statutory references are to the Government Code.

12. *Notification of Truancy*, 05-PGA-56;
13. *Notification to Teachers: Pupils Subject to Suspension or Expulsion*, 05-PGA-57;
14. *Pupil Suspensions, Expulsions, and Expulsion Appeals*, 05-PGA-65.

## COMMISSION FINDINGS

### Chronology

- 04/07/2006 State Controller's Office files request that the Commission amend parameters and guidelines for 49 different programs
- 01/29/2010 Commission adopts amended parameters and guidelines for the programs listed on the title page
- 03/16/2010 Commission adopts amended parameters and guidelines for the programs listed on the title page
- 05/27/2010 Commission adopts amended parameters and guidelines for the programs listed on the title page
- 06/28/2010 Requestors file request that the Commission review the claiming instructions
- 07/30/2010 State Controller's Office files comments on request for review of claiming instructions
- 07/19/2011 Commission issues draft staff analysis
- 10/12/2011 Commission issues final staff analysis
- 10/13/2011 State Controller's Office informs Commission that no revised claiming instructions are required for six of the 20 sets of parameters and guidelines
- 10/25/2011 Commission issues revised final staff analysis for October 27, 2011 hearing
- 10/27/2011 Item continued to December hearing by Commission staff
- 11/15/2011 Commission issues final staff analysis for December 1, 2011 hearing

### I. Background

This is a request to review the claiming instructions for the 20 school district and community college district programs listed above. Claiming instructions are prepared by the State Controller's Office (Controller) after the Commission adopts parameters and guidelines. The purpose of claiming instructions is "to assist local agencies and school districts in claiming costs to be reimbursed."<sup>2</sup> Pursuant to section 17571, a local agency or school district may request that the Commission review the claiming instructions to determine if they conform to the parameters and guidelines.

This request to amend claiming instructions has a long history. In 2002, based on a recommendation from the Bureau of State Audits, the Legislature enacted AB 2781 (Stats 2002, chapter 1167), which directed the Commission to amend the parameters and guidelines for the *School Bus Safety II* program to describe in detail the documentation necessary to support reimbursement claims. Commission staff conducted a series of workshops with stakeholders to discuss this documentation language. At one of the workshops, the Controller proposed that

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<sup>2</sup> Government Code section 17558(b).

source documentation language be added to the “boilerplate language” that is in all parameters and guidelines. “Boilerplate language” refers to the language in parameters and guidelines that describes the basic procedural elements claimants are required to follow. The amendments discussed at the workshops focused on the source documentation claimants are required to retain to support their mandate reimbursement claims and to assist the Controller in performing audits.

In 2003, the Commission adopted amendments to the parameters and guidelines for the *School Bus Safety II* program. These parameters and guidelines incorporated for the first time the new version of the boilerplate language that included the contemporaneous source documentation language proposed by the Controller. Thereafter, Commission staff has included this boilerplate language, occasionally with some minor modifications, in all subsequent parameters and guidelines.

However, no changes were made to the boilerplate language in all of the old sets of parameters and guidelines that were adopted before the new language was developed. On April 7, 2006, the Controller filed requests with the Commission to amend 49 older sets of parameters and guidelines – including the 20 that are the subject of this dispute – to add the revised boilerplate language. In 2010, the Commission adopted 14 of the 20 sets of amended parameters and guidelines at issue here for costs incurred beginning July 1, 2005. The remaining 6 sets were denied because the boilerplate language had previously been amended into those parameters and guidelines.

Section 17558 requires the Controller, within 60 days after receiving amended parameters and guidelines adopted by the Commission, to prepare and issue revised claiming instructions for mandates that require state reimbursement. Section 17558 also requires that the claiming instructions be derived from the adopted parameters and guidelines.

To date, the Controller has not issued revised claiming instructions for any of the 14 amended parameters and guidelines. The requestors asked the Controller, as required by section 1186(b)(2) of the Commission’s regulations, to issue revised claiming instructions, but the Controller did not do so. Therefore, on June 28, 2010, the requestors filed this request that the Commission review the existing claiming instructions.

The requestors allege that the existing claiming instructions are inaccurate as a matter of law for the annual reimbursement claims beginning in fiscal year 2005-2006, because they have not been revised to conform to the amended parameters and guidelines.

## **II. Commission Responsibilities**

Pursuant to section 17571, the Commission must review the Controller’s claiming instructions upon request of a local agency or school district. If the Commission determines that the Controller’s claiming instructions do not conform to the parameters and guidelines adopted by the Commission, 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.”

## **III. Commission’s Findings**

As noted above, the Commission adopted 14 of the 20 sets of amended parameters and guidelines at issue here on three dates in 2010. Requestors attempted to persuade the State

Controller's Office to issue revised claiming instructions, but those efforts failed. On June 28, 2010, requestors filed this request to review the existing claiming instructions.<sup>3</sup>

The requestors and the Controller expressly agree that the law requires the Controller to issue revised claiming instructions "within 60 days after receiving amended parameters and guidelines."<sup>4</sup> However, revised claiming instructions have not been issued. The Controller does not indicate why it has not issued them.

Instead, the Controller raises an issue regarding when the period of reimbursement should begin for costs identified in any reimbursement claims that may be filed under the amended parameters and guidelines adopted by the Commission in 2010. The Controller argues that the period of reimbursement should begin with the 2009-2010 fiscal year because the requestors filed their request to review the claiming instructions on June 29, 2010, and that long-closed reimbursement eligibility windows are not reopened.

Requestors argue that their "request is timely as to the periods of eligibility established by each of the amended parameters and guidelines." Because the request to amend 14 sets of parameters and guidelines was filed on April 7, 2006, requestors urge the Commission to find that the period of reimbursement for all of the amended parameters and guidelines begins with fiscal year 2005-2006.<sup>5</sup>

The following analysis is broken into two parts. The first part examines the black-letter law that governs this request. The second part looks at the specific arguments advanced by the Controller.

**A. Amendments to the parameters and guidelines trigger the requirement that the State Controller's Office issue revised claiming instructions.**

On April 7, 2006, the Controller filed its request with the Commission to amend 49 sets of parameters and guidelines, including the 20 at issue here. Section 17557(d)(1) sets forth the basic rule regarding the period of reimbursement applicable to claims for reimbursement filed under amended parameters and guidelines:

A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility *for that fiscal year*.  
(Emphasis added.)

The Controller's April 7, 2006 request was filed more than 90 days after the claiming deadline for initial claims for each of the 20 test claims at issue here. Accordingly, based on section 17557(d)(1), the Controller's April 7, 2006 request to amend the parameters and guidelines established reimbursement eligibility *for that fiscal year*, namely fiscal year 2005-2006.

In 2010, the Commission granted the Controller's request to amend the parameters and guidelines for 14 of the 20 test claims at issue here at three separate Commission meetings. The

<sup>3</sup> Exhibit A, Request for Review of the Controller's Claiming Instructions (Request), filed June 28, 2010.

<sup>4</sup> Government Code section 17558(c); Exhibit B, letter dated July 30, 2010 from the State Controller's Office.

<sup>5</sup> The Commission denied amendment for six of the parameters and guidelines.

Commission denied the Controller's request to amend six sets of the parameters and guidelines. In accordance with section 17557(d)(1), each set of amended parameters and guidelines adopted by the Commission states that the amendment is effective for costs incurred under the mandated program beginning July 1, 2005. The parameters and guidelines amendments have not been challenged by any party.

Following the adoption of the amended parameters and guidelines, the Commission submitted the amended parameters and guidelines to the State Controller's Office pursuant to section 17558. That section provides that claiming instructions shall be issued for each mandate that requires state reimbursement to assist local agencies and school districts in claiming costs to be reimbursed. Section 17558(b) further states that "the claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines . . . ." Section 17558(c) then states in relevant part the following:

The Controller, shall, within 60 days after receiving amended parameters and guidelines, . . . prepare and issue revised claiming instructions for mandates that require state reimbursement that have been established by commission action pursuant to Section 17557. . . .

The Commission's decision to amend the parameters and guidelines triggered the requirement in Section 17558 that the Controller issue revised claiming instructions within 60 days of the date of the Commission's decision. Therefore, by law, the State Controller's Office is required to issue revised claiming instructions that are "derived" from the amended parameters and guidelines to put school districts on notice of the requirement to maintain contemporaneous source documentation when filing reimbursement claims for these programs.

**B. The comments filed by the State Controller's Office regarding what happens after revised claiming instructions are issued is not properly before the Commission and cannot be determined in this request.**

In response to this request, the State Controller's Office filed the comments agreeing that it needs to issue claiming instructions. However, the Controller's Office states a concern that eligible claimants are attempting to reopen "long closed reimbursement eligibility windows" to file reimbursement claims. The Controller's Office states the following:

This office agrees that Government Code section 17558(c) requires the revision of the Claiming Instructions any time the Parameters & Guidelines are amended. We will begin issuing Claiming Instructions for the identified programs in the near future.

However, we disagree with the claimant's conclusions concerning the effective date of the request for review of claiming instructions. The regulations are clear on this point. Title 2 CCR section 1186 (j)(2) states that, "[a] request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Since this request was filed on June 29, 2010, the request is only effective for the 2009-2010 fiscal year and thereafter.

From the correspondence included in the package, it appears that the claimants are attempting to reopen long closed reimbursement eligibility windows. Pursuant to Section 17560, the window for eligibility to file a claim for

reimbursement is based upon the fiscal year for which costs are claimed. That deadline is the February 15<sup>th</sup> following the fiscal year for which the reimbursement is sought. Section 17568 states that “[i]n no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560.” (Emphasis added.) Claimants cite no authority that would allow this office, or the Commission, to alter that limitation.<sup>6</sup>

The Controller’s discussion of what happens after revised claiming instructions are issued for these programs is not properly before the Commission and not necessary for the determination of whether revised claiming instructions have to be issued. If, after the claiming instructions are issued, there continues to be a disagreement about language included in the claiming instructions issued by the Controller’s Office, a request to review the claiming instructions pursuant to Government Code section 17571 may be filed. In addition, if a reimbursement claim is returned or reduced by the State Controller’s Office, the claimant can file an incorrect reduction claim and raise the issue. Accordingly, the Commission takes no position on those arguments.

#### **IV. Conclusion**

The State Controller’s Office is required by law to prepare claiming instructions that conform to the amended parameters and guidelines. Pursuant to Government Code section 17571, the Commission exercises its authority to “direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the amended parameters and guidelines as directed by the Commission” for the following fourteen programs:

1. *Collective Bargaining*, 05-PGA-48;
2. *Habitual Truant*, 05-PGA-51;
3. *Intradistrict Attendance*, 05-PGA-53;
4. *Juvenile Court Notices*, 05-PGA-54;
5. *Health Fee Elimination*, 05-PGA-69;
6. *County Office of Education, Fiscal Accountability*, 05-PGA-47;
7. *Financial Compliance Audits*, 05-PGA-49;
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<sup>6</sup> Exhibit B, pp. 1–2.

