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**REQUEST TO REVIEW CLAIMING INSTRUCTIONS
DRAFT STAFF ANALYSIS**

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

AND

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

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 District, Requestors

EXECUTIVE SUMMARY

This is a request to review claiming instructions for 20 sets of parameters and guidelines that were amended by the Commission on State Mandates (Commission) in 2010. Government Code section 17558¹ 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 each of the 20 sets of parameters and guidelines at issue here. 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. Staff recommends that the Commission request that the State Controller's Office issue revised claiming instructions for each of these 20 sets of amended parameters and guidelines, as required by law.

STAFF ANALYSIS

Requestors

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

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

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."² Pursuant to section 17571, a local agency or school district may request the

¹ All statutory references are to the Government Code.

² Government Code section 17558(b).

Commission to 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 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 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 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 the 20 sets of amended parameters and guidelines at issue here for costs incurred beginning July 1, 2005.³

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 the claiming instructions to be derived from the adopted parameters and guidelines.

To date, the Controller has not issued revised claiming instructions for any of the 20 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.

II. Commission Responsibilities

³ Of those 20 parameters and guidelines amendments, 5 were adopted on January 29, 12 were adopted on March 16, and 3 were adopted on May 27.

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. Staff Analysis

As noted above, the Commission adopted 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.⁴

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."⁵ However, as of the date of this draft staff analysis, 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 20 sets of 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, 2010.⁶

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 all 20 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.

The following analysis is broken into two parts. The first part examines the black-letter law that defines the beginning of the period of reimbursement applicable here. The second part looks at the specific arguments advanced by the Controller in the context of the overall statutory and regulatory structure of mandates reimbursement.

A. Requestors are eligible to file claims for reimbursement of costs incurred beginning in fiscal year 2005-2006 because the request to amend the parameters and guidelines was filed with the Commission in fiscal year 2005-2006.

⁴ Exhibit A, Request for Review of the Controller's Claiming Instructions (Request), filed June 28, 2010.

⁵ Government Code section 17558(c); Exhibit B, letter dated July 30, 2010 from the State Controller's Office.

⁶ This is incorrect, as discussed below. Moreover, it fails to explain why the Controller has chosen to ignore its statutory obligation to issue 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 the 20 test claims at issue here at three separate Commission meetings. 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 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.

The law clearly requires the Controller to issue revised claiming instructions. Once the Controller does so, eligible claimants may file reimbursement claims for costs incurred beginning with fiscal year 2005-2006. Staff recommends that the Commission exercise its authority under Section 17571 to direct the Controller to modify the claiming instructions to conform to the parameters and guideline.

B. The authority cited by the Controller does not support its conclusion that claimants can only file claims for costs incurred beginning in fiscal year 2009-2010, the year the request to review the claiming instructions was filed.

The Controller makes two arguments. First, the Controller cites to section 1186(j)(2) of the Commission's regulations that states, "[a] request for review [of claiming instructions] filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for that fiscal year." Because the request to review claiming instructions in this matter was filed on June 29, 2010, the Controller argues, the period of reimbursement must begin with fiscal year 2009-2010.

This is incorrect. Section 1186(j)(2) does not apply in this case and the Controller's reference to it and other statutory and regulatory sections is out of context. To fully understand the function of the sections cited by the Controller, we need to view them in the context of the overall mandate claims process.

Consider the following hypothetical situation: Suppose a claimant filed a test claim in January 2001. Further suppose the Commission issued a statement of decision on January 1, 2004 and adopted parameters and guidelines on April 1, 2004, and the Controller issued claiming

instructions on May 1, 2004. Thereafter, eligible claimants could file reimbursement claims beginning with fiscal year 1999-2000. This is because the trigger date for reimbursement is the date the test claim was filed, not the date the Commission ultimately decided the issue or the Controller issued claiming instructions, both of which can take place many years after the test claim filing date.⁷

Pursuant to section 17561(d)(1), “[i]ssuance 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. . . .” Claimants are allowed to file initial claims up to 120 days after the Controller issues the claiming instructions.⁸ So, in this hypothetical example, a claimant could file a claim as late as September 1, 2004 for reimbursement beginning in fiscal year 1999-2000.

Continuing with this hypothetical, a request to review the claiming instructions submitted on October 1, 2008 would, according to section 1186(j)(2), establish reimbursement eligibility for fiscal year 2007-2008 for any claim filed based on the revised claiming instructions.

However, suppose a request to amend the parameters and guidelines was filed in May 2009. In the same way that the filing date for a test claim fixes the date for the filing of initial reimbursement claims, the filing date for the amended parameters and guidelines fixes the date for reimbursement based on those amended parameters and guidelines. If the Commission granted the May 2009 request to amend the parameters and guidelines in January 2011, claimants could file reimbursement claims for costs incurred beginning in fiscal year 2008-2009, the fiscal year in which the amendment request was filed.⁹

This is precisely what happened here. The parameters and guidelines amendment request was filed in April 2006, thereby fixing fiscal year 2005-2006 as the beginning of the reimbursement period.

The Controller’s second argument is stated as follows:

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 15th 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.¹⁰

⁷ Government Code section 17557(e).

⁸ Government Code section 17561(d)(1)(A).

⁹ Government Code section 17557(d)(1).

¹⁰ Exhibit B.

An understanding of the Controller's argument requires an examination of Government Code section 17560, entitled "Claims for reimbursement," which states that reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (b) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Contrary to the Controller's assertion, Section 17560 says nothing about the appropriate beginning date of a period of reimbursement. Rather, it applies to two situations, neither of which occurred here. Subdivision (a) applies to *the filing of annual claims* for reimbursement and allows claimants up to seven and a half months after a fiscal year (from June 30, the end of a fiscal year, until February 15 of the next fiscal year) to file annual claims for that fiscal year. Subdivision (b) applies to the specific situation where claiming instructions are revised between November 15 and February 15, and allows claimants extra time to file annual claims. Neither subdivision is intended to determine *the beginning of the period of eligibility for the reimbursement of costs*. That period is determined by when a claimant files a test claim or, as in this case, a request to amend parameters and guidelines, or a request to revise claiming instructions.

Part of what makes this matter confusing procedurally is that the matter before the Commission is a request to revise the existing claiming instructions. Ordinarily, the date of such a request would establish the beginning of the period of reimbursement for the costs incurred and claimed based on the revised claiming instructions. In this case, however, the request to amend the claiming instructions is based on the fact that the Commission amended the parameters and guidelines. Requestors are essentially asking the Commission to direct the Controller to issue claiming instructions simply to conform to the amended parameters and guidelines. Again, contrast this with the situation in the hypothetical above where there was no parameters and guidelines amendment that triggered the requirement that the claiming instructions be revised.

The Controller seems to be arguing that the Controller can itself determine when the period of reimbursement begins based on when it issues claiming instructions. Applying the Controller's logic, any time a party requests that the Commission amend parameters and guidelines, the period of reimbursement begins whenever the Commission is ultimately able to decide the matter and the Controller decides to issue claiming instructions. For example, if a parameters and guidelines amendment request is filed in 2000 and decided by the Commission in 2006, the period of reimbursement wouldn't begin until at least 2006 based on the Controller's line of reasoning. The Controller takes it a step further by suggesting that the real trigger is the Controller's issuance of the amended claiming instructions. So, if the Controller issues the claiming instructions in 2006, the period of reimbursement would begin in 2006. If the Controller issues them in 2010, the period would begin in 2010. If the Controller chooses to never issue them, it follows that claimants would never be entitled to reimbursement.

This is contrary to law and to the long-standing practice employed by all parties, including the Controller itself. The Controller has routinely paid costs identified in reimbursement claims that were incurred beginning with the year a request to amend parameters and guidelines was filed, not the year the Commission decided the matter or the year the Controller issued revised claiming instructions. No departure from that practice is warranted here.

IV. Conclusion and Staff Recommendation

Staff concludes that the State Controller's Office is required by law to prepare claiming instructions that conform to the amended parameters and guidelines. Staff recommends that, pursuant to Government Code section 17571, the Commission "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."