



June 17, 2016

Mr. Arthur Palkowitz  
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2488 Historic Decatur Road,  
Suite 200  
San Diego, CA 92106

Ms. Jill Kanemasu  
State Controller's Office  
Accounting and Reporting  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*The Stull Act*, 14-9825-I-01  
Education Code Section 44660-44665  
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4  
Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002,  
2002-2003, 2003-2004, and 2004-2005  
Oceanside Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Kanemasu:

The Draft Proposed Decision for the above-named matter is enclosed for your review and comment.

### Written Comments

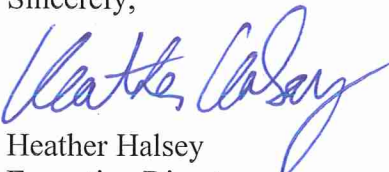
Written comments may be filed on the Draft Proposed Decision by **July 8, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### Hearing

This matter is set for hearing on **Friday, September 23, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about September 9, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

  
Heather Halsey  
Executive Director

**ITEM \_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT PROPOSED DECISION**

Education Code Sections 44660-44665  
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

*The Stull Act*

Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001,  
2001-2002, 2002-2003, 2003-2004, and 2004-2005.

14-9825-I-01

Oceanside Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) addresses audit reductions made by the State Controller's Office (Controller) to reimbursement claims of the Oceanside Unified School District (claimant) for fiscal years 1997-1998 through 2004-2005 under the *Stull Act* program. The Controller found \$1,270,420 that was claimed for employee salaries was unallowable due to the lack of source documentation.

Because the claimant did not provide the source documentation to support its actual costs, as required by the Parameters and Guidelines, staff finds that the Controller's audit findings are correct as a matter of law and the IRC is denied.

**The Stull Act Program**

The test claim statutes amended the Stull Act, which as originally enacted in 1971 requires school districts to develop and adopt evaluation and assessment guidelines for the performance of certificated personnel, evaluate and assess certificated personnel, and prepare a written evaluation of certificated personnel, including, if necessary, areas of improvement. The certificated employee and evaluator are required to meet and discuss the evaluation and assessment.

On May 27, 2004, the Commission adopted the Statement of Decision, finding that amendments to Education Code sections 44660-44665<sup>1</sup> impose a state-mandated higher level of service on school districts to perform specified new evaluation, review, and assessment activities.<sup>2</sup> On September 27, 2005, the Commission adopted the Parameters and Guidelines authorizing

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<sup>1</sup> Statutes 1983, Chapter 498 and Statutes 1999, Chapter 4.

<sup>2</sup> Exhibit A, IRC, pages 46-48 (Test Claim Statement of Decision, 98-TC-05, pages 35-37).

reimbursement for the activities the Commission found to be reimbursable in the Statement of Decision. The Parameters and Guidelines also specify that only actual costs are reimbursable, and must be supported by retained source documents “created at or near the same time the actual cost was incurred for the event or activity in question” in order to verify claimed costs, and that claimants must report each employee and “describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.”<sup>3</sup>

### **Procedural History**

The Controller issued the Final Audit Report on August 24, 2011.<sup>4</sup> On August 20, 2014, the claimant filed the IRC.<sup>5</sup> The Controller filed two requests for extension of time to file comments on the IRC on November 26, 2014 and February 2, 2015, which were granted for good cause. On March 27, 2015, the Controller filed comments on the IRC.<sup>6</sup> On May 4, 2014, the claimant filed late rebuttal comments.<sup>7</sup>

Commission staff issued the Draft Proposed Decision on June 17, 2016.<sup>8</sup>

### **Commission Responsibilities**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>9</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable

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<sup>3</sup> Exhibit A, IRC, pages 53-57 (Parameters and Guidelines).

<sup>4</sup> Exhibit A, IRC, pages 80-98 (Final Audit Report).

<sup>5</sup> Exhibit A, IRC.

<sup>6</sup> Exhibit B, Controller’s Comments on the IRC.

<sup>7</sup> Exhibit C, Claimant’s Late Rebuttal Comments.

<sup>8</sup> Exhibit D, Draft Proposed Decision.

<sup>9</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>10</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>11</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>12</sup> In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>13</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Whether the audit reduction for inadequate source documentation is correct as a matter of law.	<p>The Parameters and Guidelines authorize claimants to file for actual costs and require keeping contemporaneous source documentation to validate the actual costs claimed. Claimants must report each employee and “describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.”</p> <p>The documentation provided to the Controller for fiscal years 1997-1998 to 2004-2005</p>	<p><i>Correct</i> – The claimant’s documentation does not comply with the Parameters and Guidelines because the documentation does not verify the <i>actual</i> time taken to perform the mandated activities during the audit period, and it was not prepared at or near the time the reimbursable activity was performed. Nor does the documentation identify the employees evaluated, which is necessary to determine</p>

<sup>10</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>11</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>12</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>13</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

	<p>consisted of estimated average time on forms signed by claimed staff in February or March of 2006.</p> <p>After the IRC was filed, claimant argues that employees took six to seven hours to perform the reimbursable activities, but accepts 2.5 hours per evaluation. However, there is no evidence in the record to support this number of hours.</p>	<p>whether the costs claimed were limited to the scope of the mandate.</p> <p>Therefore, staff finds that the audit finding is correct as a matter of law.</p>
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**Staff Analysis**

**Because the Claimant Did Not Provide the Controller with Contemporaneous Source Documentation of Actual Costs, as Required by the Parameters and Guidelines, the Controller’s Reductions Are Correct as a Matter of Law.**

The Parameters and Guidelines for *The Stull Act* program specify that only actual costs are reimbursable, and must be supported by retained source documents “created at or near the same time the actual cost was incurred for the event or activity in question” to verify claimed costs, and that claimants must report each employee and “describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.”<sup>14</sup>

The record indicates that the documentation provided to the Controller for fiscal years 1997-2005 consists of average time forms signed by claimed staff in February or March of 2006. Each employee (evaluator) recorded the average minutes spent annually to perform evaluation activities for 1997-1998 through 2004-2005 on a single form, with estimates generally ranging from 5-10 hours per evaluation.<sup>15</sup> Claimant also provided collective bargaining agreements from 1994 to 2007, describing its evaluation policies and procedures during the audit period.<sup>16</sup>

This documentation, however, does not comply with the Parameters and Guidelines because it does not verify the *actual* time taken to perform the mandated activities during the audit period, nor was the documentation prepared at or near the same time as the reimbursable activity was performed. Rather, the time records were all signed in February or March 2006,<sup>17</sup> raising questions of whether the estimated times of five to 10 hours are accurate and reliable, especially in light of the Controller’s calculation for 2006-2007 and 2007-2008 that showed that each

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<sup>14</sup> Exhibit A, IRC, pages 53-57 (Parameters and Guidelines).

<sup>15</sup> Exhibit A, IRC, pages 91 (Final Audit Report), 143-191.

<sup>16</sup> Exhibit A, IRC, 193-240.

<sup>17</sup> Exhibit A, IRC, pages 143-191.

evaluation took only 30 minutes, or more time than the district claimed for those years.<sup>18</sup>

Moreover, the documentation provided during the audit does not identify the employees evaluated, which is necessary to determine whether the costs claimed were limited to the scope of the mandate which is limited to the higher level of service approved in the Test Claim Statement of Decision.

After the IRC was filed, the Controller offered to revise the findings for the audit period to reimburse 30 minutes for each of 1,149 evaluations claimed for the audit period (the same time allowed for the 2006-2007 and 2007-2008 reimbursement claims). The claimant rejected this offer, insisting that each evaluation took five to six hours, as in the Controller's *Stull Act* audits of other school districts.<sup>19</sup> In rebuttal comments, the claimant argues that the correct number of evaluations for 1997-1998 is 67 (instead of the four allowed by the Controller in the post-IRC negotiations) and that "the time spent by District employees to conduct the reimbursable activities would average 6-7 hours per employee."<sup>20</sup> But the rebuttal comments conclude that each evaluation should be reimbursed at 2.5 hours.<sup>21</sup> Claimant's various assertions about the time per evaluation are not supported by any contemporaneous source documentation to verify the actual time to perform the activities, as required by the Parameters and Guidelines. Moreover, there is no evidence in the record, as required by the Commission's regulations,<sup>22</sup> to justify reimbursement at 2.5 hours per evaluation.

### **Conclusion**

Accordingly, staff finds that the claimant did not comply with the requirements of the Parameters and Guidelines because the source documentation provided was insufficient to support the claimant's actual costs, and thus, the Controller's reduction of costs claimed is correct as a matter of law.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

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<sup>18</sup> Exhibit A, IRC, pages 91 and 92 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, page 13.

<sup>19</sup> Exhibit B, Controller's Comments on the IRC, pages 15, 118.

<sup>20</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 3.

<sup>21</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 7.

<sup>22</sup> California Code of Regulations, title 2, sections 1185.1 and 1187.5.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
 ON:

Education Code Sections 44660-44665

Statutes 1983, Chapter 498;  
 Statutes 1999, Chapter 4

Fiscal Years 1997-1998, 1998-1999, 1999-  
 2000, 2000-2001, 2001-2002, 2002-2003,  
 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

Case No.: 14-9825-I-01

*The Stull Act*

DECISION PURSUANT TO  
 GOVERNMENT CODE SECTION  
 17500 ET SEQ.; CALIFORNIA CODE OF  
 REGULATIONS, TITLE 2, DIVISION 2,  
 CHAPTER 2.5, ARTICLE 7

*(Adopted September 23, 2016)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 23, 2016. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s 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/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote count will be included in the adopted Decision] as follows:

<b>Member</b>	<b>Vote</b>
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

**Summary of the Findings**

This IRC addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims of the Oceanside Unified School District (claimant) for fiscal years 1997-

1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005<sup>23</sup> under *The Stull Act* program. The Controller found that of the \$1,286,956 claimed for employee salaries, \$1,270,420 is unallowable due to lack of source documentation.

The Commission finds that the claimant did not provide sufficient source documentation (contemporaneous or otherwise) to support its actual costs, as required by the Parameters and Guidelines, so the Controller's audit findings are correct as a matter of law and the IRC is denied.

## COMMISSION FINDINGS

### I. Chronology

- 08/24/2011 The Controller issued the Final Audit Report.<sup>24</sup>
- 08/20/2014 The claimant filed the IRC.<sup>25</sup>
- 11/26/14 The Controller filed a request for extension of time to file comments on the IRC, which was granted for good cause.
- 02/02/15 The Controller filed a request for extension of time to file comments on the IRC, which was granted for good cause.
- 03/27/2015 The Controller filed comments on the IRC.<sup>26</sup>
- 05/04/2015 The Claimant filed late rebuttal comments.<sup>27</sup>
- 6/17/2016 Commission staff issued the Draft Proposed Decision.<sup>28</sup>

### II. Background

#### A. The Stull Act Program

The Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of "certificated personnel" (including certificated non-instructional personnel) within each school district.<sup>29</sup> As originally enacted, the Stull Act required the governing board of each school district to develop and adopt specific guidelines to evaluate and assess certificated personnel, and to avail itself of the advice of certificated instructional personnel before developing and adopting the guidelines. The evaluation and assessment of the certificated personnel had to be in writing, conducted once each school year for probationary employees and every other year for permanent employees, and a copy

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<sup>23</sup> Fiscal years 2005-2006, 2006-2007 and 2007-2008 were also part of the audit, but were not included in this IRC.

<sup>24</sup> Exhibit A, IRC, pages 80-98 (Final Audit Report).

<sup>25</sup> Exhibit A, IRC.

<sup>26</sup> Exhibit B, Controller's Comments on the IRC.

<sup>27</sup> Exhibit C, Claimant's Late Rebuttal Comments.

<sup>28</sup> Exhibit D, Draft Proposed Decision.

<sup>29</sup> Former Education Code sections 13485-13490.



transmitted to the employee no later than sixty days before the end of the school year. If the employee was not performing his or her duties in a satisfactory manner according to the standards, the “employing authority” was required to notify the employee in writing, describe the unsatisfactory performance, and confer with the employee in making specific recommendations as to areas of improvement and endeavor to assist in the improvement. The employee then had the right to initiate a written response to the evaluation, which became a permanent part of the employee’s personnel file. The school district was also required to hold a meeting with the employee to discuss the evaluation.

The Stull Act was amended from 1975 through 1999, and a test claim was filed on these amendments. On May 27, 2004, the Commission partially approved the Test Claim and adopted the Statement of Decision, finding that Statutes 1983, chapter 498 and Statutes 1999, chapter 4, which amended Education Code sections 44660-44665, impose a reimbursable state-mandated higher level of service on school districts. The Commission also found many activities in the Test Claim pertaining to certificated personnel were required under preexisting law and were therefore not reimbursable, such as developing and adopting specific evaluation and assessment guidelines for performance; evaluating and assessing them as it relates to the established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.<sup>30</sup> The Parameters and Guidelines were adopted on September 27, 2005, authorizing reimbursement for only the following activities:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
  - once each year for probationary certificated employees;
  - every other year for permanent certificated employees; and
  - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at

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<sup>30</sup> Exhibit A, IRC, pages 28 and 35 (Statement of Decision).

least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

*Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.*

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
  - o once each year for probationary certificated employees;
  - o every other year for permanent certificated employees; and
  - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

**B. Certificated (Instructional and Non-Instructional) Employees**

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the

school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498).  
(*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

*Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional employees.*

C. Training

1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)<sup>31</sup>

The Parameters and Guidelines also require claimants to submit contemporaneous source documentation to verify their actual costs:

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.<sup>32</sup>

Section V. of the Parameters and Guidelines authorizes reimbursement for employee salaries and benefits and directs claimants to:

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.

And section VI. of the Parameters and Guidelines requires claimants to retain all documentation until the ultimate resolution of any audit findings:

All documentation 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.<sup>33</sup>

B. The Controller's Audit and Summary of the Issues

The Controller audited claimant's reimbursement claims for fiscal years 1997-1998 through 2004-2005, and 2006-2007 through 2007-2008 (no claims were filed for 2005-2006). The Controller reduced the reimbursement claims for fiscal years 1997-1998 through 2004-2005 to \$0 (an audit adjustment of \$1,270,420 in direct and indirect costs) because the claimant did not provide source documentation to support the average time claimed for each evaluation, or provide the Controller access to the employee evaluations completed during the audit period to support the number of employees evaluated.<sup>34</sup> Instead, the claimant supported the costs claimed for 1997-1998 through 2004-2005 with "Employee Average Time Records for Mandated Costs"

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<sup>31</sup> Exhibit A, IRC, pages 54-56 (Parameters and Guidelines).

<sup>32</sup> Exhibit A, IRC, page 53 (Parameters and Guidelines).

<sup>33</sup> Exhibit A, IRC, pages 57-58 (Parameters and Guidelines).

<sup>34</sup> Exhibit A, IRC, pages 6 and 91 (Final Audit Report).

forms, prepared by the mandate consultant for purposes of claiming costs, on which each employee recorded an estimate of the average time performing the reimbursable activities for each evaluation for the audit period. Each form was signed by the staff evaluator in either February or March 2006, when the initial reimbursement claims were filed, and certified under penalty of perjury that a good faith estimate was being reported.<sup>35</sup> For example, the first form provided shows an average time to prepare for the evaluation of 50 minutes, 45 minutes for a goals and objectives conference with the instructor, 20 minutes for a pre-observation conference with the instructor, 40 minutes for the classroom observation of the instructor, 30 minutes for the post-observation conference with the instructor, 40 minutes for the final conference with the instructor, and 80 minutes to complete a district report, which totals roughly five hours for one evaluation as follows:<sup>36</sup>

<u>Reimbursable Activities Codes:</u> Code 11 Preparing for the evaluation Code 12 Goals and objectives conference with instructor Code 13 Pre-observation conference with instructor Code 14 Classroom observation of instructor Code 15 Post-observation conference with instructor Code 16 Final conference with instructor Code 17 District reporting <b>CLASSROOM TEACHER TIME IS NOT REIMBURSED</b>	<u>Evaluation Criteria:</u> (A) district standards and test results (B) instructional techniques/strategies (C) adherence to curricular objectives (D) suitable learning environment																																											
Allocate the average time spent on each criterion (A-D) for each of the following evaluation steps:	<table border="1"> <thead> <tr> <th colspan="4">Average time in Minutes</th> </tr> <tr> <th>A</th> <th>B</th> <th>C</th> <th>D</th> </tr> </thead> <tbody> <tr> <td>Code 11 Preparing for the evaluation</td> <td>20</td> <td>10</td> <td>10</td> <td>10</td> </tr> <tr> <td>Code 12 Goals and objectives conference with instructor</td> <td>15</td> <td>10</td> <td>10</td> <td>10</td> </tr> <tr> <td>Code 13 Pre-observation conference with instructor</td> <td>5</td> <td>5</td> <td>5</td> <td>5</td> </tr> <tr> <td>Code 14 Classroom observation of instructor</td> <td>10</td> <td>10</td> <td>10</td> <td>10</td> </tr> <tr> <td>Code 15 Post-observation conference with instructor</td> <td>5</td> <td>10</td> <td>10</td> <td>5</td> </tr> <tr> <td>Code 16 Final conference with instructor</td> <td>10</td> <td>10</td> <td>10</td> <td>10</td> </tr> <tr> <td>Code 17 District Reporting</td> <td>20</td> <td>20</td> <td>20</td> <td>20</td> </tr> </tbody> </table>	Average time in Minutes				A	B	C	D	Code 11 Preparing for the evaluation	20	10	10	10	Code 12 Goals and objectives conference with instructor	15	10	10	10	Code 13 Pre-observation conference with instructor	5	5	5	5	Code 14 Classroom observation of instructor	10	10	10	10	Code 15 Post-observation conference with instructor	5	10	10	5	Code 16 Final conference with instructor	10	10	10	10	Code 17 District Reporting	20	20	20	20
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Code 16 Final conference with instructor	10	10	10	10																																								
Code 17 District Reporting	20	20	20	20																																								

Other “Employee Average Time Records for Mandated Costs” forms show estimates of five to 10 hours per evaluation, for a mean time of about 8 hours.<sup>37</sup>

Although the IRC was filed only on the Controller’s reduction of costs claimed for fiscal years 1997-1998 to 2004-2005, the audit also included the reimbursement claims for fiscal years 2006-2007 and 2007-2008, for which no reductions occurred.

<sup>35</sup> Exhibit A, IRC, pages 91, 143-191.

<sup>36</sup> Exhibit A, IRC, page 143.

<sup>37</sup> Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

For these two years, the district provided a list of employees who evaluated teachers, their title, productive hourly rate detail, as well as contemporaneous time documentation that supported an average time of approximately 30 minutes per allowable evaluation. The district also provided a list of teachers who were evaluated, which allowed the SCO auditors to determine which evaluations were reimbursable.<sup>38</sup>

The audit report states that the claimant's time logs for 2006-2007 were not dated or signed by the employees, so the Controller determined the allowable salaries by obtaining the district's evaluation procedures and interviewing administrators who performed the evaluation activities in these fiscal years. Ten percent of the claimant's 23 school sites were randomly sampled and the Controller found an average time of approximately 30 minutes per allowable evaluation.<sup>39</sup> The Controller determined that the costs claimed for fiscal years 2006-2007 and 2007-2008 were understated by \$4,834, and the Final Audit Report indicates that the claimant "agreed to our recommendation that it allow half an hour for each written observation and final teacher evaluation verified."<sup>40</sup>

In the response to the IRC, the Controller explained: "There is no reasonable means of applying the time allowance [from 2006-2008] to FY 1997-98 through FY 2004-05 without knowing the certificated instructional employees evaluated and the reimbursability of the evaluations."<sup>41</sup>

### C. Post-IRC Negotiations

After the claimant filed the IRC, the Controller contacted the claimant and offered to adjust the audit findings if the claimant provided a list of every employee evaluated during those years.<sup>42</sup> The Controller was emailed the list from the claimant on December 19, 2014.<sup>43</sup> On December 24, 2014, the Controller emailed the claimant to request clarification because the provided information appeared to be incomplete.<sup>44</sup> On January 5, 2015, the claimant emailed the Controller to confirm that the information provided was complete.<sup>45</sup> On January 21, 2015, the Controller emailed the claimant to explain that of the 1,698 employees listed by the claimant that received evaluations during the audit period, the Controller allowed 1,149 evaluations and excluded the rest because of duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations outside the audit period; and unallowable subjects or programs performed by

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<sup>38</sup> Exhibit B, Controller's Comments on the IRC, page 13.

<sup>39</sup> Exhibit A, IRC, page 91 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, page 13.

<sup>40</sup> Exhibit A, IRC, pages 91 and 92 (Final Audit Report).

<sup>41</sup> Exhibit B, Controller's Comments on the IRC, page 14.

<sup>42</sup> Exhibit B, Controller's Comments on the IRC, page 8.

<sup>43</sup> Exhibit B, Controller's Comments on the IRC, pages 8, 67-97, 100.

<sup>44</sup> Exhibit B, Controller's Comments on the IRC, pages 8, 99, 104-105.

<sup>45</sup> Exhibit B, Controller's Comments on the IRC, pages 8, 103-104.

certificated instructional employees.<sup>46</sup> The Controller offered to revise the audit to reimburse 30 minutes for each of the 1,149 evaluations (the same average time allowed for the 2006-2007 and 2007-2008 claims), and to augment the audit findings for 1997-1998 to 2004-2005 by \$35,967, plus indirect costs. On January 29, 2015, the claimant sent an email refusing the Controller's offer, arguing that five to six hours, rather than 30 minutes, is the average time to perform the mandated activities, as the Controller has found in other *Stull Act* audits.<sup>47</sup> As a result of the impasse, the Controller said it "did not expand [its] audit procedures to test the validity of the FY 1997-98 through FY 2004-05 listing of evaluations the district provided."<sup>48</sup> Therefore, the reimbursement claims at issue in this IRC all remain reduced to \$0.

### III. Positions of the Parties

#### A. Oceanside Unified School District

The claimant argues that the Controller incorrectly reduced the costs claimed for fiscal years 1997-1998 through 2004-2005 and seeks reinstatement of \$1,270,420. The claimant argues that it provided a list of employees, title, and the employees' hourly rates for each fiscal year that evaluations were performed. It also provided average time records, copies of its collective bargaining agreements containing evaluation requirements, and policies and procedures on evaluations, all of which confirm that the activities were performed during the audit period. The claimant states that "[t]here can be no doubt the District's school site staff performed the reimbursable activities" and that "sufficient documentation" was provided to prove each school site performed the activities of assessing and evaluating certificated employees as required by the mandate.<sup>49</sup> The claimant also states:

Furthermore, the district complied fully with the requirements of the *Stull Act* during the claiming period and we feel that we submitted claims appropriate to the costs incurred. While we were able to supply supporting documentation, it was not accepted as sufficient by the audit team. The additional documentation requested was, and is, available but would be a significant drain on district resources, including staff and funds, to provide. Consequently, the district cannot expend any further time or resources to produce the requested records.<sup>50</sup>

The claimant also relies on the Office of Management and Budget Circular A-87,<sup>51</sup> which establishes standards for state and local governments to determine administrative costs applicable to grants, contracts, and other agreements with state and local governments. According to the claimant: "Randomly sampling workers to find out what they are working on is

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<sup>46</sup> Exhibit B, Controller's Comments on the IRC, pages 15, 108.

<sup>47</sup> Exhibit B, Controller's Comments on the IRC, pages 15, 118.

<sup>48</sup> Exhibit B, Controller's Comments on the IRC, page 15.

<sup>49</sup> Exhibit A, IRC, pages 6-7.

<sup>50</sup> Exhibit A, IRC, (claimant's response to the Final Audit Report) page 98.

<sup>51</sup> Exhibit A, IRC, page 244.

one of the federally approved methods of identifying worker effort. Such method is reasonable and may be implemented rather than 100 percent time reporting method.”<sup>52</sup>

In late rebuttal comments submitted on May 4, 2015, the claimant states that “the time spent by District employees to conduct the reimbursable activities would average 6-7 hours per employee.”<sup>53</sup> The claimant further argues that the Controller’s audits on *The Stull Act* of other school district claims supports the average time claimed in this IRC. For example, the claimant refers to an audit finding of the average time spent for evaluations in the Poway Unified School District of 1.52 hours for permanent employees, 3.57 hours for non-permanent employees, and 12.93 hours for unsatisfactory evaluations. For the Norwalk-LaMirada Unified School District, the Controller allowed 1.89 hours for permanent employees, 3.07 hours for non-permanent employees, and 12.99 hours for unsatisfactory evaluations. And the claimant asserts that Long Beach Unified School District provided the same documentation to the Controller as the claimant, and was allowed an average of 2.14 hours for each evaluation for each fiscal year. The claimant argues that:

Documentation submitted by the claimant supports the reasonable time spent per evaluation of 6.40 hours [in] FY 1997-98 and 6.50 hours in FY 1998-99. For the claimant’s time to be limited by the Controller to 30 minutes is far below the other times accepted in School District audits and is inconsistent with the documentation submitted by the claimant. As a result [the] Controller’s decision to disallow the reimbursement claim is unreasonable, as well as arbitrary and capricious.<sup>54</sup>

The claimant also argues that the Controller’s offer to revise the audit findings for fiscal year 1997-1998 after the IRC was filed, by allowing only four evaluations instead of 67, is arbitrary and capricious. The claimant concludes by stating that the “District accepts the Controller’s allowable total evaluations of 1,149 . . . adjusted for the evaluations for FY 1997-1998 for a total of 1,212. The Claimant’s adjusted reimbursement claim for FY 1997-1998 to FY 2004-2005 in the amount of \$181,800.00 is based on an average hourly rate of \$60.00 per hour at 2.5 hours per evaluation.”<sup>55</sup>

#### B. State Controller’s Office

The Controller maintains that the reductions are correct and that the audit finding should be upheld because the district’s claims do not comply with the documentation requirements in the Parameters and Guidelines. Insufficient source documentation was provided to support the number of certificated instructional employees evaluated for 1997-1998 through 2004-2005. Actual cost documentation supporting the time to perform the reimbursable activities, a listing of certificated instructional employees evaluated, and the nature of the evaluations were provided only for 2006-07 and 2007-08. According to the Controller, “there is no reasonable means of applying the time allowance to FY 1997-98 through FY 2004-05 without knowing the

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<sup>52</sup> Exhibit A, IRC, page 7.

<sup>53</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 3.

<sup>54</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 4.

<sup>55</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 7.



certificated instructional employees evaluated and the reimbursability of the evaluations.”<sup>56</sup>

As to the claimant’s reference to the Office of Management and Budget Circular A-87, the Controller notes that the “district did not provide the auditors with any reasonable sampling methodology to arrive at allowable costs.”<sup>57</sup> And in response to the claimant’s argument that the Controller authorized more time per evaluation in its other audits of *The Stull Act* program, the Controller states: “Time documentation supporting the reimbursable activities of the Stull Act Program for other audits is not relevant to this audit. The district’s records supported approximately 30 minutes for the reimbursable activities of the Stull Act Program, not five to six hours, as requested by Mr. Palkowitz.”<sup>58</sup>

#### **IV. Discussion**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>59</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>60</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to

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<sup>56</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>57</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>58</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>59</sup> Government Code sections 17551, 17552; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334.

<sup>60</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>61</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”<sup>62</sup>

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>63</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>64</sup>

**Because the Claimant Did Not Provide the Controller with Contemporaneous Source Documentation of Actual Costs, as Required by the Parameters and Guidelines, the Controller’s Reductions Are Correct as a Matter of Law.**

After a test claim is approved, the Commission adopts parameters and guidelines to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs incurred under a state-mandated program.<sup>65</sup> At the time the earlier reimbursement claims in this case were filed, the Government Code also stated “[c]laims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines.”<sup>66</sup> The parameters and guidelines are regulatory, in that before their adoption, notice and an opportunity to comment on them are provided, and a full quasi-judicial hearing is held.<sup>67</sup> Once adopted, whether after judicial review or without it, the parameters and guidelines are final

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<sup>61</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>62</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>63</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>64</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

<sup>65</sup> Government Code section 17557; California Code of Regulations, title 2, section 1183.7(e).

<sup>66</sup> Government Code section 17564, as amended by Statutes 1999, chapter 643.

<sup>67</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, 805, and 808.

and binding on the parties.<sup>68</sup> The Controller may audit the records of the claimant “to verify the actual amount of the mandated costs” claimed in a reimbursement claim, and reduce any claim that the Controller determines is excessive or unreasonable.<sup>69</sup>

The Parameters and Guidelines adopted for *The Stull Act* program authorize claimants to request reimbursement for actual costs incurred and require claimants and to keep contemporaneous source documentation (documentation created at or near the same time the actual costs was incurred) to support the costs claimed:

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.<sup>70</sup>

Section V. of the Parameters and Guidelines authorizes reimbursement for employee salaries and benefits and directs claimants to do the following:

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.*<sup>71</sup>

And section VI. of the Parameters and Guidelines requires claimants to retain all documentation until the ultimate resolution of any audit findings.<sup>72</sup>

The record indicates that the documentation provided to the Controller for fiscal years 1997-2005 consists of average time forms signed by claimed staff in February or March of 2006, when the initial reimbursement claims for the program were submitted to the Controller. Each employee (evaluator) estimated the average minutes spent annually to perform evaluation activities for 1997-1998 through 2004-2005 on a single form, with estimates generally ranging from 5 to 10 hours per evaluation,<sup>73</sup> and certified under penalty of perjury that actual data or a good faith estimate was reported. Claimant also provided a list of the evaluators,<sup>74</sup> and

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<sup>68</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

<sup>69</sup> Government Code section 17561(d)(2)(A)(i) and (B).

<sup>70</sup> Exhibit A, IRC, page 53 (Parameters and Guidelines).

<sup>71</sup> Exhibit A, IRC, page 56 (Parameters and Guidelines), emphasis added.

<sup>72</sup> Exhibit A, IRC, page 57 (Parameters and Guidelines).

<sup>73</sup> Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

<sup>74</sup> Exhibit A, IRC, pages 101-141.

collective bargaining agreements from 1994 to 2007, describing its evaluation policies and procedures during the audit period.<sup>75</sup>

This documentation, however, does not verify the *actual* time taken to perform the mandated activities during the audit period, as required by the Parameters and Guidelines. Nor was the documentation prepared at or near the same time as the reimbursable activity was performed, as required by the Parameters and Guidelines. Rather, the time records were all signed in February or March 2006,<sup>76</sup> raising questions of whether the estimated times of five to 10 hours is accurate and reliable, especially in light of the Controller's calculation for 2006-2007 and 2007-2008 that showed that each evaluation took only 30 minutes, or more time than the district claimed for those years.<sup>77</sup>

Moreover, the documentation provided during the audit does not identify the employees evaluated, which is necessary to determine whether the costs claimed were limited to the scope of the mandate. This program was approved only as a higher level of service and thus, not all activities required by the Education Code to evaluate employees are reimbursable. The scope of the mandate is limited to: (1) the evaluation of certificated instructional personnel who perform the requirements of educational programs mandated by state or federal law as it reasonably relates only to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives; (2) the evaluation of certificated instructional employees that teach core subjects in grades 2 to 11 as it reasonably relates to the progress of pupils on state adopted content standards and assessment tests; and (3) the continued evaluation of permanent certificated employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation.<sup>78</sup>

After the audit was completed and the IRC filed, the claimant provided to the Controller a list of every employee evaluated during the audit years in question.<sup>79</sup> As part of its offer to revise the audit findings, the Controller said that of the 1,698 employees listed by the claimant that received evaluations for the audit period, the Controller allowed 1,149 evaluations and excluded the rest because the information the claimant provided indicated there were duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations made outside of the IRC period; and unallowable subjects or programs performed by certificated instructional employees.<sup>80</sup> The claimant, however, did not provide any time logs or other contemporaneous documentation to support the time for each evaluation. Nevertheless, the Controller offered to provide limited reimbursement for those years for 1,149 evaluations at 30 minutes per

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<sup>75</sup> Exhibit A, IRC, pages 193-240.

<sup>76</sup> Exhibit A, IRC, pages 143-191.

<sup>77</sup> Exhibit A, IRC, pages 91 and 92 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, page 13.

<sup>78</sup> Exhibit A, IRC, pages 54-56 (Parameters and Guidelines).

<sup>79</sup> Exhibit B, Controller's Comments on the IRC, page 14. The list is on pages 69-97 of Exhibit B.

<sup>80</sup> Exhibit B, Controller's Comments on the IRC, pages 15 and 108.

evaluation, based on the time logs prepared by the claimant's employees at or near the time the reimbursable activities were performed in fiscal years 2006-2007 and 2007-2008.<sup>81</sup> The claimant rejected this offer, insisting that each evaluation took five to six hours, as the Controller has found in audits of *The Stull Act* program in other school districts.<sup>82</sup>

In rebuttal comments, the claimant states that the correct number of evaluations for 1997-1998 is 67 (instead of the four allowed by the Controller in the post-IRC negotiations) and that "the time spent by District employees to conduct the reimbursable activities would average 6-7 hours per employee."<sup>83</sup> But the rebuttal comments conclude that each evaluation should be reimbursed at 2.5 hours as follows:

The District accepts the Controller's allowable total evaluations of 1,149 . . . adjusted for the evaluations for FY 1997-1998 for a total of 1,212. The Claimant's adjusted reimbursement claim for FY 1997-1998 to FY 2004-2005 in the amount of \$181,800.00 is based on an average hourly rate of \$60.00 per hour at 2.5 hours per evaluation.<sup>84</sup>

The Commission finds that the claimant's various assertions that the evaluations took either five to six hours, or six to seven hours, or 2.5 hours, are not supported by any contemporaneous source documentation to verify the actual time to perform the activities, as required by the Parameters and Guidelines. Moreover, the claimant's assertion that evaluations take 2.5 hours is not supported by any evidence in the record. Section 1185.1 of the Commission's regulations requires all assertions of fact in an IRC shall be supported by testimonial or documentary evidence and shall be submitted in accordance with section 1187.5 of the regulations. Section 1187.5 requires that written representations of fact shall be under oath or affirmation by persons who are authorized and competent to so, based on the declarant's personal knowledge or information or belief. The Controller's audits of the records of other school districts is not relevant to the claimant's audit here and, pursuant to section 1187.5(a) of the Commission's regulations, non-relevant evidence must be excluded.<sup>85</sup>

Accordingly, the Commission finds that the claimant did not comply with the requirements of the Parameters and Guidelines because no contemporaneous source documentation was provided and the documentation that was provided was insufficient to support the claimant's actual costs, and thus, the Controller's reduction of costs claimed is correct as a matter of law.

## **V. Conclusion**

For the reasons discussed above, the Commission denies this IRC.

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<sup>81</sup> Exhibit B, Controller's Comments on the IRC, pages 14 and 108.

<sup>82</sup> Exhibit B, Controller's Comments on the IRC, pages 15 and 118.

<sup>83</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 3.

<sup>84</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 7.

<sup>85</sup> California Code of Regulations, title 2, sections 1185.1 and 1187.5.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 17, 2016, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

*The Stull Act*, 14-9825-I-01

Education Code Section 44660-44665

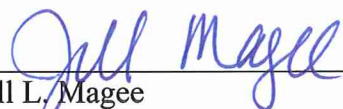
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 17, 2016 at Sacramento, California.



\_\_\_\_\_  
Jill L. Magee

Commission on State Mandates

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(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/24/16

**Claim Number:** 14-9825-I-01

**Matter:** The Stull Act

**Claimant:** Oceanside Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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