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DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Education Code Section 51210.1 (formerly 51223.1)
Statutes 1997, Chapter 640
Statutes 2002, Chapter 943

Physical Education Reports
11-PGA-04 (05-PGA-60, 98-TC-08)
State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request to amend the parameters and guidelines for the *Physical Education Reports* program filed by the State Controller's Office to update the language of the parameters and guidelines to reflect the new grade level requirement imposed by Statutes 2002, chapter 943 (AB 1793), and to renumber Education Code section 51223.1 to section 51210.1, effective January 1, 2003. In addition, the State Controller's Office requests amendments to update the boilerplate language.

Background

Under existing law, school districts are required to provide a minimum number of physical education instruction minutes to pupils in grades 1 through 8. The 1997 test claim statute added Education Code section 51223.1¹ to impose a new reporting and compliance requirement to determine whether districts selected by the Superintendent of Public Instruction (SPI) are actually providing their students in grades 1 to 8 with the statutory minimum minutes of physical education. The requirements of Education Code section 51223.1 do not apply to high schools.²

On September 28, 2000, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statute imposes a reimbursable state-mandated program upon school districts, excluding high schools, within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. On February 22, 2001, the Commission adopted the parameters and guidelines, and on March 26, 2010, upon the request of the State Controller's Office, the Commission amended the parameters and guidelines to update the boilerplate language.

Statutes 2002, chapter 943 (AB 1793) renumbered Education Code section 51223.1 to section 51210.1 and revised this program to require each school district selected by the SPI to report on its compliance with the minimum number of physical education instruction minutes required for pupils in grades 1 through 6, instead of grades 1 through 8. Thus, beginning January 1, 2003,

¹ Education Code section 51223.1 was renumbered as Education Code section 51210.1 by Statutes 2002, chapter 943.

² Education Code section 51223.1(e) (now 51210.1).

school districts were no longer mandated by the state to comply with this program with respect to students in grades 7 and 8.

On September 29, 2011, the State Controller's Office requested that these parameters and guidelines be amended to reflect elimination of these physical education requirements for pupils in grades 7 and 8, to renumber Education Code section 51223.1 to 51210.1, and to provide further updates to the boilerplate language.³

Discussion

Staff reviewed the statutes and the State Controller's request. Non-substantive changes were made to the parameters and guidelines to renumber Education Code section 51223.1 to 51210.1, and to bring them into conformity with the other parameters and guidelines adopted by the Commission. Staff modified all other sections of the parameters and guidelines as discussed below.

I. Summary of the Mandate

The State Controller's Office requested that this section be amended to reflect the elimination of the physical education compliance reporting requirements for grades 7 and 8, effective for the 2010-2011 fiscal year. Staff revised this section to add the following language:

Statutes 2002, chapter 943(AB 1783) renumbered Education Code section 51223.1 to section 51210.1 and revised this program to require each school district selected by the SPI to report on its compliance with the minimum number of physical education instruction minutes required for pupils in grades 1 through 6, instead of grades 1 through 8. Thus, beginning January 1, 2003, school districts were no longer mandated by the state to comply with this program with respect to students in grades 7 and 8.

On March 23, 2012, the Commission amended these parameters and guidelines to clarify that school districts are no longer eligible to receive reimbursement to comply with this program for students in grades 7 and 8, beginning January 1, 2003.

In addition, for costs incurred beginning July 1, 2010, the amended parameters and guidelines require school districts to use the California Department of Education approved indirect cost rate for the year that funds are expended.

II. Eligible Claimants

The State Controller also requested that this section be amended to reflect the elimination of the physical education reporting requirements for grades 7 and 8, and staff made that revision. As amended, this section states the following:

Any "school district", as defined in Government Code section 17519, with students in grades 1 through 6, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. Period of Reimbursement

The State Controller's Office requested that this section clarify that the amendments to the parameters and guidelines are effective beginning with the 2010-2011 fiscal year.

³ Exhibit A.

Amendments Limiting Reimbursement for the Mandate to Grades 1 through 6

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On September 29, 2011, the State Controller requested that these parameters and guidelines be amended. This filing date would make the proposed budget changes to activities in the parameters and guidelines effective July 1 2010.

However, Statutes 2002, chapter 943 eliminated the mandate to comply with this program for students in grades 7 and 8 effective January 1, 2003. Therefore, staff revised this section accordingly.

Effective Date of Boilerplate Language

Each set of parameters and guidelines include language that is common to all parameters and guidelines, and provides guidance to claimants on the procedures for filing reimbursement claims, the documentation required to support the reimbursement claims, records retention requirements and the legal and factual basis for the parameters and guidelines. This language is known as “boilerplate language.” When the boilerplate language is amended, certain sections will have different effective dates, depending on different statutes.

Staff added the effective dates for the boilerplate language as further discussed in the analysis. As proposed, Section III, Period of Reimbursement, states the following:

The amendments made to these parameters and guidelines become effective as follows:

1. Beginning January 1, 2003, school districts are not eligible to claim reimbursement for this program with respect to students in grades 7 and 8. (Statutes 2002, chapter 943).
2. The amendment made to Section V(B) of these parameters and guidelines addressing the indirect cost rate, is effective beginning July 1, 2010. Pursuant to Government Code section 17557(d)(1), “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. The State Controller’s Office filed this request to amend the parameters and guidelines on September 29, 2011, making the amendments to Section V(B) of these parameters and guidelines effective for the 2010-2011 fiscal year.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c) between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. Reimbursable Activities

Staff added language to this section clarifying that the reporting requirement was limited to grades 1 to 6, and further added the following sentence to this section:

Beginning January 1, 2003, school districts are not eligible for reimbursement for costs incurred to comply with these activities for grades 7 and 8.

V. Claim Preparation and Submission

1) *Amendments Proposed to the Indirect Cost Rate Language*

The Controller proposed revising the boilerplate language for the indirect cost rate. Currently, the language allows school districts to use the J-380 *non-restrictive* indirect cost rate approved by the Department of Education. The Controller's Office proposes that the method now be a "*restricted* indirect cost rate for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year costs." (Emphasis added.)

After this language was proposed, staff was informed that in 2003-2004, when all districts converted to SACS (Standardized Account Code Structure), the California Department of Education discontinued the software for the J-380 and J-580, and approved restricted indirect cost rates for school districts.

As a result, at the January 2012 hearing, the Commission adopted new indirect cost rate language for school districts as follows:⁴

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

Staff revised the *Physical Education Reports* parameters and guidelines to include this language. This language will ensure that the parameters and guidelines are consistent with the practices of the State Controller and California Department of Education (CDE). As described below, this amendment is effective beginning July 1, 2010, pursuant to Government Code section 17557(d)(1).

The general rule for the effective date of a parameters and guidelines amendment is governed by Government Code section 17557(d)(1). That section provides that an amendment resulting from a request filed on or before February 15 following a fiscal year, "shall establish reimbursement eligibility for that fiscal year." Applying the general rule to the proposed amendments here results in an effective date of July 1, 2010.

In 2011, the Legislature enacted SB 112 (Statutes 2011, chapter 144) to revise when amendments to boilerplate language in parameters and guidelines become effective. SB 112 amended Government Code section 17557(d)(2)(H) to provide that a request for amendment of the boilerplate language in parameters and guidelines "that *does not increase or decrease reimbursable costs* shall limit the eligible filing period commencing with the fiscal year in which

⁴ Amendment to Parameters and Guidelines for the *Pupil Promotion and Retention* program, (10-PGA-03, 98-TC-19).

the amended parameters and guidelines were adopted.” If section 17557(d)(2)(H) applies, then the changes to the boilerplate would be effective on July 1, 2011.

Staff finds that the amendment to the indirect cost rate affects reimbursable costs and, thus, the correct period of reimbursement for the change, if adopted, is governed by the general rule provided in Government Code section 17557(d)(1), and becomes effective beginning July 1, 2010.

An indirect cost rate is the percentage of an organization’s indirect costs to its direct costs and is a standardized method of charging individual programs for their share of indirect costs. The United States Department of Education provides the following guidance on the differences between restricted and unrestricted indirect cost rates:

Unrestricted indirect cost rates are those calculated for use on programs without limitations on indirect costs. Certain ED grant programs have a statutory requirement prohibiting the use of federal funds to supplant non-federal funds. These programs require the use of a restricted indirect cost rate, computed in accordance with 34 CFR 76.564-76.569. Generally, adjustments to the unrestricted rate calculation are made and *result in a lower rate* to claim indirect cost reimbursement on restricted rate programs.⁵

The CDE cost rates are negotiated rates between CDE and the United States Department of Education. The United States Department of Education has approved the fixed with carry-forward restricted rate methodology for calculating indirect cost rates for California LEAs. CDE has been delegated authority to calculate and approve indirect cost rates annually for LEAs.⁶ According to the California School Accounting Manual:

Approved indirect cost rates for K–12 LEAs, including charter schools, are posted online annually at <http://www.cde.ca.gov/fg/ac/ic>, usually in early spring. The rates may be used, as appropriate, to budget, allocate, and recover indirect costs for federal programs, grants, and other assistance governed by the Office of Management and Budget (OMB) Circular A-87, the *Education Department General Administrative Regulations* (EDGAR), and the *Code of Federal Regulations* (CFR), Title 34. The rates may also be used for state programs, subject to any restrictions that may govern the individual programs.⁷

Here, the proposed change to the boilerplate language changes the indirect cost rate from a “nonrestrictive indirect cost rate” to the current restricted indirect cost rates adopted by the CDE. This change will generally decrease the reimbursable costs.⁸ Thus, the general rule for the effective date for an amendment of the parameters and guidelines applies. Therefore, staff finds that the appropriate effective date for the amendment to the indirect cost rate is July 1, 2010.

⁵ United States Department of Education, *Cost Allocation Guide for State and Local Governments*, p. 9 (emphasis added).

⁶ California School Accounting Manual, 2011 Edition, p 915-1.

⁷ *Id.*, p. 915-7, underlining added (italics in original).

⁸ See United States Department of Education, *Cost Allocation Guide for State and Local Governments*, p. 9.

2) *Amendments Proposed to Clarify and Provide Notice of Existing Law Regarding Direct Cost Reporting, Offsetting Revenues, State Controller’s Revised Claiming Instructions, Remedies Before the Commission, and the Legal and Factual Basis for Parameters And Guidelines.*

The following proposed amendments to the parameters and guidelines have no effective date since they are statements of existing law and do not change any requirements. The California Supreme Court has found that “a statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment” “because the true meaning of the statute remains the same.”⁹ The following amendments are proposed for purpose of clarification and to provide notice of the law to the claimants:

V.A. Direct Cost Reporting

Revise this section to include updated boilerplate language that conforms to other parameters and guidelines recently adopted by the Commission.

This section provides guidance to claimants regarding how to file their reimbursement claims for the direct costs incurred to comply with the mandated program.

VII. Offsetting Savings and Reimbursements

Revise title of this section for the sake of clarity, to delete “savings” (since there are no offsetting savings for this mandate) and replace it with “revenues” (since there may be offsetting revenues for this mandate) and make changes to the text of this section to make it consistent with the changes to the title.

The proposed amendment to Section VII simply updates the language regarding offsetting revenue to conform to current boilerplate changes and to make the provision in this set consistent with section 1183.1(a)(7) of the Commission’s regulations. Section 1183.1(a)(7) requires that the parameters and guidelines contain a section on offsetting revenues and reimbursements to the extent applicable.

VIII. State Controller’s Revised Claiming Instructions

Add a new section VIII, which states the following:

Pursuant to Government Code section 17558(c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

This section provides the claimants with notice of when the State Controller’s Office is required to issue revised instructions, and notice of the right of local governments to file reimbursement claims once the claiming instructions are issued.

⁹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

IX. Remedies Before the Commission

Add a new section IV, which states the following:

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

This section notifies the claimants of the process for reviewing and revising claiming instructions if they do not conform with the parameters and guidelines. It also notifies parties that requests may be made to amend parameters and guidelines.

X. Legal and Factual Basis for the Parameters and Guidelines

Add a new section X, which states the following:

The statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the statement of decision, is on file with the Commission.

The proposed addition of Section X to the parameters and guidelines updates the document consistent with existing law. Section 1183.1(a)(11) of the Commission's regulations requires that the parameters and guidelines contain ". . .notice that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the commission." Therefore, these changes are merely statements of existing law that clarify the parameters and guidelines and no effect on the costs claimed.

Staff recommends that the Commission amend these sections of the parameters and guidelines as requested by the Controller and discussed above.

Staff Recommendation

Staff recommends the Commission adopt staff's proposed amendments to the parameters and guidelines, beginning on page 8.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.