

**ITEM 9**  
**FINAL STAFF ANALYSIS**  
**REVIEW OF OFFICE OF STATE CONTROLLER'S**  
**CLAIMING INSTRUCTIONS**

Education Code Section 51225.3  
Statutes 1983, Chapter 498

*Graduation Requirements*

08-RCI-01 (CSM 4181A, 05-PGA-05, 06-PGA-04, 06-PGA-05)

Castro Valley Unified, Fullerton Joint Union High, Grossmont Union High, San Jose  
Unified and Sweetwater Union High School Districts, Requestors

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**Executive Summary**

This is a request to review three sets of claiming instructions for the *Graduation Requirements* program issued by the State Controller's Office on January 9, 2009, pursuant to the amended parameters and guidelines adopted by the Commission at its November 6, 2008 hearing. 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.

**Background**

On November 6, 2008, the Commission amended the parameters and guidelines for costs incurred beginning in fiscal year 1995-1996 by adopting a reasonable reimbursement methodology representing "the one quarter class load method" for claiming increased science teacher salary costs. Three sets of parameters and guidelines were adopted to reflect the existing parameters and guidelines for the periods of reimbursement of the requests and three sets of claiming instructions were prepared by the State Controller's Office; (1) Claiming Instructions No. 2009-01, effective July 1, 1995, through June 30, 2004; (2) Claiming Instructions No. 2009-02, effective July 1, 2004, through December 31, 2004; and (3) Claiming Instructions No. 2009-03, effective January 1, 2005, through June 30, 2005, and subsequent fiscal years. The language in dispute in each set of claiming instructions states the following:

**Requirements, Limitations, and Exceptions**

Based on the Amended P's and G's, it is not necessary for a school district to re-file or amend claims for prior fiscal years in which there are no changes to claimed amounts or additional offsets. In addition, there is no requirement for a claimant to have previously filed annual reimbursement

claims in order to file claims now, pursuant to these Amended P's and G's and claiming instructions.

No provision was included in the Amended P's and G's to allow claimants to claim science teacher costs by filing for actual costs. Increased science teacher costs must be claimed based on the RRM. Refer to the Amended P's and G's Section VII. A.1. and 2.

The school districts contend, and the State Controller's Office agrees, that this paragraph requires school districts that previously filed reimbursement claims for prior fiscal years, beginning in fiscal year 1995-1996, to re-file those claims using the reasonable reimbursement methodology adopted by the Commission if the school district's teacher salary costs change with the use of the reasonable reimbursement methodology.

The school districts contend that the requirement to re-file reimbursement claims that, in many cases, have already been resolved is not required in the amended parameters and guidelines and not intended as a requirement by the Commission.

### **Staff Analysis**

Staff finds that neither the amended parameters and guidelines, nor the analysis adopted by the Commission on the proposed amendments to the parameters and guidelines, require school districts to re-file their reimbursement claims for prior fiscal years using the reasonable reimbursement methodology for science teacher salary costs.

Moreover, Government Code sections 17560, subdivision (a), and 17561, subdivision (d)(1), provide that local agencies and school districts have "the right" to file reimbursement claims based upon the parameters and guidelines adopted by the Commission, and "may" file annual reimbursement claims for costs incurred during the fiscal year. Thus, there is no requirement in the law for claimants to re-file reimbursement claims when parameters and guidelines are amended.

### **Conclusion**

Staff finds that the three sets of claiming instructions (2009-01, 2009-02, and 2009-03) issued by the State Controller's Office on January 9, 2009, on the amended parameters and guidelines for the *Graduation Requirements* program do not conform to the amended parameters and guidelines adopted by the Commission on November 6, 2008, or to Government Code sections 17560 and 17561.

### **Staff Recommendation**

Pursuant to Government Code section 17571, staff recommends that the Commission adopt this staff analysis and direct the Controller to replace the paragraph on page 1 of Claiming Instructions 2009-01, 2009-02, and 2009-03 entitled "Requirements, Limitations, and Exceptions," with the following language:

#### **Requirements, Limitations, and Exceptions**

1. Claimants that previously filed reimbursement claims based on actual costs are *not* required to amend or re-file those claims using the reasonable reimbursement methodology of "the one quarter class load method" to calculate the increased science teacher salary costs.

2. Previously filed reimbursement claims that are not re-filed or amended by the claimant pursuant to the amended parameters and guidelines will remain as previously filed and be adjudicated by the Controller according to the parameters and guidelines and claiming instructions in effect at the time of the original filing.
  3. Claimants need not have filed original reimbursement claims in order to now file reimbursement claims retroactive to FY 1995-96 pursuant to the amended parameters and guidelines.
  4. Amended and future reimbursement claims filed pursuant to the amended parameters and guidelines require the use of the reasonable reimbursement methodology of “the one quarter class load method” to claim the increased science teacher salary costs.
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## STAFF ANALYSIS

### Requestors

Castro Valley Unified, Fullerton Joint Union High, Grossmont Union High, San Jose Unified and Sweetwater Union High School Districts

### Chronology

- 11/06/08 Commission amends parameters and guidelines in Graduation Requirements program
- 12/18/08 Parameters and guidelines that apply to costs incurred beginning January 1, 2005 are corrected to delete reference to filing estimated reimbursement claims. Pursuant to Statutes 2008, chapter 6 (AB 8), estimated reimbursement claims are no longer authorized
- 01/09/09 State Controller's Office issues claiming instructions on amended parameters and guidelines
- 01/16/09 Castro Valley Unified, Fullerton Joint Union High, Grossmont Union High, San Jose Unified and Sweetwater Union High School Districts file request to review claiming instructions
- 01/22/09 Fullerton Joint Union High School District, Grossmont Union High School District, Sweetwater Joint Union High School District, and San Jose Unified School District file declarations certifying request and appointing Keith B. Petersen, SixTen and Associates as their representative
- 02/05/09 Request for review of claiming instructions deemed complete and issued for comment
- 02/24/09 State Controller's Office files comments on the request for review of claiming instructions
- 02/25/09 Department of Finance files comments on the request for review of claiming instructions
- 03/05/09 Final staff analysis issued

### Background

This is a request to review three sets of claiming instructions for the *Graduation Requirements* program issued by the State Controller's Office on January 9, 2009; (1) Claiming Instructions No. 2009-01, effective July 1, 1995, through June 30, 2004; (2) Claiming Instructions No. 2009-02, effective July 1, 2004, through December 31, 2004; and (3) Claiming Instructions No. 2009-03, effective January 1, 2005, through June 30, 2005, and subsequent fiscal years. These claiming instructions were issued to reflect the amended parameters and guidelines adopted by the Commission at its November 6, 2008 hearing. Pursuant to Government Code section 17571, a local agency or school district may request the Commission to review the claiming instructions to determine if the claiming instructions conform to the parameters and guidelines. Government Code section 17571 states the following:

The commission, upon request of a local agency or school district, shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs. 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.<sup>1</sup>

The *Graduation Requirements* program involves Education Code section 51225.3, which requires students, beginning with the 1986-87 school year, to complete at least two courses in science before receiving a high school diploma. The test claim statute increased the number of science courses required for high school graduation from one science course to two science courses. The Commission approved the test claim and adopted parameters and guidelines, with an original period of reimbursement beginning July 1, 1984.

On November 6, 2008, the Commission amended the parameters and guidelines for costs incurred beginning in fiscal year 1995-1996, by adopting the reasonable reimbursement methodology (RRM) representing “the one quarter class load method” for claiming teacher salary costs. The Commission also:

- Amended the Eligible Claimant section to specifically identify county offices of education as eligible claimants beginning in fiscal year 1995-1996.
- Added a section to the parameters and guidelines requiring school districts to retain documentation supporting the data elements for the RRM.
- Clarified the activities of supplying the new science class, acquisition of additional space, and remodeling existing space.
- Amended the Offsetting Revenue and Offsetting Savings sections of the parameters and guidelines to make the parameters and guidelines consistent with the court’s ruling in *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al., and to specifically identify sources of offsetting revenue.<sup>2</sup>

Three sets of parameters and guidelines were adopted to reflect the existing parameters and guidelines for the periods of reimbursement of the requests pursuant to Government Code section 17557 as follows:

1. Parameters and Guidelines Amendment (CSM 4181 A, 06-PGA-05); Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *July 1, 1995 through June 30, 2004*.

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<sup>1</sup> See also California Code of Regulations, title 2, section 1186 of the Commission’s regulations.

<sup>2</sup> Exhibit D.

2. Parameters and Guidelines Amendment (CSM 4181A, 05-PGA-05, 06-PGA-05), Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *July 1, 2004, through December 31, 2004.*
3. Parameters and Guidelines Amendment (04-PGA-30, CSM 4181 A, 05-PGA-05, 06-PGA-05); Effective for Reimbursement Claims Filed for Increased Science Teacher Salary Costs for Staffing the Mandated Science Class Beginning *January 1, 2005.*<sup>3</sup>

Pursuant to Government Code section 17558, subdivision (c), the Controller's Office prepared and issued three sets of revised claiming instructions on January 9, 2009. At issue is the following language on page 1 of each set of claiming instructions that the school districts contend does not conform to the amended parameters and guidelines because it requires them to re-file reimbursement claims for prior fiscal years using the reasonable reimbursement methodology for claiming teacher salary costs.

#### **Requirements, Limitations, and Exceptions**

Based on the Amended P's and G's, it is not necessary for a school district to re-file or amend claims for prior fiscal years in which there are no changes to claimed amounts or additional offsets. In addition, there is no requirement for a claimant to have previously filed annual reimbursement claims in order to file claims now, pursuant to these Amended P's and G's and claiming instructions.

No provision was included in the Amended P's and G's to allow claimants to claim science teacher costs by filing for actual costs. Increased science teacher costs must be claimed based on the RRM. Refer to the Amended P's and G's Section VII. A.1. and 2.<sup>4</sup>

#### **School Districts' Request to Review Claiming Instructions**

The school districts object to the two paragraphs on page 1 of the claiming instructions that are quoted above. The school districts contend that these paragraphs require claimants to re-file reimbursement claims for teacher salary costs that were previously filed for fiscal years 1995-96 through 2003-04. The school districts contend that the requirement to re-file reimbursement claims that have already been resolved is not required in the amended parameters and guidelines, and not intended as a requirement by the Commission.

The school districts' filing summarizes language contained in draft claiming instructions issued by the Controller's Office the day before the final claiming instructions were issued.<sup>5</sup> The draft claiming instructions stated clearly that school districts were required to re-file reimbursement claims as follows:

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<sup>3</sup> See Exhibit A.

<sup>4</sup> Exhibit A.

<sup>5</sup> Request to review claiming instructions, page 5. (Exhibit A.)

One of the reasons for the adoption of the Amended P's and G's was to replace the actual cost claiming method with a reasonable reimbursement methodology (RRM) for claiming increased teacher salary costs for staffing the new mandated science class.

[¶]

If any other method was used to claim increased teacher salary costs for staffing the new mandated science class for fiscal years 1995-1996 through 2003-2004, a claimant is required to refile.

The language in the final claiming instructions was changed as follows:

Based on the Amended P's and G's, it is not necessary for a school district to re-file or amend claims for prior fiscal years in which there are no changes to claimed amounts or additional offsets. In addition, there is no requirement for a claimant to have previously filed annual reimbursement claims in order to file claims now, pursuant to these Amended P's and G's and claiming instructions.

No provision was included in the Amended P's and G's to allow claimants to claim science teacher costs by filing for actual costs. Increased science teacher costs must be claimed based on the RRM. Refer to the Amended P's and G's Section VII. A.1. and 2.

The school districts argue that these two paragraphs in the final claiming instructions contradict each other; the first paragraph states that there is no need to re-file or amend previously filed claims, and the second paragraph states that increased science teacher costs may only be claimed using the RRM. The school districts state that "The reasonable reimbursement methodology could not have been used for the original claims because it did not exist until November 6, 2008." Thus, school districts interpret the final claiming instructions as requiring claimants that previously filed reimbursement claims for fiscal years 1995-96 through 2003-04 to re-file those claims using the RRM.

The school districts request that the Commission direct the Controller to modify the claiming instructions to indicate the following:

1. Claimants that previously filed reimbursement claims based on actual costs are *not* required to amend or re-file those claims using the quarterload reasonable reimbursement methodology.
2. Previously filed claims will remain as previously filed and be adjudicated by the Controller according to the parameters and guidelines and claiming instructions in effect at the time of the original filing.
3. Claimants need not have filed original claims in order to now file amended claims retroactive to FY 1995-96.
4. Amended and future claims require the use of the reasonable reimbursement methodology to calculate the increased science teacher costs.

### **Comments from the State Controller's Office**

The Controller's Office contends that the amended parameters and guidelines were adopted to "replace" the actual cost claiming method with the RRM for claiming increased science teacher costs. The Controller relies on the first sentence in Section III of the amended parameters and guidelines:

#### **III. AMENDMENT TO THE PARAMETERS AND GUIDELINES**

*The parameters and guidelines amendment adopted on November 6, 2008, was adopted pursuant to Government Code sections 17557 and 17518.5, to replace the actual cost claiming method with a reasonable reimbursement methodology for claiming increased teacher salary costs for staffing the new mandated science class. The parameters and guidelines amendment also clarifies the activities of supplying the new science class, acquiring and remodeling additional space, and acquiring additional equipment, which may be claimed using the actual cost claiming method. Finally, this parameters and guidelines amendment adds language regarding the reimbursement of teacher salary costs to Section X, Offsetting Savings, consistent with the court's ruling in *San Diego Unified School District v. Commission on State Mandates*, Sacramento County Superior Court Case No. 03CS01401; and identifies funds appropriated from restricted resources specifically to pay teacher salary costs and instructional materials in Section IX, Offsetting Revenue and Other Reimbursements. (Emphasis added.)*

The Controller states that this language

...replace[s] (emphasis added) the actual cost claiming method with a reasonable reimbursement methodology (RRM) for claiming increased science teacher salary costs for staffing for the period effective July 1, 1995 through June 30, 2004, July 1, through December 31, 2004, and January 1, 2005 and subsequent fiscal years was interpreted by SCO staff to imply that the method of reimbursement for claims filed in prior fiscal years replaced (emphasis added) the actual cost method. The SCO claiming instructions stated that it was not necessary for a school district to re-file or amend claims for prior fiscal years in which there are no changes to claimed amounts or additional offsets. (Underline in original.)

The Controller also states that the issue of re-filing claims based on the RRM instead of actual costs going back to fiscal year 1995-96 was not discussed at the hearing on the proposed amendments to the parameters and guidelines. Thus, the Controller's Office supports the request for clarification.

### **Comments from the Department of Finance**

The Department of Finance states the following:

While the Department of Finance is responding to this request, it is with abundance of caution that we provide our input. We continue to oppose the recently adopted reasonable reimbursement methodology (RRM) for calculating increased teacher salary costs because it is neither accurate nor cost efficient. Nonetheless, Finance understands the Commission's action on November 6, 2008 was to replace the actual cost methodology for



increased teacher salaries with the quarter load RRM for all new or amended cost claims beginning July 1, 1995. The claiming instructions reflect this action.

**Issue: Do the claiming instructions conform to the parameters and guidelines?**

Government Code section 17558, subdivision (c), requires the State Controller's Office to prepare and issue revised claiming instructions within sixty (60) days after receiving amended parameters and guidelines. Government Code section 17558, subdivision (b), requires that the claiming instructions be derived from the adopted parameters and guidelines. Government Code section 17571 states that, upon request of a party, 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.

Thus, the issue is whether the language in the claiming instructions conforms to the parameters and guidelines. The language in dispute states the following:

Based on the Amended P's and G's, it is not necessary for a school district to re-file or amend claims for prior fiscal years in which there are no changes to claimed amounts or additional offsets. In addition, there is no requirement for a claimant to have previously filed annual reimbursement claims in order to file claims now, pursuant to these Amended P's and G's and claiming instructions.

No provision was included in the Amended P's and G's to allow claimants to claim science teacher costs by filing for actual costs. Increased science teacher costs must be claimed based on the RRM. Refer to the Amended P's and G's Section VII. A.1. and 2.

Unlike language in the draft claiming instructions, this language does not expressly require school districts to re-file their reimbursement claims using the RRM and, given the comments filed by the parties, appears vague and ambiguous. The Controller's Office has taken the position that the amended parameters and guidelines replaces the claiming methods for teacher salary costs, and that if a school district's teacher salary costs change with the use of the RRM, the school district is required to re-file their claim.

This alleged requirement to re-file reimbursement claims if the RRM changes the claimed amount for a fiscal year may affect the requesting school districts in this case. At the hearing on the proposed amendments to the parameters and guidelines, Mr. Keith Petersen testified that the claims he prepares for his clients under the original parameters and guidelines are "slightly larger" than if he used the RRM adopted by the Commission.<sup>6</sup> The alleged requirement also affects the 22 school districts that challenged the Commission's decisions on incorrect reduction claims for this program in *San Diego Unified School District, et al. v. Commission on State Mandates et al.*, Case No. 03CS01401 et al., and *West Contra Costa Unified School District et al. v.*

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<sup>6</sup> Transcript from November 6, 2008 Commission Hearing, page 61, lines 6-15. (Exhibit A.)

*Commission on State Mandates, et al.*, Case No. 05CS01253 et al. These cases resolved with a court ruling in favor of the school districts on the issue of teacher salary costs, and full reimbursement on their reimbursement claims for teacher salary costs. None of the reimbursement claims at issue in these lawsuits used the quarter load method for claiming costs for teacher salaries.<sup>7</sup>

For the reasons below, staff finds that the language in the claiming instructions to require school districts to re-file reimbursement claims using the RRM does not conform to the amended parameters and guidelines.

Section III. of the amended parameters and guidelines states that the amended parameters and guidelines replaces the actual cost claiming method with the RRM for claiming increased teacher salary costs for staffing the new mandated science class. Section VIII. A. states that the Commission adopted the RRM in lieu of filing detailed documentation of actual costs. Thus, the plain language of the amended parameters and guidelines requires school districts *that file* all new and amended reimbursement claims for teacher salary costs beginning in fiscal year 1995-96 to use the RRM to calculate their costs.

The analysis adopted by the Commission on proposed amendments to the parameters and guidelines further states the following:

If the parameters and guidelines are amended by the Commission, the State Controller's Office will be required to issue revised claiming instructions pursuant to Government Code section 17558. Eligible claimants *may be allowed* to file new claims under the revised claiming instructions. If a claimant has received state mandate reimbursement, in whole or in part, for the claim year for an activity listed in the revised claiming instructions, the claimant would not be eligible to receive 100% reimbursement for the same activity for same [sic] claim year that has already been reimbursed. (Emphasis added.)<sup>8</sup>

However, neither the amended parameters and guidelines, nor the analysis adopted by the Commission on the proposed amendments to the parameters and guidelines, require school districts to re-file their reimbursement claims for prior fiscal years using the RRM for teacher salary costs.

Moreover, it is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. When an administrative agency acts in excess of the powers conferred upon

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<sup>7</sup> See Item 3, November 6, 2008 Commission Hearing, Revised Final Staff Analysis, Proposed Amendments to Parameters and Guidelines as Modified by Staff, pages 16-19. (Exhibit D.)

<sup>8</sup> Item 3, November 6, 2008 Commission Hearing, Revised Final Staff Analysis, Proposed Amendments to Parameters and Guidelines as Modified by Staff, page 63. (Exhibit D.)

it by statute or constitution, its action is void.<sup>9</sup> The Commission's authority to act is based solely on Government Code section 17500 et seq. These statutes do not require or authorize the Commission to require a local agency or school district to re-file a reimbursement claim when parameters and guidelines are amended. Rather, the statutes clearly provide that local agencies and school districts have "the right" to file reimbursement claims based upon the parameters and guidelines adopted by the Commission (Gov. Code, § 17561, subd. (d)(1)), and "may" file annual reimbursement claims for costs incurred during the fiscal year (Gov. Code § 17560, subd. (a)).

Therefore, staff finds that the language in the claiming instructions does not conform to the parameters and guidelines, or to Government Code sections 17560 and 17561. Staff further finds that the language proposed by the school districts as modifications to the claiming instructions is necessary to clarify the claiming instructions and the amendments made by the Commission to the parameters and guidelines. Staff has further modified the proposed language for clarity and consistency with the amended parameters and guidelines, and recommends that this language replace the paragraph on page 1 of the claiming instructions entitled "Requirements, Limitations, and Exceptions" as follows:

1. Claimants that previously filed reimbursement claims based on actual costs are *not* required to amend or re-file those claims using the ~~quarter load~~ reasonable reimbursement methodology of "the one quarter class load method" to calculate the increased science teacher salary costs.
2. Previously filed reimbursement claims that are not re-filed or amended by the claimant pursuant to the amended parameters and guidelines will remain as previously filed and be adjudicated by the Controller according to the parameters and guidelines and claiming instructions in effect at the time of the original filing.
3. Claimants need not have filed original reimbursement claims in order to now file ~~amended~~ reimbursement claims retroactive to FY 1995-96 pursuant to the amended parameters and guidelines.
4. Amended and future reimbursement claims filed pursuant to the amended parameters and guidelines require the use of the reasonable reimbursement methodology of "the one quarter class load method" to ~~calculate~~ claim the increased science teacher salary costs.

## CONCLUSION

Staff finds that the three sets of claiming instructions (2009-01, 2009-02, and 2009-03) issued by the State Controller's Office on January 9, 2009, on the amended parameters and guidelines for the *Graduation Requirements* program do not conform to the amended parameters and guidelines adopted by the Commission on November 6, 2008, or to Government Code sections 17560 and 17561.

### Staff Recommendation

Pursuant to Government Code section 17571, staff recommends that the Commission adopt this staff analysis and direct the Controller to replace the paragraph on page 1 of

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<sup>9</sup> *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104. (Exhibit E.)

Claiming Instructions 2009-01, 2009-02, and 2009-03 entitled “Requirements, Limitations, and Exceptions,” with the following language:

**Requirements, Limitations, and Exceptions**

1. Claimants that previously filed reimbursement claims based on actual costs are *not* required to amend or re-file those claims using the reasonable reimbursement methodology of “the one quarter class load method” to calculate the increased science teacher salary costs.
2. Previously filed reimbursement claims that are not re-filed or amended by the claimant pursuant to the amended parameters and guidelines will remain as previously filed and be adjudicated by the Controller according to the parameters and guidelines and claiming instructions in effect at the time of the original filing.
3. Claimants need not have filed original reimbursement claims in order to now file reimbursement claims retroactive to FY 1995-96 pursuant to the amended parameters and guidelines.
4. Amended and future reimbursement claims filed pursuant to the amended parameters and guidelines require the use of the reasonable reimbursement methodology of “the one quarter class load method” to claim the increased science teacher salary costs.