

ITEM 11

PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Education Code Sections 35295, 35296, 35297, 40041.5 and 40042
Statutes 1984, Chapter 1659

and

Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8
Statutes 1997, Chapter 736 and Statutes 1999, Chapter 996

Amended By

Statutes 2004, Chapter 895 (Assem. Bill No. 2855)

Emergency Procedures, Earthquake Procedures, and Disasters and
Comprehensive School Safety Plans

04-PGA-24 (CSM-4241, 98-TC-01, 99-TC-10)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This item was originally scheduled for the January 26, 2006 hearing. On January 20, 2006, Keith Petersen, SixTen and Associates requested the item be pulled from the proposed consent calendar, or postponed until the next Commission hearing to allow interested parties to comment on the proposed amendments. Commission staff postponed this item and set February 8, 2006 as the due date for comments on the proposed parameters and guidelines amendments. No comments were received.

The staff analysis prepared for the January hearing is revised to address the issues raised in Mr. Petersen's letter. However, staff notes that no changes are made to staff's proposed parameters and guidelines amendments as issued for the January hearing.

Background

Emergency Procedures, Earthquakes and Disasters (Emergency Procedures)

On July 23, 1987, the Commission on State Mandates (Commission) determined that Statutes 1984, chapter 1659 imposed a reimbursable state mandate on school districts and established a new program by requiring the governing board of any school district to:

- Establish an earthquake emergency procedure system.¹
- Require the governing board of any school district to grant the use of school facilities, grounds and equipment for mass care and welfare shelters to public agencies in the event of a disaster or other emergency without the ability to recover direct costs from the user.²

¹ Education Code sections 35295 and 35296.

On March 23, 1989, the Commission adopted parameters and guidelines for this program and on February 28, 1991 and May 29, 2003, adopted amendments.³

Comprehensive School Safety Plans

On August 23, 2001, the Commission determined that Education Code sections 35294.1, 35294.2, 39294.6, and 35294.8, as added and amended by Statutes 1997, Chapter 736 and Statutes 1999, Chapter 996, constituted a reimbursable state-mandated program by requiring each school district and county office of education to develop and adopt comprehensive school safety plans that are relevant to the safety needs of each school. The statute also specified that each safety plan must include routine and emergency disaster procedures. The Commission also found that the test claim legislation did not require school sites or school districts to *implement* their safety plans. This finding was based on the plain language of the test claim legislation which does not require school sites to implement their safety plans. Moreover, legislative intent stated that the purpose of the test claim legislation is to “develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process.” Legislative intent did not identify implementation as a purpose.

On July 30, 2002, the Commission reconsidered the prior final decision. On reconsideration, the decision was amended to clarify that the emergency procedures in the *Emergency Procedures* test claim refers to emergency procedures for earthquake safety and made other technical corrections. On May 29, 2003, the Commission adopted parameters and guidelines for this program.⁴

Consolidated Parameters and Guidelines

On July 31, 2003, the Commission consolidated the parameters and guidelines for the *Emergency Procedures* and *Comprehensive School Safety Plans* programs.⁵

Amendments to Test Claim Statutes

Statutes 1996, chapter 277, repealed sections 40041.5 and section 40042 of the *Emergency Procedures* program and renumbered them as sections 38132 and 38133.

On June 23, 2003, a new test claim, *Comprehensive School Safety Plans II* (02-TC-33) was filed on Education Code sections 35294.1, 35294.2, 35294.6 and 35294.8, as amended by Statutes 2001, chapters 646 and 890; Statutes 2002, chapters 91, 506, and 735. This test claim is pending.

Statutes 2003, chapter 828 (SB 719) repealed, renumbered and amended the test claim statutes addressed in *Comprehensive School Safety Plans*. The original provisions are now in Education Code sections 32281, 32282, 32286, and 32288.

Statutes 2004, chapter 895 (AB 2855) amended Education Code sections 32282 (former § 35294.1, *Comprehensive School Safety Plans*) and 35295, 35296, and repealed 38132 (former §

² Education Code section 40041.5.

³ See Exhibit A.

⁴ See Exhibit B.

⁵ See Exhibit C.

40041.5) (*Emergency Procedures*). The amendments deleted public school districts from the state-mandated requirements to establish earthquake emergency procedure systems pursuant to Education Code sections 35295, 35296, and repealed section 38132, the requirement for public schools to allow public agencies, including the Red Cross, to use school facilities during disasters. Although no amendments were made to section 35297, this section now only applies to private schools.

On November 1, 2005, the State Controller's Office (SCO) requested that the consolidated parameters and guidelines be amended to conform the 2004 amendments to the test claim statutes.⁶

Conclusion and Recommendation

Staff concludes that effective, January 1, 2005, based on the amendments made by AB 2855, the *Emergency Procedures, Earthquake Procedures, and Disasters* program is no longer reimbursable and the parameters and guidelines are no longer required.

Staff agrees with the State Controller's Office request and recommends that the Commission:

- Adopt staff's proposed amendments to the consolidated parameters and guidelines to limit reimbursement to December 31, 2004, for the reimbursable activities that were approved based on the Commission's decision on *Emergency Procedures*. This amendment would apply to reimbursement claims filed for costs incurred in fiscal year 2004-2005 (beginning on page 11).
- Adopt staff's proposed amendments to the consolidated parameters and guidelines to delete all references to, and all reimburseable activities and direct costs for the *Emergency Procedures* program. This amendment would apply to reimbursement claims filed for costs incurred beginning in fiscal year 2005-2006 (beginning on page 21).
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁶ See Exhibit D.

Discussion

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.⁷ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.⁸ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁹

Effect of AB 2855 on the Emergency Procedures Program

The plain language of AB 2855 deleted the mandated activities for public schools to implement the *Emergency Procedures* program.

Staff finds that effective January 1, 2005, AB 2855 amended Education Code sections 35295, 35296, and repealed 38132 (former § 40041.5) (*Emergency Procedures*). The amendments deleted “public school districts” from the state-mandated requirements to establish earthquake emergency procedure systems pursuant to Education Code sections 35295 and 35296. Although section 35297 was not amended, the amendments made to sections 35295 and 35296 made the *earthquake emergency procedure system*, as defined, inapplicable to public schools.

Specifically, AB 2855, amended Education Code section 35295, as follows

The Legislature finds and declares the following:

- (a) Because of the generally acknowledged fact that California will experience moderate to severe earthquakes in the foreseeable future, increased efforts to reduce earthquake hazards should be encouraged and supported.

⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

⁸ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁹ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

- (b) In order to minimize loss of life and disruption, it is necessary for all ~~public or private~~ elementary schools and high schools to develop school disaster plans and specifically an earthquake emergency procedure system so that ~~students~~ pupils and staff will act instinctively and correctly when an earthquake disaster strikes.
- (c) It is therefore the intent of the Legislature in enacting this article to authorize the establishment of earthquake emergency procedure systems in kindergarten and grades 1 through 12 in all ~~the public or private~~ schools in California.

Staff finds that Education Code section 35295, as amended, does not apply to public schools and does not mandate public schools to perform the activities specified in the parameters and guidelines.

AB 2855 amended Education Code section 35296, as follows:

~~The governing board of each school district and county superintendent of schools of each county shall establish an earthquake emergency procedure system in every public school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. The governing board of each private school shall establish an earthquake emergency procedure system in every private school building under its jurisdiction having an occupant capacity of 50 or more pupils or more than one classroom. Governing boards and county superintendents~~ A governing board may work with the Office of Emergency Services and the Seismic Safety Commission to develop and establish the earthquake emergency procedure systems.

Staff finds that Education Code section 35296, as amended, does not apply to public schools and does not mandate public schools to perform the activities specified in the parameters and guidelines.

Education Code section 35297 states:

The earthquake emergency procedure system shall include, but is not limited to, all of the following:

- (a) A school building disaster plan, ready for implementation at any time for maintaining the safety and care of students and staff.
- (b) A drop procedure. As used in this article, “drop procedure” means an activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools.
- (c) Protective measures to be taken before, during, and following an earthquake.
- (d) A program to ensure that the students and that both the certificated and classified staff are aware of, and properly trained in the earthquake emergency procedure system.

Staff finds that effective January 1, 2005, Education Code section 35297 does not apply to public schools and does not mandate public schools to perform the activities specified in the parameters and guidelines.

Prior to its repeal by AB 2855, Education Code section 38132 stated:

Notwithstanding section 38134, the governing board of any school district shall grant the use of school buildings, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The governing board shall cooperate with these agencies in furnishing and maintaining such services as the governing board may deem necessary to meet the needs of the community.

Staff finds that with the repeal of Education Code section 38132 (formerly § 40041.5), there is no reimbursable state-mandated program for school district governing boards to grant the use of school buildings, grounds, and equipment to public agencies, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare.

Interested Person Comments

Mr. Petersen's January 20, 2006 letter stated:¹⁰

...Your action proposes to "repeal" reimbursement of the Emergency Disaster Plans pursuant to Statutes of 2004, Chapter 895. Your analysis states that AB 2855 deleted all mandated activities [of the Emergency Procedures program] for public schools". However, the same Chapter, at section 1, simultaneously moved those requirements to Education Code section 32282.

Effect of AB 2855 on the Comprehensive School Safety Plans Program

Staff agrees that AB 2855 added language addressing *emergency procedures for earthquake safety* to Education Code section 32282 which describes the contents of the *Comprehensive School Safety Plan*. However, staff finds that AB 2855's amendments to Education Code section 32282 is not a restatement of the original *Emergency Procedures* program pursuant to Government Code section 9604 which provides, as follows:

When the provisions of one statute are carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments, any reference made by any statute, charter or ordinance to such provisions shall, unless a contrary intent appears, be deemed a reference to the restatements and continuations.

On August 23, 2001, the Commission determined that Education Code sections 35294.1, 35294.2, 39294.6, and 35294.8, as added and amended by Statutes 1997, Chapter 736 and Statutes 1999, Chapter 996, constituted a reimbursable state-mandated program by requiring each school district and county office of education to develop and adopt comprehensive school safety plans that are relevant to the safety needs of each school. Education Code section 32282, subdivision (a)(2) requires identification of "appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety.... Among the elements specified for inclusion in this activity are "routine and emergency disaster procedures."

¹⁰ See Exhibit E.

The Commission also found that the test claim legislation did not require school sites or school districts to *implement* their safety plans. This finding was based on the plain language of the test claim legislation which does not require school sites to implement their safety plans. Moreover, legislative intent stated that the purpose of the test claim legislation is to “develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process.” Legislative intent did not identify implementation as a purpose.¹¹

AB 2855 added elements from the repealed earthquake emergency procedure system statutes to the scope of routine and emergency disaster procedures by adding new subdivisions (a)(2)(B)(i)(I)-(IV). AB 2855 also added new subdivision (a)(2)(B)(ii) to section 32282. This new subdivision included establishment of a procedure to allow a public agency to use school buildings ... during disasters or other emergencies affecting the public health and welfareto the scope of routine and emergency disaster procedures.

Under prior law, the Emergency Earthquake Disaster Plan was a separate program; that was not required by the plain meaning of the statute to be included in the *Comprehensive School Safety Plan*. Governing boards and county superintendents were required to establish the earthquake emergency procedure system and could work with the Office of Emergency Services and the Seismic Safety Commission to establish the earthquake emergency procedure systems.

In contrast, before adopting its initial *comprehensive school safety plan*, the schoolsite council or school safety planning committee holds a public meeting at the school site to allow members of the public the opportunity to express an opinion about the plan. Each school adopts its plan, and the plan is submitted to the school district or county office of education for approval. There are also statutory requirements for annual evaluation and update of the plan; consultation, cooperation, and coordination with other school sites, and making available an updated file of all safety related plans and materials for public instruction. In addition, new schools may qualify for grants to develop the initial comprehensive school safety plan and school districts may qualify for grants to implement the plan.

As amended by AB 2855, the *comprehensive school safety plan* includes emergency earthquake disaster plans as part of its routine and emergency disasters component.

Based on the differences in the original *Emergency Procedures* program and the *comprehensive school safety planning process*, staff finds that AB 2855’s amendments to Education Code section 32282, are not a restatement of prior law contained in Education Code sections 35295, 35296, and 38132. Therefore, without a test claim finding on the 2004 amendments to Education Code section 32282, the parameters and guidelines for the *Comprehensive School Safety Plans* program cannot be amended to incorporate the activities that may be required to implement the 2004 amendments.

¹¹ On July 30, 2002, the Commission reconsidered the prior final decision. On reconsideration, the decision was amended to clarify that the emergency procedures in the *Emergency Procedures* test claim refers to emergency procedures for earthquake safety and make other technical corrections. On May 29, 2003, the Commission adopted parameters and guidelines for this program.

Review of Staff’s Proposed Parameters and Guidelines Amendments

Staff reviewed the Statements of Decision, consolidated parameters and guidelines, AB 2855 and the SCO’s request. Staff modified the title and captions and made substantive changes to all sections of the parameters and guidelines, except Section II. Eligible Claimants. The substantive changes are discussed below:

I. Summary of the Mandate

This section is updated to describe the amendments made to the test claim statutes, effective January 1, 2005, by AB 2855 for fiscal year 2004-2005;¹² and to delete all references to the *Emergency Procedures* program beginning for fiscal year 2005-2006.¹³

III. Period of Reimbursement

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On November 1, 2005, the SCO requested that these parameters and guidelines be amended. This filing date would make the proposed amendments effective July 1, 2004. However, the legislation that caused the need for the amendments did not become effective until January 1, 2005. Therefore, staff revised this section to specify the operative date for reimbursement claims filed for fiscal year 2004-2005¹⁴ and for reimbursement claims filed beginning in fiscal year 2005-2006 (and thereafter).¹⁵

This section is updated to add language that “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

Section IV A. of the consolidated parameters and guidelines allow reimbursement for the following activities based on the *Emergency Procedures* statement of decision:

1. Earthquake Emergency Procedure System
 - a. One-Time Activities
 - i. Developing and establishing a district earthquake emergency procedure system that shall include all of the following:
 - ii. A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs.
 - iii. A drop procedure.¹⁶

¹² See Exhibit B.

¹³ See Exhibit C.

¹⁴ See Exhibit B.

¹⁵ See Exhibit C.

¹⁶ As used in this article, “drop procedure” means an activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once

- iv. Protective measures to be taken before, during, and following an earthquake.
- v. A program to ensure that the students and that both the certificated and classified staff are aware of and properly trained in, the earthquake emergency procedure system.

(Ed. Code, §35297.)

b. On-Going Activities

- i. Updating the district earthquake emergency procedure system as to those activities identified in 1.a. above, including the training program.
- ii. Employees reviewing the requirements of the Earthquake Emergency Procedure System program and attending training meetings to receive instruction.
- iii. Employees preparing to conduct training sessions. However, in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system is not reimbursable.

2. Mass Care and Welfare Shelters – Earthquake and Other Disasters

a. On-Going Activities

- i. Secure and supervise facilities for the purpose of opening and closing the facility or portions of the facilities and to provide security at the facility during the period of the emergency.
- ii. Maintain and clean-up district facilities during the emergency or after for the purpose of making the facility ready for normal operation.
- iii. Utility cost incurred by the district directly related to the usage of district facilities for Mass Care and Welfare Shelters.

Fiscal Year 2004-2005

Staff finds that reimbursement for the *Emergency Procedures, Earthquake Procedures, and Disasters* program identified in Section IV. Reimbursable Activities, Section A. of the Consolidated Parameters and Guidelines, ended on December 31, 2004 because of the amendments enacted by AB 2855.

Therefore, staff concludes that the consolidated parameters and guidelines should be amended to limit the period of reimbursement for the reimbursable activities for the *Emergency Procedures, Earthquake Procedures, and Disasters* program, to December 31, 2004. This amendment would apply to reimbursement claims filed for costs incurred during fiscal year 2004-2005.

Fiscal Year 2005-2006

Staff finds that effective, January 1, 2005, based on the amendments made by AB 2855, the *Emergency Procedures, Earthquake Procedures, and Disasters* program, is no longer reimbursable. Therefore, the parameters and guidelines are no longer required.

each school quarter in elementary schools and at least once a semester in secondary schools.
(Ed. Code, § 35297.)

Therefore, staff concludes that the Reimbursable Activities described in Section IV.A of the Consolidated Parameters and Guidelines for this program should be deleted. This amendment would apply to reimbursement claims filed for costs incurred beginning in fiscal year 2005-2006.

Other Changes

Staff also updated code cites and deleted references to test claims that are no longer reimbursable (*Open Meetings Act* and *School Crimes Reporting II*).

Sections V. Through IX.

The remaining sections are updated, as necessary, to make these parameters and guidelines consistent with language in recently adopted parameters and guidelines.

Also, for fiscal year 2005-2006, Section V. A. 6. Training, a. *Emergency Procedures, Earthquake Procedures and Disasters* is deleted.

Staff Recommendation

Staff recommends the Commission:

- Adopt staff's proposed amendments to the consolidated parameters and guidelines to limit reimbursement to December 31, 2004, for the reimbursable activities that were approved based on the Commission's decision on *Emergency Procedures*. This amendment would apply to reimbursement claims filed for costs incurred in fiscal year 2004-2005 (beginning on page 11).
- Adopt staff's proposed amendments to the parameters and guidelines to delete all references to, and all reimburseable activities and direct costs for the *Emergency Procedures* program. This amendment would apply to reimbursement claims filed for costs incurred beginning in fiscal year 2005-2006 (beginning on page 21).
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.