

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 44830.1, 44830.2, 45125, 45125.01, and 45125.2; Statutes 1998, Chapter 594; Statutes 1998, Chapter 840; Statutes 1999, Chapter 78; Penal Code Sections 11077 and 11105.02; Statutes 1972, Chapter 1437; Statutes 1992, Chapter 1026; California Code of Regulations, Title 11, Sections 700-708.

Filed on December 15, 2000,

By Napa County Office of Education,
Claimant.

No. 00-TC-05

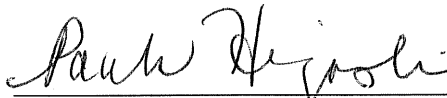
Criminal Background Checks II

ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND CALIFORNIA CODE OF
REGULATIONS, TITLE 2, SECTION
1183.12

(Adopted on December 2, 2003)

PARAMETERS AND GUIDELINES

On December 2, 2003, the Commission on State Mandates adopted the attached Parameters and Guidelines.



PAULA HIGASHI, Executive Director

12-5-03
Date

PARAMETERS AND GUIDELINES

Education Code Sections 44830.1, 44830.2, 45 125,
45125.01, and 45125.2

Statutes 1998, Chapters 594 and 840
Statutes 1999, Chapter 78

California Code of Regulations, Title 11, Sections 700-708

Criminal Background Checks II (00-TC-05)

Napa County Office of Education, Claimant

I. SUMMARY OF THE MANDATE

On February 27, 2003, the Commission adopted its Statement of Decision finding that Education Code sections 44830.1, 45125, 45125.01, and 45125.2 impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and impose costs mandated by the state pursuant to Government Code section 175 14 for the following activities:

- ⚡ **Communication with DOJ:** (1) Entering into contracts with the Department of Justice (DOJ) in order to receive notification of subsequent arrests; (2) notifying the DOJ when the employment of the applicant is terminated, when the applicant's certificate is revoked, or when the applicant may no longer renew or reinstate the certificate; (3) immediately returning the subsequent arrest notification to the DOJ and informing the DOJ that the district is no longer interested in the applicant for a person unknown to the district, or for a person no longer employed by the district, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established; and (4) immediately notifying the DOJ if the applicant is denied licensing or certification. (Stats. 1998, ch. 840; Ed. Code, §§ 44830.1, subd. (i) & 45125, subd. (j).)
- ⚡ **Storage of DOJ documents:** Storing criminal history records and reports of subsequent arrest received from the DOJ in a locked file separate from other files accessible only to the custodian of records. (Stats. 1998, ch. 840, and Stats. 1999, ch. 78; Ed. Code, §§ 44830.1, subd. (n)(2), 44830.2, subd. (f)(2), 45125.01 subd. (f)(2), & 45125, subd.(k)(2).)
- ⚡ **Destruction of DOJ information:** Destroying information received from the DOJ upon a hiring determination in accordance with subdivision (a) of Section 708 of Title 11 of the California Code of Regulations, requiring that destruction of criminal offender record information be carried out so the identity of the subject can no longer reasonably be ascertained, and requiring a witness from the school district when records are destroyed outside the district. (Stats. 1998, ch. 840, Ed. Code, §§ 44830.1, subd. (n)(3), & 45125, subd. (k)(3).)

- ⌘ **Fingerprint card request to FBI:** Requesting that the DOJ forward copies of non-certificated employees' fingerprint cards to the Federal Bureau of Investigation. (Stats. 1998, ch. 840; Ed. Code, § 45125, subd. (b)(3).)
- **Maintaining a list of the number of current employees:** Maintaining a list indicating the current number of employees who have not completed the requirements of Education Code section 45 125 (except for pupils employed in a temporary or part-time position in the school they attend). (Stats. 1998, ch. 840; Ed. Code, § 45125, subd. (d).)
- ⌘ **Subsequent arrest service request:** Requesting subsequent arrest service from the DOJ for certificated and non-certificated positions. (Stats. 1998, ch. 840; Ed. Code, §§ 44830.1, subd. (i), & 45125, subd. (j).)
- ⌘ **Precautions dealing with construction contractors:** When contracting for construction, reconstruction, rehabilitation, or facility repair, determining whether the contractor will have "limited contact" with pupils, and if not, installing a physical barrier at construction worksites at school facilities, or having a contractor employee continually supervising and monitoring employees of construction contractors who have not been convicted of a violent or serious felony, or conducting surveillance of employees of construction contractors. (Stats. 1998, ch. 840; Ed. Code, § 45 125.2, subd. (a).)

The Commission also found that Penal Code section 11077 (Stats. 1972, ch. 1437), and Penal Code section 11105.02 (Stats. 1992, ch. 1026), and training requirements mentioned in Education Code sections 44830.1, subdivision (n)(4), and 45 125, subdivision (k)(4), are not subject to article XIII B, section 6.

The Commission further found the following do not constitute new programs or higher levels of service within the meaning of article XIII B, section 6:

- ⌘ **Submittal of fingerprints, description and fee to DOJ:** Submitting fingerprints cards to DOJ by any means authorized by the DOJ, when a school district requests from the DOJ a criminal record summary of a temporary, substitute, or probationary certificated employee. (Stats. 1998, ch. 840; Ed. Code, § 44830.1, subd. (d).)
- ⌘ **Designated districts:** Activities of designated districts stated in Education Code sections 44830.2 and 45125.01.

The Commission also found that processing applications for non-certificated applicants, including costs for FBI review of the fingerprints included in the DOJ fee, is not a reimbursable state-mandate because of the school districts' fee authority within the meaning of Government Code section 17556, subdivision (d). (Ed. Code, § 45 125, subd. (f).)¹

II. ELIGIBLE CLAIMANTS

Any "school district," as defined in Government Code section 175 19, except for community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement. A charter school is not an eligible claimant.

¹ Reimbursement for this activity was previously allowed under the parameters and guidelines for *Criminal Background Checks I* (97-TC-16), which were amended to delete this activity.

III. PERIOD OF REIMBURSEMENT

The Government Code section 17557 requires that a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The *Criminal Background Checks II* test claim was submitted on December 15, 2000. Therefore, costs incurred on or after July 1, 1999, are reimbursable.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of release of claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided for by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 20 15.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

(Reimbursement period begins July 1, 1999.)

A. Communication with the Department of Justice

(Stats. 1998, ch. 840; Ed. Code, §§ 44830.1, subd. (i) & 45 125, subd. (j).)

1. Complete DOJ "Contract for Subsequent Arrest Notification Service" to receive notification of subsequent arrests.²
2. Notify the DOJ when the employment of the applicant is terminated, when the applicant's certificate is revoked, or when the applicant may no longer renew or reinstate the certificate.

² Attachment 1.

3. Return the subsequent arrest notification to the DOJ and inform the DOJ that the District is no longer interested in the applicant for a person unknown to the District, or for a person no longer employed by the District, or no longer eligible to renew the certificate or license for which subsequent arrest notification service was established.
 4. Notify the DOJ if the applicant is denied licensing or certification.
- B. Storage of Department of Justice Documents
(Stats. 1998, ch. 840, and Stats. 1999, ch. 78; Ed. Code, §§ 44830.1, subd. (n)(2), 44830.2, subd. (f)(2), 45125.01 subd. (f)(2), & 45125, subd.(k)(2).)
1. Store criminal history records and reports of subsequent arrests received from the DOJ on volunteers and current and prospective employees in a locked file separate from other files and accessible to only the custodian of records. This activity includes the costs associated with obtaining separate storage for these records. The storage method and how long the records are kept must be in accordance with how school district records of a similar nature are stored in the normal course of business.
- C. Destruction of Department of Justice Information
(Stats. 1998, ch. 840, Ed. Code, §§ 44830.1, subd. (n)(3), & 45125, subd. (k)(3).)
1. Destroy information received from the DOJ upon a hiring determination in accordance with California Code of Regulations, title 11, section 708, subdivision (a), which requires that destruction of criminal offender record information be carried out so that the identity of the subject can no longer be reasonably ascertained, or
 2. Provide a witness from the school district to observe the destruction of the information when records are destroyed outside the district.
- D. Fingerprint Card Requests to the Federal Bureau of Investigation
(Stats. 1998, ch. 840; Ed. Code, § 45 125, subd. (b)(3).)
1. Indicate (check appropriate box) to request the DOJ to forward copies of non-certificated employees' fingerprint cards to the Federal Bureau of Investigation (FBI).
- E. Maintaining a List of the Number of Current Employees
(Stats. 1998, ch. 840; Ed. Code, § 45 125, subd. (d).)
1. Maintain a list indicating the current number of employees who have not completed the requirements of Education Code section 45 125 (except for pupils employed in a temporary or part-time position at the school they attend).
- F. Subsequent Arrest Service Requests
(Stats. 1998, ch. 840; Ed. Code, §§ 44830.1, subd. (i), & 45125, subd. (j).)
1. Request subsequent arrest service from the DOJ for certificated and non-certificated positions, as necessary.
- G. Precautions Dealing with Construction Contractors
(Stats. 1998, ch. 840; Ed. Code, § 45 125.2, subd. (a).)

The activities listed in section IV. G. are not reimbursable to “an entity providing construction, reconstruction, rehabilitation, or repair services to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or

when repairs are needed to make school facilities safe and habitable.” (Ed. Code, § 45 125.2, subd. (d).)

1. When contracting for construction, reconstruction, rehabilitation, or facility repair, determine whether the contractor will have “limited contact”³ with pupils.
2. If the contractor’s employees will have more than limited contact:
 - a. Install a physical barrier at construction worksites at school facilities, or
 - b. Develop contract language that requires the contractor to install a physical barrier at construction worksites at school facilities or to continually supervise and monitor contractor employees (any individual serving as a construction employee monitor or providing employee surveillance must not have been convicted of a violent or serious felony).

v. **CLAIM PREPARATION AND SUBMISSION**

Each claim for reimbursement pursuant to this mandate must be timely filed and identify each of the following cost elements to each reimbursable activity identified in Section IV of this document.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

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.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

³ Districts must consider the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. See Education Code section 45 125.1, subdivision (c).

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A. 1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁴ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents 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.

⁴ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program because of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 1756 1, subdivision (d)(l), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

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, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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.

DECLARATION OF SERVICE BY MAIL

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 958 14.

December 5, 2003, I served the:

Adopted Parameters and Guidelines

Criminal Background Checks II, OO-TC-05

Napa County Office of Education, Claimant

Education Code sections 44830.1, 44830.2, 45122,1, 4512545125.01, 45125.1, and 45125.2

Statutes 1998, Chapters 594 and 840

by placing a true copy thereof in an envelope addressed to:

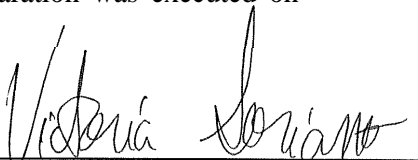
Mr. David Scribner
Schools Mandate Group
One Capitol Mall, Suite 200
Sacramento, CA 95814

Mr. Mike Havey
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

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 December 5, 2003, at Sacramento, California.



VICTORIA SORIANO