

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 44332.6, 44830.1, 45122.1, 45125, 45125.1, as added or amended by Statutes of 1997, Chapters 588 and 589;

Filed on December 30, 1997;

By the Lake Tahoe Unified School District and Irvine Unified School District, Co-Claimants.

No. 97-TC- 16

Michelle Montoya School Safety Act


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

(Adopted on October 28, 1999)

ADOPTED PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Parameters and Guidelines on October 28, 1999.

These Parameters and Guidelines are effective on November 1, 1999.


Paula Higashi, Executive Director

Parameters and Guidelines

Education Code Sections 44332.6, 44830.1,
45122.1, 45125, and 45125.1

Statutes of 1997, Chapter 588
Statutes of 1997, Chapter 589

Criminal Background Checks (a.k.a. Michele Montoya School Safety Act)

I. Summary Of The Mandate

On March 25, 1999 the Commission on State Mandates adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state mandated program on school districts under article XIII B, section 6 of the California Constitution and Government Code section 17514.

The test claim legislation enacts the Michelle Montoya School Safety Act, which requires school districts to obtain criminal background checks on specified certificated and non-certificated employees prior to hiring and to obtain certification that specified employees of entities that contract with school districts for janitorial, administrative, landscape, transportation, and food-related services have been fingerprinted. The test claim legislation also requires school districts to suspend and terminate specified certificated employees and temporary, substitute and probationary employees hired before September 30, 1997 (the effective date of the test claim legislation) if the school district receives notification from the Department of Justice that the employee has been convicted of a violent or serious felony.

II. Eligible Claimants

Any "school district", as defined in Government Code section 175 19, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.¹

III. Period Of Reimbursement

Section 17557 of the Government Code, prior to its amendment by Statutes of 1998, Chapter 681 (effective September 22, 1998), stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on December 30, 1997, establishing eligibility for Fiscal Year 1996-97. However, the test claim legislation was enacted as urgency measures and became effective on September 30, 1997. Therefore, costs incurred on or after September 30, 1997, for compliance with the mandate are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable.

¹The activities under this mandate also apply to charter schools.

Pursuant to section 17561, subdivision (d)(l), of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

The direct and indirect costs of labor, materials and supplies, contracted services, equipment, training, and travel incurred for the following mandate components are eligible for reimbursement:

A. Criminal Background Checks for Previously Exempted, Non-Certificated Employees Hired After September 30, 1997.

Obtaining fingerprints and the required processing fee from applicants selected for all non-certificated employee positions (school districts with an ADA of 400,000 or more and school districts wholly within a city and county only) or for temporary and substitute non-certificated employees employed for less than the school year (all other school districts); processing the fingerprints and any required forms, sending the fingerprints and required forms to the Department of Justice ("DOJ"), resolving problems with the DOJ; and reviewing the criminal background checks and other correspondence from DOJ to determine whether the applicant was arrested or convicted of a violent or serious felony. Secondary school pupils employed in a temporary part-time position at the school they attend are exempt from these requirements.

For all non-certificated employees at all school districts hired after September 30, 1997, the costs of overtime for existing employees who are required to perform the duties of the non-certificated applicant during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ are reimbursable under this component. The difference in costs between the salary and benefits offered to the non-certificated applicant and the salary and benefits of the substitutes, and temporary employees who are hired to perform the duties of the non-certificated applicant during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ are also reimbursable under this component.

B. Criminal Background Checks for Non-Certificated Employees Hired Before September 30, 1997.

The one-time activity of reviewing employment records to determine which of the school district's non-certificated employees with a hire date before September 30, 1997, except for pupils that are employed at the school they attend, have not had a criminal background check completed; forwarding the request to the DOJ indicating the number of non-certificated employees for whom a criminal background check has not been completed; obtaining fingerprints from each non-certificated employee for whom a criminal background check has not been completed, processing the fingerprints and any required forms, sending the fingerprints and any required forms to the DOJ, and resolving problems with the DOJ; and reviewing the criminal

background checks and other correspondence from DOJ to determine whether the employee was convicted of a violent or serious felony.

The fees school districts pay to the DOJ for processing the criminal background checks for existing employees are reimbursable under this component.

For all non-certificated employees at all school districts hired before September 30, 1997, the costs of overtime for existing employees who are required to perform the duties of the non-certificated employee during the period from the date the employee was removed from his/her employment pending a criminal background check to the date that the school district received the criminal background check on the employee from the DOJ are reimbursable under this component. The difference in costs between the salary and benefits of the certificated employee and the salary and benefits of substitutes and temporary employees who are hired to perform the duties of the non-certificated employee during the period from the date the employee was removed from his/her employment pending a criminal background check to the date that the school district received the criminal background check on the employee from the DOJ are also reimbursable under this component.

C. Criminal Background Checks for Certificated Employees Hired After September 30, 1997.

Obtaining fingerprints and the required processing fee from applicants selected for all certificated employee positions; processing the required fingerprints and any required forms, sending the fingerprints and required forms to the Department of Justice, resolving problems with the DOJ; and reviewing the criminal background checks and other correspondence from DOJ to determine whether the applicant has been convicted of a serious or violent felony.

For all certificated employees at all school districts hired after September 30, 1997, the costs of overtime for existing employees who are required to perform the duties of the certificated applicant during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ are reimbursable under this component. The difference in costs between the salary and benefits of the substitutes and temporary employees who are hired to perform the duties of the certificated applicant during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ are also reimbursable under this component.

D. Criminal Background Checks for Certificated Employees Hired Before September 30, 1997.

The one-time activity of reviewing employment records to determine whether any certificated employee hired before September 30, 1997 has been convicted of a violent or serious felony (other than a sex or narcotics offense); obtaining fingerprints from certificated employees hired prior to September 30, 1997 for whom a criminal background check has not been completed, processing the fingerprints and any required forms, sending the fingerprints and any required forms to DOJ, and resolving any problems with the DOJ; and reviewing the criminal background checks and other correspondence from DOJ to determine whether the employee has been convicted of a serious or violent felony.

The fees school districts pay to the DOJ for processing the criminal background checks for existing employees are reimbursable under this component.

For all certificated employees at all school districts hired before September 30, 1997, the costs of overtime for existing employees who are required to perform the duties of the certificated

employee during the period from the date the employee was removed from his/her employment pending a criminal background check to the date that the school district received the criminal background check on the employee from the DOJ are reimbursable under this component. The difference in costs between the salary and benefits of the certificated employee and the salary and benefits of substitutes and temporary employees who are hired to perform the duties of the certificated employee during the period from the date the employee was removed from his/her employment pending a criminal background check to the date that the school district received the criminal background check on the employee from the DOJ are also reimbursable under this component.

E. Criminal Background Checks for Certificated Employees Applying for a Temporary Certificate or Temporary Certificate of Clearance.

Obtaining fingerprints and the required fee for processing the fingerprints and obtaining a criminal record summary from applicants for certificated positions prior to employing such applicants based upon a temporary certificate (county offices of education) or a temporary certificate of clearance (school districts); processing fingerprints, any required forms, and fees, sending the fingerprints, any required forms, and fees to the DOJ for processing, and resolving problems with the DOJ; reviewing the criminal background checks and other correspondence from DOJ to determine whether the applicant was arrested or convicted of a violent or serious felony; and notifying an applicant whether the county office of education or school district will issue a temporary certificate or temporary certificate of clearance.

For all certificated employees applying for a temporary certificate or temporary certificate of clearance at all school districts hired after September 30, 1997, the costs of overtime,-for existing employees who are required to perform the duties of the applicant being hired during the time from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check from the DOJ on the applicant are reimbursable under this component. The difference in costs between the salary and benefits offered to the certificated applicant and the salary and benefits of the substitutes, and temporary employees who are hired to perform the duties of the applicant being hired during the period from the date that an offer of employment was made to the applicant to the date that the school district received the criminal background check on the applicant from the DOJ, are also reimbursable under this component.

Reimbursement for the costs of obtaining a criminal record summary on employees currently and continuously employed by a school district within the county who serve under a valid credential and who have applied for a renewal of that credential or for an additional credential is limited to the period from September 30, 1997 until September 25, 1998.²

² Education Code section 44332.6 was amended by Statutes of 1998, Chapter 840. Statutes of 1998, Chapter 840 added subdivisions (f)(1) and (2) to provide that “a county or city and county board of education may issue a temporary certificate or temporary certificate of clearance to employees currently and continuously employed by a school district within the county who is serving under a valid credential and has applied for a renewal of that credential or for an additional credential without obtaining a criminal record summary for that employee.” This amendment became effective on September 25, 1998.

F. Criminal Background Checks for Contractor Employees.

Drafting and revising contracts, bid documents, requests for proposal, and other contract documents to include provisions relating to the duties of entities contracting with school districts to provide janitorial, administrative, landscape, transportation, or food-related services to comply with Education Code section 45 125.1; determining whether the employees of entities contracting with school districts to provide janitorial, administrative, landscape, transportation, or food-related service will have limited contact with pupils; taking appropriate steps to protect the safety of the pupils that may come into contact with those contractor employees who will have limited contact with pupils; assuring that the contracting entity provides a certification to the school district that none of its employees have been convicted of a felony and a list of employees who may come into contact with pupils; distributing the lists of contractor employees to the appropriate school or schools.

G. Electronic Fingerprinting Equipment.

Costs of electronic fingerprinting system equipment and other equipment used to obtain criminal background checks, including service and system connection costs, are reimbursable to the extent that the purchase is cost-effective for the school district. Factors in determining if purchasing electronic fingerprinting system equipment is cost-effective include, but are not limited to, staffing needs and the availability of electronic fingerprinting system equipment in other jurisdictions within the community of the school district.

H. Reporting to the DOJ.

The one-time cost of compiling and preparing a report to the DOJ by September 30, 1998, listing all of the district's employees for the prior school year and indicating whether or not a criminal background check has been completed on each employee.

I. Terminating, Suspending and Reinstating Employees.

1. The one-time activity of reviewing school district records to determine whether any certificated temporary, substitute or probationary employee hired prior to September 30, 1997 and serving before March 15 of their second probationary year has been convicted of a violent or serious felony (other than a sex or narcotics offense); terminating such employees.
2. The one-time activity of reviewing school district records to determine whether any non-certificated temporary, substitute or probationary employee hired prior to September 30, 1997 has been convicted of a violent or serious felony (other than a sex or narcotics offense); terminating such employees.
3. Immediately suspending any certificated temporary, substitute or probationary employees serving before March 15 of their second probationary year or any temporary, substitute, or probationary non-certificated employee upon telephonic notice from DOJ that such employee has been convicted of a violent or serious felony.
4. Immediately terminating any certificated temporary, substitute or probationary employees serving before March 15 of their second probationary year or any temporary, substitute, or probationary non-certificated employee upon written notification from DOJ that the employee has been convicted of a violent or serious felony.
5. Reinstating any employee that was suspended or terminated based upon notice from the DOJ in the event that DOJ withdraws its conviction notification in writing, including, without

limitation, all salary, benefits, and other compensation paid to or on behalf of the employee upon reinstatement.

Costs of recruiting persons to replace a suspended or terminated employee are reimbursable under this component. The difference in costs between the salary and benefits of the suspended or terminated employee and the salary and benefits of the replacement person are also reimbursable under this component, if there are increased costs.

J. Preparation of Policies, Procedures, Guidelines, and Training.

Preparation and adoption of policies, procedures, and guidelines for obtaining and processing criminal background checks and other requirements in the test claim legislation. This reimbursable component includes, but is not limited to, reimbursement of the labor time of school district personnel involved with review of the test claim legislation; preparation of policies, procedures, and guidelines; preparation for and attendance at training sessions, and conducting training sessions. The cost of materials and supplies used for policies, procedures, and guidelines and used or distributed in training sessions, fees and costs paid to consultants who conduct training sessions, and travel and training expenses for the school district personnel who conduct or attend the training sessions are reimbursable under this component

V. Claim Preparation And Submission

Each claim for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

A. Direct Costs.

1. Employee Salaries and Benefits

Identify the employee(s), and/or the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the time devoted to each reimbursable activity by each employee, productive hourly rate, and related fringe benefits. The average number of hours devoted to each reimbursable activity in these Parameters and Guidelines may be claimed if supported by a documented time study.

Reimbursement for personnel services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purpose of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the service(s), including any fixed contracts for services. Describe the activity(ies) performed by each named contractor, and give the number of actual hours spent on the activities, if applicable, show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices to the claim.

4. Equipment and Other Capital Assets

List the purchase price paid for equipment and other capital assets acquired for this mandate. Purchase price includes taxes, delivery costs, and installation costs. If the equipment or other fixed asset is used for purposes other than for this mandate, only the pro rata portion of the purchase price can be claimed.

5. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of this document, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the dates attended, and the location. Reimbursable costs may include salaries and benefits, transportation, lodging, per diem, and registration fees.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate, and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.
2. County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the Sate Department of Education.

VI. Supporting Data

For audit purposes, all costs claimed must be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

VII. Offsetting Savings And Other Reimbursements

Any offsetting savings that the claimant experiences as a direct result of this mandate must 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 Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those cost mandated by the state contained herein.