

COMMISSION ON STATE MANDATES

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July 7, 2003

Mr. Steve Smith
Mandated Cost Systems, Inc.
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Mr. Mike Havey
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 958 16

RE: Proposed Statements of Decision- July 31, 2003 Hearing
Certification of Teacher Evaluator 's Demonstrated Competence
0 1-4 13 6-I-4 1 through -47, Various Claimants
Education Code Section 3 5 160.5
Statutes 1983, Chapter 498

Dear Mr. Smith and Mr. Havey:

The proposed Statements of Decision for the above-named incorrect reduction claims are complete and enclosed for your review.

Commission Hearing

These proposed Statements of Decision are set for hearing on Thursday, **July 31, 2003**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be placed on the proposed consent calendar unless you let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations **such** as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Cathy Cruz at (916) 323-82 18.

Sincerely,,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enclosures

MAILED: X FAXED: _____
DATE: 7/7/03 INITIAL: CF
CHRON: X FILE: _____
WORKING BINDER: _____

ITEM 9

PROPOSED STATEMENTS OF DECISION ON DEMAND FOR CORRECT REDUCTION CLAIMS

Education Code Section 35 160.5

Statutes 1983, Chapter 498

Claimants:

Elk Grove Unified School District (01-4136-I-41),
Santa Maria-Bonita School District (01-4136-I-42),
Milpitas Unified School District (01-4136-I-43),
Del Mar Union School District (01-4136-I-44),
Saratoga Union Elementary School District (01-4136-I-45),
Merced City Elementary School District (01-4136-I-46),
Davis Joint Unified School District (01-4136-I-47)

Certification of Teacher Evaluator's Demonstrated Competence

EXECUTIVE SUMMARY

On May 29, 2003, the Commission on State Mandates (Commission), by a vote of 5 – 0, denied the incorrect reduction claim (IRC) filed by the seven above-named school districts on the *Certification of Teacher Evaluator's Demonstrated Competence* program. Therefore, the sole issue before the Commission is whether the proposed Statements of Decision accurately reflect the vote of the Commission.¹

The seven claimants contended that the State Controller's Office (SCO) incorrectly reduced their claims, in an aggregate amount of \$475,103 for fiscal year 1995-1996, for the cost of salaries and benefits of probationary teachers in training. It was their position that the cost of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The Commission found that the SCO did not incorrectly reduce the claimants' reimbursement claims on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- ⌘ The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- ⌘ The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the

¹ California Code of Regulations, title 2, section 1188.1, subdivision (g).

Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

Staff Recommendation

Staff recommends that the Commission adopt the following proposed Statements of Decision, which accurately reflect the Commission's decision:

Exhibit	Claimant
A	Elk Grove Unified School District
B	Santa Maria-Bonita School District
C	Milpitas Unified School District
D	Del Mar Union School District
E	Saratoga Union Elementary School District
F	Merced City Elementary School District
G	Davis Joint Unified School District

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35160.5 as added by
Statutes 1983, Chapter 498;

Filed on November 9, 2001, to include
Fiscal Year 1995-1996;

By Elk Grove Unified School District,
Claimant.

NO. 01-4136-I-41

*Certification of Teacher Evaluator's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 31, 2003)

PROPOSED STATEMENT OF DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 1181 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

The Commission, by a vote of 5 – 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 1755 1, subdivision (d), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Component&" provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable.

Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable. Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995- 1996 on November 26, 1996. On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on October 26, 1998. The SCO issued a final notice of adjustment dated October 16, 2001. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on November 9, 2001, the Elk Grove Unified School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$169,520 for fiscal year 19954996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. For example, the claimant

states that its permanent teachers work 184 days a year while its probationary teachers work a total of 186 work days to accommodate two additional 7.5-hour days for teacher training.’

State Controller’s Office Position

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission, SUSD proposed to include the following language under Reimbursable Costs, section V.B.1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher’s time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

¹ The number of additional training days for probationary teachers varied by claimant, ranging from half a day to two days.

teachers, and thus, they worked a longer school year. During these training sessions; probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction.”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996, the Education Trailer Bill to the Budget-Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996-1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-01). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added.)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 160.5.² Education Code section 35160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations,

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Neither the school day, nor the school year, increased as a result of the test claim legislation. Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training. . . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training,

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board.. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs of substitute teachers provided for probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques. The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines, Thus, the Commission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-365-O 1), *Emergency Procedures, Earthquakes and Disasters* (CSM-4241), and *Standardized Testing and Reporting* (97-TC-23).

Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- ⌘ The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- ⌘ The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35 160.5 as added by
Statutes 1983, Chapter 498;

Filed on November 9, 2001, to include
Fiscal Year 1995-1996;

By Santa Maria-Bonita School District,
Claimant.

NO. 01-4136-I-42

*Certification of Teacher Evaluator 's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 3 1, 2003)

PROPOSED STATEMENT OF' DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 1755 1, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 118 1 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

The Commission, by a vote of 5 – 0, denied this IRC,

COMMISSION AUTHORITY

Government Code section 1755 1, subdivision (d), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 1756 1.

Government Code section 1756 1, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train-and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education. ,
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable. Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable. Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on November 26, 1997. On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on March 16, 1999. The SCO issued a final notice of adjustment dated April 4, 1999. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on November 9, 2001, the Santa Maria-Bonita School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$10,871 for fiscal year 1995-1996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers over *and above that usually provided to permanent teachers.*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. For example, the claimant

states that its permanent teachers work 175 days a year while its probationary teachers work a total of 176 work days to accommodate one additional 7.5-hour day for teacher training.’

State Controller% Office Position

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore,’ the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary **Certificated** Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B. 1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher’s time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

¹ The number of additional training days for probationary teachers varied by claimant, ranging from half a day to two days.

teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction,”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996, the Education-Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996-1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-01). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day or for *teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added.)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 160.5.² Education Code section 35160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations.

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Neither the school day, nor the school year, increased as a result of the test claim legislation. Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not 'reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday*- a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day,

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V, of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs of substitute teachers provided for-probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques. The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines. Thus, the Commission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-365-O 1), *Emergency Procedures, Earthquakes and Disasters* (CSM-4241), and *Standardized Testing and Reporting* (97-TC-23).

Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unzfzed School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35160.5 as added by
Statutes 1983, Chapter 498;

Filed on November 9, 2001, to include
Fiscal Year 1995-1996;

By Milpitas Unified School District, Claimant.

NO. 01-4136-r-43

*Certification Of Teacher Evaluator's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 31, 2003)

PROPOSED STATEMENT OF DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 1181 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

The Commission, by a vote of 5 - 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 1755 1, subdivision (d), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator 's Demonstrated Competence* program constitutes a reimbursable state-mandated program, Education Code section 35160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education,
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

*The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable. Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable. Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on November 28, 1996. On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on March 16, 1999. The SCO issued a final notice of adjustment dated April 30, 1999. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on November 9, 2001, the Milpitas Unified School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$56,802 for fiscal year 1995-1996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. For example, the claimant

states that its permanent teachers work 184 days a year while its first-year probationary teachers work a total of 186 work days to accommodate an additional 16 hours for teacher training.*

State Controller% Office Positiop

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost, of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator 's Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B. 1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher's time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

¹ The number of additional training days for probationary teachers varied by claimant, ranging from half a day to two days.

teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction.”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996, the Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996-1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the Certification Of Teacher Evaluator’s Demonstrated Competence program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-O 1). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added.)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 160.5.² Education Code section 35 160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations.

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a, minimum of 175 days in a fiscal year and 240 minutes in a day. Neither the school day, nor the school year, increased as a result of the test claim legislation. Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs of substitute teachers provided for probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques. The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines. Thus, the Commission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-365-01), *Emergency Procedures, Earthquakes and Disasters* (CSM-4241), and *Standardized Testing and Reporting* (97-TC-23).

Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35 160.5 as added by
Statutes 1983, Chapter 498;

Filed on November 9, 2001, to include
Fiscal Year 1995-1996;

By Del Mar Union School District, Claimant.

NO. 01-4136-I-44

*Certification of Teacher Evaluator's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 31, 2003)

PROPOSED STATEMENT OF DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 17551, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 1181 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar. The Commission, by a vote of 5 – 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 1755 1, subdivision (d), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January' 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title.2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so, that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable.

Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable.

Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year' 1995-1996 on November 19, 1996. On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on March 29, 1999. The SCO issued a final notice of adjustment dated October 16, 2001. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on November 9, 201, the Del Mar Union School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$3 1,43 8 for fiscal year 1995-1996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator 's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator 's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end

of the regular work year when a substitute teacher is not necessary. For example, the claimant states that its probationary teachers worked an additional 4 hours to attend teacher training.’

State Controller’s Office Position

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B. 1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher’s time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

¹ The number of additional training days for probationary teachers varied by claimant, ranging from half a day to two days.

teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties,

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction.”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996, the Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996- 1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-01). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added.)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired,

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35160.5.² Education Code section 35160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board,
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations.

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Neither the school day, nor the school year, increased as a result of the test claim legislation. Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they* ‘are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)*
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques. The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines. Thus, the Commission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-3 65-O 1), *Emergency Procedures, Earthquakes and Disasters* (CSM-4241), and *Standardized Testing and Reporting* (97-TC-23). Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35 160.5 as added by
Statutes 1983, Chapter 498;

Filed on November 9, 2001, to include
Fiscal Year 1995-1996;

By Saratoga Union Elementary School
District, Claimant.

NO. 01-4136-I-45

*Certification of Teacher Evaluator's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 31, 2003)

PROPOSED STATEMENT OF DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 1755 1, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 118 1 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

The Commission, by a vote of 5 – 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 1755 1, subdivision (d), requires the Commission to **determine** whether the SCO has **incorrectly** reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 1756 1.

Government Code section 1756 1, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable, Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable, Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on November 25, 1996. On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on October 13, 1998. The SCO issued a final notice of adjustment dated December 11, 1998. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on November 9, 2001, the Saratoga Union Elementary School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$57,045 for fiscal year 1995-1996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements,

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. For example, the claimant

states that its permanent teachers work 183 days a year while its probationary teachers work a total of 184 work days to accommodate one additional 8-hour day for teacher training.¹

State Controller's Office Position

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission, SUSD proposed to include the following language under Reimbursable Costs, section V.B. 1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher's time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

¹ The number of additional training days for probationary teachers varied by claimant, ranging from half a day to two days.

teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, S&D noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction,”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996; the Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the, 1996- 1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the Certification of Teacher Evaluator’s Demonstrated Competence program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the, parameters and guidelines for *Physical Performance Tests* (CSM 96-365-O 1). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added,)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 1 60.5.² Education Code section 35 160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations.

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record **supports** the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day, Neither the school day, nor the school year, increased as a result of the test claim legislation, Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 - 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs OF substitute teachers providedfor probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques. The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines. Thus, the Con-mission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-365-01), *Emergency Procedures, Earthquakes and Disasters* (CSM-424 1), and *Standardized Testing and Reporting* (974X-23).

Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- z The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- z The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35 160.5 as added by
Statutes 1983, Chapter 498;

Filed on November 9, 2001, to include
Fiscal Year 1995-1996;

By Merced City Elementary School District,
Claimant.

NO. 01-4136-I-46

*Certification of Teacher Evaluator's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 3 1, 2003)

PROPOSED STATEMENT OF DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 1755 1, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 118 1 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

The Commission, by a vote of 5 - 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 1755 1, subdivision (d), requires the Commission to **determine** whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 198 5, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 1756 1.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive” or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification Of Teacher Evaluator 's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35 160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 199 1, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable, Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable. Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on November 26, 1996. On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on October 13, 1998. The SCO issued a final notice of adjustment dated December 30, 1998. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on November 9, 2001, the Merced City Elementary School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$39,018 for fiscal year 1995-1996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers,*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. For example, the claimant

states that its permanent teachers work 184 days a year while its **probationary** teachers work a total of 186 work days to accommodate two additional 7.5-hour days for teacher training.¹

State Controller's Office Position

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B.1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher's time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

¹ The number of additional training days for probationary teachers varied by claimant, ranging from half a day to two days.

teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction.”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996, the Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996- 1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training. . . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-01). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added.)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 160.5.² Education Code section 35160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations.

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Neither the school day, nor the school year, increased as a result of the test claim legislation. Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the Certification of Teacher Evaluator's Demonstrated Competence program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training. . . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers **they are** assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] , . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous’ policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs of substitute teachers provided for probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques. The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines. Thus, the Commission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-365-O 1), *Emergency Procedures, Earthquakes and Disasters* (CSM-4241), and *Standardized Testing and Reporting* (974X-23).

Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 35 160.5 as added by
Statutes 1983, Chapter 498;

Filed on December 8, 2001, to include
Fiscal Year 1995-1996;

By Davis Joint Unified School District,
Claimant.

NO. 01-4136-I-47

*Certification of Teacher Evaluator's
Demonstrated Competence*

PROPOSED STATEMENT OF
DECISION PURSUANT TO
GOVERNMENT CODE SECTION
17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Proposed on July 3 1, 2003)

PROPOSED STATEMENT OF DECISION

The Commission is required to hear and decide a claim by a local agency or school district that the State Controller's Office (SCO) has incorrectly reduced payments to the local agency or school district pursuant to Government Code section 1755 1, subdivision (d). The law applicable to the Commission's determination of reimbursable state-mandated activities and whether the SCO has incorrectly reduced payments to the local agency or school district is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., California Code of Regulations, title 2, section 118 1 et seq., and related case law.

On May 29, 2003, Mr. David Scribner, with Spector, Middleton, Young & Minney, on behalf of the claimant, requested that this incorrect reduction claim (IRC) be placed on the consent calendar.

The Commission, by a vote of 5 – 0, denied this IRC.

COMMISSION AUTHORITY

Government Code section 17551, subdivision (d), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 1756 1.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its Statement of Decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with

claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.

- a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester).
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

In September 1995, the SCO issued its claiming instructions. Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable.

Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable.

Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on December 2, 1996.

On August 5, 1998, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. The claimant requested that the SCO reconsider its payment action on October 14, 1998. The SCO issued a final notice of adjustment dated October 25, 2001. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.

Thus, on December 8, 2001, the Davis Joint Unified School District filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant contends that the SCO incorrectly reduced its claim by \$110,409 for fiscal year 1995- 1996, for the cost of salaries and benefits of probationary teachers in training.

STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the Commission findings, the Commission concludes that the SCO did not incorrectly reduce the claimant's reimbursement claim.

POSITIONS OF THE PARTIES

Claimant's Position

The claimant contends that the cost of salaries and benefits of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that the cost of salaries and benefits of probationary teachers in training consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

The claimant states that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the claimant asserts that the first category is reimbursable because the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*"

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work a fixed number of days a year, the claimant asserts that this mandate requires all probationary teachers to work additional days for teacher training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. For example, the claimant

states that its permanent teachers work 184 days a year while its probationary teachers work a total of 185 work days to accommodate one additional 7-hour day for teacher training.’

State Controller’s Office Position

The SCO argues that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In its final notice of adjustment, the SCO stated that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training. However, this request was withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program.

COMMISSION FINDINGS

Background

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training of probationary teachers for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B. 1.:

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher’s time.

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent

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teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties,

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: “The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction,”

However, in a letter dated June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because “after numerous discussions with Commission staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied.”

On July 22, 1996; the Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996- 1997 fiscal year.

Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program?

The claimant contends that it required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional days for teacher, training, occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary. Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that “[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year,

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-01). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. (Emphasis added.)

The claimant also cited the Commission's decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

Either the cost of providing a substitute teacher for each teacher who attends a training session during the teacher's normal classroom periods or the additional payments made to each teacher who attends a training session outside the teacher's normal classroom period (after school or on Saturday). (Emphasis added.)

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission's parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day; or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher-stipends to attend training outside the regular school day. Therefore, the Commission finds that the former Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35160.5.² Education Code section 35160.5, as added by Statutes 1983, chapter 498, stated:

On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following;

- a) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.
- b) The establishment of district policies ensuring that each probationary certificated employee is assigned to, a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.
- c) The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to and where possible to resolve, the complaints. These policies and procedures shall be established in consultation with employee organizations.

The Commission finds that the plain language of the statute does not require additional training to be provided outside the regular workday or work year. Accordingly, neither the test claim statute,

² Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

the Statement of Decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. In addition, since the 1959 Education Code,³ the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Neither the school day, nor the school year, increased as a result of the test claim legislation. Therefore, there is no showing that the state mandated probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, the Commission finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary-Certificated Employee Policies component of the Certification of Teacher Evaluator's Demonstrated Competence program?

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

The SCO maintains that "[t]he parameters and guidelines simply do not provide for reimbursement of the wages of probationary teachers while they attend training.. . [n]otably absent is any reference to the salaries of probationary teachers." The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, the Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim for the cost of salaries and-benefits for probationary teachers attending training and mentoring during the course of their regular work day.

³ Education Code sections 41420, 46113, 46141, and 46142.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district ‘with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
 - 1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. ‘The cost ‘of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
 - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
 - b. Training materials and clerical services for probationary teachers.
 - c. Registration fees and travel costs of probationary teachers attending training activities.
 - d. *Costs of substitute teachers provided for probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
 - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers’ classrooms to observe teaching techniques, The SCO’s claiming instructions mirrored the Commission’s parameters and guidelines. Thus, the Commission finds, that based on the express language contained in the parameters and guidelines, claimants are only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

In this case, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated ‘by the state as a

result of complying with the test claim statute.⁴ The Commission finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary **teachers** when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district for the probationary teacher who is being trained during the course of the regular school day. This is consistent with the Commission's decision in *Physical Performance Tests* (CSM 96-365-01), *Emergency Procedures, Earthquakes and Disasters* (CSM-4241), and *Standardized Testing and Reporting* (97-TC-23).

Accordingly, the Commission finds that the cost of salaries and benefits for probationary teachers to attend training and mentoring during the course of their regular workday is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim.

CONCLUSION

The Commission finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The cost of salaries and benefits for probationary teachers receiving additional training *outside their regular workday or work year* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.
- The cost of salaries and benefits for probationary teachers attending training and mentoring *during the course of their regular workday* is not a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

⁴ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 175 14.