

**COMMISSION ON STATE MANDATES**

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January 27, 2015

Mr. Keith B. Petersen  
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Ms. Jill Kanemasu  
State Controller's Office  
Accounting and Reporting  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Decision**

*Emergency Procedures, Earthquake, and Disasters 05-4241-I-06*  
Education Code Sections 35295, 35296, 35297, 40041.5 and 40042  
Statutes 1984, Chapter 1659  
Fiscal Years 2000-2001, 2001-2002, and 2002-2003  
Poway Unified School District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

On January 23, 2015, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Education Code Sections 35295, 35296,  
35297, 40041.5 and 40042

Statutes 1984, Chapter 1659

Fiscal Years 2000-2001, 2001-2002 and 2002-  
2003

Poway Unified School District, Claimant

Case No.: 05-4241-I-06

*Emergency Procedures, Earthquake, and  
Disasters*

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

*(Adopted January 23, 2015)*

*(Served January 27, 2015)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claims (IRC) during a regularly scheduled hearing on January 23, 2015. Keith Petersen appeared on behalf of the claimant. Jim Spano and Ken Howell appeared on behalf of the State Controller's Office.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the proposed decision to partially approve the IRC by a vote of 7-0.

**Summary of the Findings**

This IRC challenges reductions by the State Controller's Office (Controller) totaling \$738,364 to reimbursement claims filed on the *Emergency Procedures, Earthquake, and Disasters* program for fiscal years 2000-2001, 2001-2002, and 2002-2003, for employee costs to update the earthquake emergency procedure system and to train district staff and students on the earthquake emergency procedure system.

The Commission finds that the audit of the 2000-2001 reimbursement claim is not barred by the deadlines in Government Code section 17558.5.

The 1991 parameters and guidelines for this program were amended in 2003 and the parties dispute which version governs this audit. The Commission finds that the 2003 parameters and guidelines apply retroactively on issues involving the scope of the reimbursable activities. However, for due process reasons, the documentation requirements in the 2003 parameters and guidelines cannot apply to the audit of the 2000-2001, 2001-2002 and 2002-2003 claims. Rather, on issues involving adequate source documentation, the parameters and guidelines adopted in 1991 must apply because they were in effect when the claimant incurred costs for the

program and filed the reimbursement claims.

Based on the plain language of the governing parameters and guidelines and the evidence in the record, the Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission concludes that the following reductions are not consistent with the documentation requirements in the parameters and guidelines adopted in 1991, are *incorrect* as a matter of law, and should be reinstated to the claimant:

- The reduction of a total of \$11,423 in salaries and benefits claimed for fiscal years 2000-2001, 2001-2002, and 2002-2003, to update the earthquake emergency procedure system;
- The reduction of the portion of the \$645,757 claimed for fiscal years 2000-2001, 2001-2002, and 2002-2003, for training that is *not* attributable to "in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system."

Finally, the Commission concludes that the following reductions are supported by the parameters and guidelines and the evidence in the record, and are therefore *correct* as matter of law:

- The reduction of \$32,405 for claimant's consultant to update the emergency procedures system in fiscal years 2000-2001, 2001-2002, and 2002-2003, because claimant provided no supporting documentation to show that the costs were incurred to comply with the limited scope of the mandate.
- The reduction of \$19,452 for fiscal years 2000-2003 for employees to update the emergency earthquake system, because the claimant provided no supporting documentation to show that the costs were incurred to comply with the mandate.
- The reductions for fiscal years 2000-2001, 2001-2002, and 2002-2003 for "in-classroom" teachers to provide instruction to students on the earthquake emergency procedure system, because both the 1991 and 2003 parameters and guidelines plainly state that such costs are not reimbursable.

The Commission hereby remands the reimbursement claims to the Controller, and requests that the Controller reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

## COMMISSION FINDINGS

### I. Chronology

01/08/02	Claimant signed and dated the reimbursement claim for fiscal year 2000-2001, according to documentation submitted with the IRC. <sup>1</sup>
01/06/03	Claimant signed and dated the reimbursement claim for fiscal year 2001-2002. <sup>2</sup>
01/09/04	Claimant signed and dated the reimbursement claim for fiscal year 2002-2003. <sup>3</sup>
09/24/04	The audit entrance conference was held. <sup>4</sup>
06/24/05	Controller issued the draft audit report. <sup>5</sup>
07/11/05	Claimant submitted comments on the draft audit report. <sup>6</sup>
08/31/05	Controller issued the final audit report. <sup>7</sup>
11/10/05	Claimant filed the IRC. <sup>8</sup>
03/12/08	Controller filed comments on the IRC. <sup>9</sup>
09/03/09	Claimant filed rebuttal comments. <sup>10</sup>
11/10/14	Commission staff issued the draft proposed decision. <sup>11</sup>
11/21/14	Claimant filed comments on the draft proposed decision. <sup>12</sup>
12/01/14	Controller filed comments on the draft proposed decision. <sup>13</sup>

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<sup>1</sup> Exhibit A, IRC, page 113. However, the documentation submitted by the Controller shows that the 2000-2001 reimbursement claim was dated January 15, 2001. (See Exhibit B, Controller's comments on IRC pp. 24 and 57.)

<sup>2</sup> Exhibit A, IRC, page 198.

<sup>3</sup> Exhibit A, IRC, page 276.

<sup>4</sup> Exhibit B, Controller's comments on IRC, pages 7 and 22.

<sup>5</sup> Exhibit A, IRC, page 90. The draft audit report is not part of the record.

<sup>6</sup> Exhibit A, IRC, pages 90 and 107-111.

<sup>7</sup> Exhibit A, IRC, pages 85-100.

<sup>8</sup> Exhibit A, IRC.

<sup>9</sup> Exhibit B, Controller's comments on IRC.

<sup>10</sup> Exhibit C, Claimant's rebuttal comments.

<sup>11</sup> Exhibit D, draft proposed decision.

<sup>12</sup> Exhibit E, Claimant's comments on the draft proposed decision.

<sup>13</sup> Exhibit F, Controller's comments on the draft proposed decision.

## II. Background

### The *Emergency Procedures, Earthquake, and Disasters* Program

The *Emergency Procedures, Earthquake, and Disasters* program was enacted by Statutes 1984, chapter 1659, in recognition that California would experience moderate to severe earthquakes in the foreseeable future and that all public and private schools should develop an earthquake emergency procedure system.<sup>14</sup> The program required the governing board of each school district and the superintendent of schools for each county to establish an earthquake emergency procedure system in every public or private school building having an occupant capacity of 50 or more pupils or more than one classroom that shall include all of the following:

- (a) A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staff.
- (b) A drop procedure. As used in this article, “drop procedure” means an activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once a semester in secondary schools.
- (c) Protective measures to be taken before, during, and following an earthquake.
- (d) A program to ensure that the students and staff are aware of, and properly trained in, the earthquake emergency procedure system.<sup>15</sup>

The 1984 statute also required the governing board of any school district to: (a) grant the use of school facilities for mass care and welfare shelters to public agencies such as the American Red Cross in the event of a disaster or other emergency affecting the public health and welfare; and (b) cooperate with such public agencies in furnishing and maintaining those services as the governing board may deem necessary to meet the needs of the community.<sup>16</sup>

The Commission approved the test claim on July 23, 1987, and adopted parameters and guidelines for the program on March 23, 1989 for costs incurred beginning July 1, 1985. The parameters and guidelines authorize reimbursement to establish emergency procedure systems; provide instruction to employees and students about the earthquake emergency procedures; and to provide district facilities, grounds, and equipment to public agencies for mass care and welfare shelters. On February 28, 1991, the Commission amended the parameters and guidelines to clarify that in-classroom teacher time to instruct students about the earthquake emergency procedure systems is not reimbursable.<sup>17</sup>

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<sup>14</sup> Former Education Code section 35295 (Stats. 1984, ch. 895).

<sup>15</sup> Education Code sections 35926, 35297.

<sup>16</sup> Former Education Code section 40041.5. This IRC does not involve the activities in former Education Code section 40041.5.

<sup>17</sup> The 1991 parameters and guidelines are contained in Exhibit B, Controller’s comments on IRC, page 93.

On May 29, 2003, the Commission amended the parameters and guidelines for the period of reimbursement from July 1, 2000 through June 30, 2003, to clarify that reimbursement for the emergency and disaster procedures is limited to earthquake emergencies only.<sup>18</sup> The supporting documentation requirements were amended to require claimants to support all costs claimed with contemporaneous source documents, in addition to other amendments to the boilerplate language. Reimbursement claims for costs incurred after June 30, 2003 were to be filed under consolidated parameters and guidelines for *Comprehensive School Safety Plans and Emergency Procedures, Earthquake Procedures, and Disasters*.

Statutes 2004, chapter 895 (AB 2855) amended Education Code sections 35295, 35296, and 35297, and repealed section 38132 (former § 40041.5), removing public school districts from the state-mandated requirements to establish earthquake emergency procedure systems. The amended parameters and guidelines state that this program is no longer reimbursable after December 31, 2004.<sup>19</sup>

#### Controller's Audit Adjustments and Summary of the Issues

For fiscal years 2000-2001, 2001-2002 and 2002-2003, claimant filed reimbursement claims for a total of \$753,508 for salaries, benefits, and related indirect costs to update its standardized emergency management system and to train staff. The Controller issued its final audit report on August 31, 2005, reducing the claims for salaries, benefits, and related indirect costs by \$738,364. The final audit report states that the Controller reduced \$63,280 claimed for updating the standardized emergency management system because:

The district claimed costs for updating its Standardized Emergency Management System (SEMS). However, SEMS includes all disaster scenarios; it is not limited to earthquakes. The district did not provide any documentation to show SEMS costs specifically attributable to earthquakes; therefore, the district did not document actual mandate-related costs. In addition, the district claimed costs supported by employee declarations. District employees did not complete the declarations contemporaneously and did not identify the date on which the employee performed mandated activities. Furthermore, the district did not provide any supporting documentation for \$19,452 of the costs claimed.<sup>20</sup>

The final audit report states that the Controller reduced \$645,757 claimed for training staff because:

The district claimed 1.5 hours per district employee for fiscal year (FY) 2000-01 and FY 2001-02, and 1.75 hours per district employee for FY 2002-03. The

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<sup>18</sup> The 2003 parameters and guidelines are contained in Exhibit B, Controller's comments on IRC, page 99.

<sup>19</sup> Commission on State Mandates, *Emergency Procedures, Earthquake Procedures, and Disasters and Comprehensive School Safety Parameters and Guidelines*, 04-PGA-24 (CSM-4241, 98-TC-01, 99-TC-10) Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8, 35295, 35296, 35297, 40041.5 and 40042, Statutes 1984, Chapter 1659 (AB 2786), Statutes 1997, Chapter 736 (SB 187), Statutes 1999, Chapter 996 (SB 408), as amended March 29, 2006.

<sup>20</sup> Exhibit B, Controller's comments on IRC, final audit report, page 145.

district provided employee declarations signed by school principals, which indicate that all school site employees attended 1.5 or 1.75 hours of training. However, these employee declarations are insufficient documentation to support training hours claimed. The district provided a letter dated September 13, 2004, which was addressed to school principals from the district's consultant. Regarding training hours claimed, the letter states, "These hours are based on an original study done a few years ago ... I have attached a certification for each year for you to sign stating that the training for those years did take place ...." Therefore, the employee certifications were not completed contemporaneously. Furthermore, the district did not provide any documentation to support the "original study" referenced in the consultant's letter.

The district also provided various emergency drill reports, and disaster committee and school site staff meeting agendas. Emergency drill reports did not identify which staff performed mandated activities or the amount or time spent on mandated activities. In addition, in-classroom teacher time spent during earthquake drills is not reimbursable. Further, disaster committee and school site staff meeting agendas did not identify time spent on mandate-related activities.<sup>21</sup>

This IRC presents the following issues:

- Whether the audit of the fiscal year 2000-2001 claim is barred by the deadlines in Government Code Section 17558.5.
- Whether the parameters and guidelines as amended in 1991 or 2003 govern the Controller's audit on the scope of mandate and documentation issues.
- Whether the reduction of claimed costs for updating the emergency management system is correct as a matter of law or supported by evidence in the record.
- Whether the reduction of \$645,757 for training in fiscal years 2000-2003 is correct as a matter of law.

### **III. Positions of Parties**

#### **A. Poway Unified School District**

Claimant contends that the Controller incorrectly reduced the reimbursement claims, and requests that the Commission direct the Controller to reinstate all costs claimed. Claimant argues that the audit of fiscal year 2000-2001 was completed beyond the statutory deadlines in Government Code section 17558.5 and is therefore barred. Claimant argues, based on the 1991 parameters and guidelines, that earthquakes are not the only disasters covered by the mandate and that its claim for reimbursement to update the district's standardized emergency management system is authorized by the parameters and guidelines and test claim statutes.

Claimant further argues that the Controller asserts documentation standards that are not in the parameters and guidelines and not adopted pursuant to the Administrative Procedure Act. Claimant states that the audit report relies on parameters and guidelines adopted May 29, 2003

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<sup>21</sup> *Ibid.*

and claiming instructions that have more specific documentation requirements than the parameters and guidelines adopted February 28, 1991.

Although the 2003 parameters and guidelines applied retroactively to the fiscal years that were the subject of the audit, claimant asserts that it was not on notice of the increased documentation standards in the 2003 parameters and guidelines until they were transmitted to the claimants after the reimbursement claims were filed, making it impossible to go back in time and comply with documentation standards in the 2003 version that did not exist when the costs were incurred. Claimant also argues that the 1991 parameters and guidelines govern the audit and that the contemporary source document rule (CSDR), which had not yet been included in parameters and guidelines, was invalidated by the trial court in *Clovis v. Chiang*.<sup>22</sup>

In comments on the draft proposed decision, claimant admits that the 2000-2001 audit was initiated in a timely manner, but maintains that the 2000-2001 audit was completed beyond the statutory deadline in Government Code section 17558.5 and is therefore barred. Claimant submitted additional documentation to justify Mr. Camozzi's time spent on mandated activities and copies of time sheets for 15 principals reporting 1.75 hours each for training. Claimant concurs with the findings in the draft proposed decision to reinstate costs claimed for lack of contemporaneous source documentation (\$11,423) and the portion of training (\$645,757) not attributable to in-classroom teacher time.

#### B. State Controller's Office

The Controller contends that the audit of the 2000-2001 reimbursement claim was timely, that the adjustments are correct and in accordance with the parameters and guidelines, as amended in 2003, so that this IRC should be denied. In comments on the draft proposed decision, the Controller concurs that the 1991 parameters and guidelines govern the documentation issues in the audit. The Controller also concurs with the finding to reinstate to claimant \$11,434 to update the earthquake emergency procedures system and the portion of \$646,757 in training costs that were not attributable to in-classroom teacher time. The Controller submits documentation in opposition to the recommendation in the draft proposed decision to reinstate \$2189 for fiscal year 2000-2001 and \$163 for fiscal year 2001-2002 for updating the emergency earthquake system, showing that the audit found that the claimant provided no source documentation to support these costs.

#### **IV. Discussion**

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

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<sup>22</sup> At the time claimant's comments were submitted, this case was not a published appellate decision as it is now: *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>23</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>24</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>25</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”<sup>26</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>27</sup> In addition, section 1185.2(c) of the Commission’s regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>28</sup>

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<sup>23</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>24</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>25</sup> *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>26</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at 547-548.

<sup>27</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>28</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

**A. The Audit of the Fiscal Year 2000-2001 Claim is Not Barred by the Statutory Deadlines in Government Code Section 17558.5.**

The claimant asserts that the Controller did not complete the audit of the reimbursement claim filed for fiscal year 2000-2001 within the applicable deadlines so that the audit adjustments for that fiscal year should be reinstated.<sup>29</sup>

The time to audit a reimbursement claim is provided in Government Code section 17558.5. At the time the reimbursement claim in this case was filed in January 2002,<sup>30</sup> Government Code section 17558.5, as amended by Statutes 1995, chapter 945 (operative July 1, 1996), stated the following:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>31</sup>

The claimant asserts that funds were provided for this program so that the first sentence of Government Code section 17558.5 applies in this case, requiring that the reimbursement claim be subject to audit “no later than two years after the end of calendar year in which the reimbursement claim is filed or last amended...”<sup>32</sup> The claimant argues that the phrase “subject to audit” requires the Controller “to complete” the audit no later than two years after the end of the calendar year in which the claim is filed.<sup>33</sup> The claimant further contends that an interpretation of “subject to audit” to require the Controller simply “to initiate” the audit within two years would lead to the absurd result that the Controller could issue a final audit report years or decades later and make adjustments to the claim without notifying the claimant whether the audit has been abandoned or is still in progress. In this respect, the claimant states:

The claimant would be in a state of limbo, not knowing whether the audit had been abandoned or the Controller’s Office was simply taking its time. As the process currently stands, several months can pass between the exit conference,

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<sup>29</sup> Exhibit A, IRC, pages 20-24.

<sup>30</sup> Claimant states that the reimbursement claim was signed on January 8, 2002. (Exhibit A, IRC, pages 22 and 113.) The Controller contends that the claim was filed January 15, 2002. (Exhibit B, Controller’s comments on IRC, pages 24 and 57.)

<sup>31</sup> Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

<sup>32</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11); Exhibit A, IRC, beginning on page 24.

<sup>33</sup> Exhibit A, pages 25-26.

issuance of the draft audit report, and issuance of the final audit report. The Controller is free to abandon an audit report at any point in the process, and there is no requirement that the claimant be notified of this. Thus, this is a very real possibility for this type of uncertainty to arise of the Controller's interpretation [of section 17558.5] were correct.<sup>34</sup>

Based on this interpretation, claimant argues that the audit of the reimbursement claim for fiscal year 2000-2001, filed in January 2002, was required to be completed by December 31, 2004. Since the final audit report was issued eight months later on August 31, 2005, claimant asserts that the audit of this reimbursement claim is barred.

The Controller contends that the audit of the reimbursement claim is timely and that the phrase "subject to audit" in section 17558.5, as amended in 1995, means subject to the initiation of the audit and does not require the Controller to complete the audit within the two-year deadline. Since the reimbursement claim was filed in January 2002, an audit had to be initiated by December 31, 2004. The Controller argues that the audit was timely initiated "no later than September 20, 2004, when the entrance conference was held."<sup>35</sup> Alternatively, the Controller asserts that the deadline to initiate the audit was extended by Government Code section 17558.5, as amended effective January 1, 2003,<sup>36</sup> to three years from the day the claim is filed, or to January 2005, since the audit was pending when the amendment of the statute was enacted. Since the audit was initiated in September 2004, the Controller argues that it was timely initiated under section 17558.5, as amended by the 2002 statute, as well.

The Commission finds that the audit of the 2000-2001 reimbursement claim was timely initiated and timely completed.

From the context of section 17558.5 (a), the Controller's interpretation is the better one. While one rule of statutory construction states that the use of differing language in otherwise parallel statutory provisions supports an inference that a different meaning was intended, the Commission finds that this inference does not apply to this statute.<sup>37</sup>

The 1995 version of section 17558.5(a) is not a model of clarity. However, a careful reading of the language of the first and second sentences reveals that the primary difference between the two concerns appropriations. The second sentence clearly refers to situations where funds are not appropriated. It can reasonably be inferred from the context that the first sentence, in contrast, refers to situations where funds are appropriated. The use of the word "however" to begin the second sentence signals the contrast between when funds are appropriated versus when they are not.

There is nothing about the structure or language of the two sentences to suggest that the Legislature intended any other substantive differences between these two parallel sentences. In each situation, when there is an appropriation (first sentence) and when there is not (second

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<sup>34</sup> Exhibit C, Claimant's rebuttal comments, pages 9-10.

<sup>35</sup> Exhibit B, Controller's comments on IRC, page 2.

<sup>36</sup> Statutes 2002, chapter 1128.

<sup>37</sup> *Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, 62.

sentence), the Controller must perform some activity within a two-year period. The use in the second sentence of the phrase “the time for the Controller to initiate an audit” refers back to “the time” defined in the first sentence, namely two years. Similarly, the use of “initiate” in the second sentence refers to what the Controller is required to do within the two-year period. Read in this way, the two sentences are parallel. In the first sentence, when there is an appropriation, the time to initiate an audit is two years. In the second sentence, when there is no appropriation, the time to initiate an audit is also two years. The only difference is the triggering event of an appropriation that determines when the two-year period to initiate an audit begins to run.

The phrase “subject to audit” does not require completing the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. In this case, the reimbursement claim filed for 2000-2001 was subject to audit at any time before December 31, 2004. Since the audit began at the latest in September 2004, it was timely initiated.

This interpretation is consistent with the Legislature’s 2002 amendment to Government Code section 17558.5, clarifying that “subject to audit” means “subject to the initiation of an audit,” as follows in underline and strikeout:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than ~~two~~ three years after the ~~end of the calendar year in which the date that~~ the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>38</sup>

In addition, the Controller received additional time to initiate the audit based on the 2002 amendment to section 17558.5. This amendment clarified that when funds are appropriated, the claim is subject “to *the initiation of an audit...*” for the statutory period. The 2002 statute also enlarged the time for the Controller to initiate the audit from *two years after the end of the calendar year* in which the reimbursement claim is filed or last amended, to *three years after the date that the actual reimbursement claim is filed* or last amended. According to the California Supreme Court, “[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.”<sup>39</sup> The 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for the reimbursement claim was still pending and not yet barred under the prior statute. The 2002 statute, which extended the deadline to three years after the date the 2000-2001 reimbursement claim was filed or last amended, gave the Controller additional time to initiate the audit until either January 8, 2005, based on the date claimant states the claim was signed, or January 15, 2005, the date the Controller states that the claim was filed with the Controller.<sup>40</sup> Regardless of

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<sup>38</sup> Statutes 2002, chapter 1128 (AB 2834).

<sup>39</sup> *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, at p. 465.

<sup>40</sup> The claimant states that the reimbursement claim was signed on January 8, 2002. (Exhibit A, pages 22 and 113.) The Controller states that the claim was filed January 15, 2002. (Exhibit B, pages 24 and 57.) Both submitted supporting documentation.

which date the claim was filed, however, the audit was initiated no later than September 20, 2004, when the entrance conference was held. Therefore, the Commission finds that the audit was timely initiated before the deadline established by section 17558.5, as amended in 2002.

In comments on the draft proposed decision, claimant admits that, pursuant to the 1995 “then-relevant” version of section 17558.5, the claim was subject to audit initiation no later than December 31, 2004, and was commenced before this deadline in September 2004 (at the entrance conference).<sup>41</sup> However, claimant states that the Commission incorrectly applies the concept of enlargement to the extension of relief to a state agency rather than its effect as an impairment of previous rights of claimants.<sup>42</sup>

However, the claimant does not have a vested right in the running of a statutory period prior to its expiration, as long as the audit is not already barred. In *Douglas Aircraft*, the Supreme Court stated the general rule as follows:

The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred. (*Weldon v. Rogers*, 151 Cal. 432.) The party claiming to be adversely affected is deemed to suffer no injury where he was under an obligation to pay before the period was lengthened. This is on the theory that the legislation affects only the remedy and not a right. (*Mudd v. McColgan*, 30 Cal.2d 463; *Davis & McMillan v. Industrial Acc. Com.*, 198 Cal. 631; 31 Cal.Jur.2d 434.) An enlargement of the limitation period by the Legislature has been held to be proper in cases where the period had not run against a corporation for additional franchise taxes (*Edison Calif. Stores, Inc. v. McColgan*, 30 Cal.2d 472), against an individual for personal income taxes (*Mudd v. McColgan*, *supra*, 30 Cal.2d 463), and against a judgment debtor (*Weldon v. Rogers*, *supra*, 151 Cal. 432). It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan*, *supra*, 30 Cal.2d 463.)<sup>43</sup>

In *Mudd v. McColgan*, relied on in *Douglas Aircraft*, the Court explained:

It is settled law of this state that an amendment which enlarges a period of limitation applies to pending matters where not otherwise expressly excepted. Such legislation affects the remedy and is applicable to matters not already barred, without retroactive effect. Because the operation is prospective rather than retrospective, there is no impairment of vested rights. [Citations.] Moreover, a party has *no vested right in the running of a statute of limitation prior to its expiration*. He is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for recovery, he is under obligation to pay. In *Campbell v. Holt*, 115 U.S. 620, at page 628, it was said that statutes

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<sup>41</sup> Exhibit E, Claimant’s comments on the draft proposed decision, pages 2-3.

<sup>42</sup> Exhibit E, Claimant’s comments on the draft proposed decision, page 4.

<sup>43</sup> *Douglas Aircraft Co. v. Cranston*, *supra*, 58 Cal.2d 462, 465.

shortening the period or making it longer have always been held to be within the legislative power until the bar was complete.<sup>44</sup>

And in *Liptak v. Diane Apartments, Inc.*,<sup>45</sup> the Second District Court of Appeal, relying in part on *Mudd, supra*, reasoned:

A party does not have a vested right in the time for the commencement of an action. (*Mill and Lumber Co. v. Olmstead* (1890) 85 Cal. 80, 84-85.) Nor does he have a vested right in the running of the statute of limitations prior to its expiration. (*Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; *Weldon v. Rogers* (1907) 151 Cal. 432, 434.) *A change in the statute of limitations merely effects a change in procedure and the Legislature may shorten the period, however, a reasonable time must be permitted for a party affected to avail himself of the remedy before the statute takes effect.* (*Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122; *Davis & McMillan v. Industrial Acc. Com.* (1926) 198 Cal. 631, 637; *Mill and Lumber Co. v. Olmstead, supra*, 85 Cal. at p. 84.)<sup>46</sup>

Moreover, the Commission further finds that the audit was timely completed. Before Government Code section 17558.5 was amended effective January 1, 2005, there was no statutory deadline for the completion of an audit. Under common law principles, however, the Controller had to complete an audit within a reasonable period of time after it was initiated.<sup>47</sup> In comments on the draft proposed decision, claimant disputes this interpretation, calling it a “misapplication of a decision in a civil matter” and states that a reasonable period of time for completion is “without regard to the positive law of the Legislature’s statute of limitations.” Reasonableness of the audit period means that the audit completion date would become a question of fact in every audit, which claimant calls contrary to the concept of a statute of limitations.<sup>48</sup> Claimant also discusses at length the defense of laches,<sup>49</sup> but the Commission is not suggesting that laches is the appropriate remedy in this IRC because the audit was completed when the final audit report was issued on August 31, 2005, eleven months after the audit was initiated. There is nothing on the face of the 1995 or 2002 versions of section 17558.5 that requires completion of the audit by a certain date, and claimant has not alleged or demonstrated that the audit was not completed within a reasonable period of time.

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<sup>44</sup> *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468, emphasis added.

<sup>45</sup> 109 Cal.App.3d 762.

<sup>46</sup> *Id.* at page 773.

<sup>47</sup> *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986. In that case, the court determined that the hospital failed to establish an unreasonable delay in audits by Department of Health Services, since the Department conducted audits two years or less after the end of the fiscal period that it was auditing, which was less than the three-year period permitted by statute. See also, *Steen v. City of Los Angeles* (1948) 31 Cal.2d 542, 546, where the court held that laches applies in quasi-adjudicative proceedings.

<sup>48</sup> Exhibit E, Claimant’s comments on the draft proposed decision, page 4.

<sup>49</sup> Exhibit E, Claimant’s comments on the draft proposed decision, pages 4-5.

Effective January 1, 2005, when the audit at issue was still pending, the statute was amended to require that “an audit shall be completed not later than two years after the date that the audit is commenced;” or for this audit, no later than September 20, 2006. The courts have held that where the state gives up a right previously possessed by it or one of its agencies (such as the Controller’s unspecified time to complete an audit before the Jan. 1, 2005 statutory amendment), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims. In *California Employment Stabilization Commission v. Payne* (1948) 31 Cal.2d 210, 215-216, the California Supreme Court stated in relevant part the following:

Accordingly, the power of the Legislature to lessen a statute of limitations is subject to the restriction that an existing right cannot be cut off summarily without giving a reasonable time after the act becomes effective to exercise such right. (See *Davis & McMillan v. Ind. Acc. Comm.*, 198 Cal. 631, 637, 246 P. 1046, 46 A.L.R. 1095.) This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state.

Thus, the audit was subject to the statutory two-year deadline to complete the audit imposed by section 17558.5, as amended in 2004. In this case, the audit was completed when the final audit report was issued on August 31, 2005, well before the two-year deadline of September 20, 2006.

Accordingly, the Commission finds that the audit of the 2000-2001 reimbursement claim was timely initiated and timely completed and is not barred by the deadlines in Government Code section 17558.5.

**B. The Parameters and Guidelines as Amended in 2003 Govern the Scope of the Mandate Issues and the Parameters and Guidelines as Amended in 1991 Govern the Source Documentation Issues.**

The substantive issues in this IRC include the scope of the mandate and whether the claimant complied with the supporting documentation requirements in the parameters and guidelines when claiming employee salaries and benefits.

The Controller assumes that the parameters and guidelines, as amended on May 29, 2003, apply to the audit of the 2000-2001, 2001-2002 and 2002-2003 reimbursement claims.<sup>50</sup> That amendment was adopted following a request from the Controller, on September 19, 2001, and pursuant to former section 1183.2 of the Commission’s regulations.<sup>51</sup> The request established a period of reimbursement going back to July 1, 2000. The amended parameters and guidelines clarified that reimbursement for the emergency and disaster procedures was limited to earthquake emergencies only, and added a new requirement for claimants to support all costs

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<sup>50</sup> See Exhibit B, Controller’s comments on IRC, page 10.

<sup>51</sup> The provision is now in Government Code section 17557(d) as of Statutes 2004, chapter 890.

claimed with contemporaneous source documents “created at or near the same time the actual cost was incurred.”

The amended parameters and guidelines were not in effect when the costs in this case were incurred.<sup>52</sup> Thus, the issue is whether the 2003 parameters and guidelines can be applied retroactively to costs incurred before the parameters and guidelines amendment was adopted.

As discussed below, the Commission finds that the 2003 parameters and guidelines apply retroactively to the claimant’s reimbursement claims regarding the scope of the reimbursable activities. However, for due process reasons, the documentation requirements in the 2003 parameters and guidelines cannot apply to the audit of the 2000-2001, 2001-2002 and 2002-2003 claims. Rather, on issues involving adequate source documentation, the parameters and guidelines adopted in 1991 must be applied because they were in effect when the claimant incurred costs for the program and filed the reimbursement claims.

1. The parameters and guidelines amended on May 29, 2003 apply to the claimant’s reimbursement claims on the issue involving the scope of the reimbursable activities.

The parameters and guidelines were amended on May 29, 2003 to clarify the scope of the reimbursable activities. As amended, the Commission tracked the statutory language of the test claim statute to identify the reimbursable activities and to clarify that the reimbursable activities apply expressly to earthquake emergencies only. Section IV of the parameters and guidelines, as amended on May 29, 2003, lists the following reimbursable activities:

A. Earthquake Emergency Procedure System

1. One-Time Activities

- a. Developing and establishing a district earthquake emergency procedure system that shall include all of the following:
  - A school building disaster plan, ready for implementation at any time, for maintaining the safety and care of students and staffs.
  - A drop procedure.<sup>53</sup>
  - Protective measures to be taken before, during, and following an earthquake.
  - A program to ensure that the students and that both the certificated and classified staff are aware of, and properly trained in, the earthquake emergency procedure system. (Ed. Code, §35297.)

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<sup>52</sup> There is a possibility that costs may have been incurred in fiscal year 2002-2003 between May 29, 2003 (when the Commission adopted the amendment) and June 30, 2003 (the end of the 2002-2003 fiscal year). However, there is no evidence in the record to support this possibility.

<sup>53</sup> As used in this article, “drop procedure” means an activity whereby each student and staff member takes cover under a table or desk, dropping to his or her knees, with the head protected by the arms, and the back to the windows. A drop procedure practice shall be held at least once each school quarter in elementary schools and at least once a semester in secondary schools. (Ed. Code, § 35297.)

## 2. On-Going Activities

- a. Updating the district earthquake emergency procedure system as to those activities identified in 1.a. above, including the training program.
- b. Employees reviewing the requirements of the Earthquake Emergency Procedure System program and attending training meetings to receive instruction.
- c. Employees preparing to conduct training sessions. However, in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system is not reimbursable.<sup>54</sup>

Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.<sup>55</sup> Interpretation of an administrative agency's rule, like the parameters and guidelines, is a question of law.<sup>56</sup> The Commission's clarification of existing law may be applied to reimbursement claims for costs that predate the parameters and guidelines amendment. The Commission's clarification is merely a statement of what the law has always been from the time it was enacted.<sup>57</sup>

Therefore, the 2003 parameters and guidelines apply retroactively to the claimant's reimbursement claims on the issue involving the scope of the reimbursable activities.

2. Due process requires that the parameters and guidelines adopted in 1991, which were in effect when the claimant incurred costs for the program and filed the reimbursement claims, be applied to issues involving documentation requirements.

When the Commission amended the parameters and guidelines in 2003, it identified the period of reimbursement for the amendment beginning in the 2000-2001 fiscal year based on the filing date of the Controller's request (September 19, 2001), pursuant former section 1183.2 of the Commission's regulations.<sup>58</sup> Despite the retroactive period of reimbursement for amendments to parameters and guidelines in former section 1183.2, an amendment cannot be applied retroactively if due process considerations prevent it.<sup>59</sup> If an amendment affects substantive rights or liabilities of the parties that change the legal consequences of past events, then the application of an amendment may be considered unlawfully retroactive under principles of due process.<sup>60</sup> A statutory change is substantive if it imposes new, additional, or different liabilities

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<sup>54</sup> Exhibit B, Controller's comments on IRC, page 99.

<sup>55</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

<sup>56</sup> *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93.

<sup>57</sup> *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.

<sup>58</sup> The period of reimbursement for amended parameters and guidelines is now in Government Code section 17557(d).

<sup>59</sup> *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

<sup>60</sup> *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

based on past conduct.<sup>61</sup> In addition, due process requires that a claimant have reasonable notice of any change that affects the substantive rights and liabilities of the parties.<sup>62</sup>

The court in *Clovis Unified School Dist. v. Chiang* held that the contemporaneous source document rule (CSDR) as an underground regulation that was not authorized in the parameters and guidelines. The court also determined which parameters and guidelines governed the audit of the programs at issue in that case, consistent with these due process rules. In *Clovis*, the Controller requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request and stated:

We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR *during the 1998 to 2003 fiscal years*, when the CSDR was an underground regulation. This issue is not resolved by the Commission's *subsequent* incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's. (Emphasis in original.)<sup>63</sup>

The court further determined that the parameters and guidelines that were in effect when the state-mandated costs were incurred are the parameters and guidelines that govern the documentation issues in the audit.<sup>64</sup>

Therefore, the documentation requirements added to the parameters and guidelines in 2003 operate only prospectively to prevent a denial of due process. Before the amendment was adopted, claimants were not on notice of the requirement to keep contemporaneous documents to support actual salary and benefit costs and they cannot go back and recreate those documents.

Consequently, the documentation requirements in the 1991 parameters and guidelines govern the audit of these reimbursement claims. In comments on the draft proposed decision, the Controller agrees that "the 1991 parameters and guidelines governed this audit through May 29, 2005, which required only minimal support for employee costs claimed."<sup>65</sup>

Section VI, "Claim Preparation," of the 1991 parameters and guidelines states the following:

Attach a statement [to each claim] showing the actual increased costs incurred to comply with the mandate which summarizes these costs as follows: 1. Emergency Procedures; Salaries, employee benefits; Printing, postage and supplies

[¶]...[¶]

A listing to support the following reimbursable items shall be provided:

1. Emergency procedures

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<sup>61</sup> *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

<sup>62</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784.

<sup>63</sup> *Clovis Unified School Dist., supra* 188 Cal.App.4th 794, 809, fn. 5.

<sup>64</sup> *Id.* at pages 812-813.

<sup>65</sup> Exhibit F, Controller's comments on the draft proposed decision, page 7.

- a. For those employees whose function is to prepare and implement emergency plans and to provide instruction, provide a listing of each employee, describe their function, their hourly rate of pay and related employee benefit cost and the number of hours devoted to their function as they relate to this mandate.

Section VII, Consultant Services, states in relevant part the following:

Separately show the name of professionals or consultants, specify the functions the consultants performed relative to the mandate, length of appointment, and the itemized costs for such services. Invoices must be submitted as supporting documentation with your claim. The maximum reimbursable fee for contracted services shall not exceed the salaries and wages, including benefits, that would be paid to a school district's employee performing the same services. Reasonable expenses will also be paid as identified on the monthly billings of consultants. However, travel expenses for consultants hired by the claimant shall not be reimbursed in an amount higher than that received by State employees.

Section VIII, Supporting Data, states the following:

For auditing purposes, all costs claimed may be traceable to source documents and/or worksheets that show evidence of the validity of such costs. These documents must be kept on file by the school district submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State controller or his agent.<sup>66</sup>

And Section X of the 1991 parameters and guidelines requires that an authorized representative of the claimant certify the claim for the costs mandated by the state.<sup>67</sup>

**C. Some of the Reductions of Costs Claimed for Updating the Emergency Management System are Correct as a Matter of Law, and Some are Entirely Lacking in Evidentiary Support.**

The Controller reduced salaries and benefits claimed in all three fiscal years for updating the district's standardized emergency management system by \$63,280 for the following three reasons: (1) \$32,405 was reduced because the claimant did not provide any documentation to show that the claimed costs were specifically attributable to earthquakes; (2) \$19,452 was reduced because the claimant did not provide any supporting documentation of the costs claimed; and (3) \$11,423 was reduced because employee declarations were not completed contemporaneously and did not identify the date that employees performed the mandated activities.<sup>68</sup> Each of these issues is addressed below.

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<sup>66</sup> Exhibit A, IRC, pages 17-18, and 37.

<sup>67</sup> Exhibit B, Controller's comments on IRC, page 93.

<sup>68</sup> Exhibit A, IRC, pages 93-94.

1. The Controller's Reduction of \$32,405 for Updating the District's Emergency Procedures System is Correct as a Matter of Law.

For each fiscal year at issue, reimbursement was claimed for Romeo Camozzi, former superintendent of claimant's district and a consultant for planning, training, and updating the district's emergency procedures system. The Controller denied claimed costs of \$5,395 for fiscal year 2000-2001, \$16,137 for fiscal year 2001-2002, and \$10,873 for fiscal year 2002-2003 (totaling \$32,405),<sup>69</sup> for Mr. Camozzi's time to update claimant's emergency procedures system because:

The district claimed salary and benefit costs related to updating its standardized emergency management system (SEMS). The district updated its SEMS emergency preparedness plan in accordance with district Board policy, Section 6.85, which states, "The District Superintendent shall develop an emergency preparedness plan which complies with the state education and government codes and the requirements of SEMS."

District administrative procedure Section 6.85.1 and California Code of Regulations, Title 19, Section 2402, define an emergency as follows:

"Emergency" means a condition of disaster or of extreme peril to the safety of persons and property caused by such conditions as air pollution, fire, flood, hazardous material incident, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestations or disease, [earthquake], or other conditions, other than conditions resulting from a labor controversy.

The district did not provide documentation that identifies SEMS costs applicable to earthquakes.<sup>70</sup>

Claimant does not dispute the finding that the costs claimed are for emergencies other than earthquakes, but argues, based on the 1991 parameters and guidelines, that earthquake procedures are not the only disaster procedures covered by the mandate.<sup>71</sup>

It is correct that the description of the reimbursable activities in the 1991 parameters and guidelines was broadly worded (i.e., "prepare and implement district emergency and disaster plans and procedures"). However, as stated above, the Commission amended the parameters and guidelines in 2003, to clarify that the mandate was limited to earthquake emergencies only. The Commission's 2003 amendment tracked the statutory language in Education Code section 35297, which is limited to earthquake emergencies, and clarified that developing, establishing, and

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<sup>69</sup> Exhibit A, IRC, page 114 (reimbursement claim for fiscal year 2000-2001), page 199 (reimbursement claim for fiscal year 2001-2002), and page 277 (reimbursement claim for fiscal year 2002-2003).

<sup>70</sup> Exhibit B, Controller's comments on IRC, final audit report, pages 156-157. See also, Tab 6 to the comments (Poway Unified School District Board Policy Section 6.85 and 6.85.1), page 48.

<sup>71</sup> Exhibit A, IRC, pages 17-19.

updating a “district earthquake emergency procedure system” was eligible for reimbursement. Moreover, the test claim statutes, Education Code sections 35295-35297, are within Article 10.5 of the Education Code, entitled “Earthquake Emergency Procedures.” Education Code section 35925(c) states the intent of the Legislature in enacting Article 10.5 is “to authorize the establishment of earthquake emergency procedure systems in kindergarten and grades 1 through 12 in all [California schools].”<sup>72</sup>

The Commission’s 2003 parameters and guidelines amendment was a statement of what the mandate has always been and constitutes a final, binding decision of the Commission, which applies to this audit.<sup>73</sup> Thus, to the extent that costs were claimed for updating the standardized emergency management system for emergencies that are not earthquake related, then the Controller’s reduction of those costs is correct as a matter of law.

Moreover, the 1991 parameters and guidelines required the claimant to provide source documents and/or worksheets that show evidence of the validity of all costs claimed. The Controller found that the claimant provided no documentation to show that the costs claimed for Mr. Camozzi’s time was limited to the scope of the mandate. In comments on the draft proposed decision, claimant submits a representative training package that describes the scope of the subject matter for which Mr. Camozzi was responsible, and a copy of Mr. Camozzi’s time sheets used for payroll purposes.<sup>74</sup> The training package submitted is titled “Emergency Survival Program (ESP),” and describes itself as “enhancing preparedness for earthquakes and other types of hazards” for each month in 2002. The ESP training packet was not developed by the claimant, but developed by the County of Los Angeles and coordinated by other counties and the Governor’s Office of Emergency Services.<sup>75</sup> The timesheets also describe the time Mr. Camozzi worked on “SEMS emergency prep,” “SEMS emergency planning,” or “emergency planning” for 219 hours in 2001, 236 hours in 2002, and 80 hours in 2003.<sup>76</sup> Claimant contends that the Commission can review these documents using the documentation standards in the 1991 parameters and guidelines to determine the validity of the costs claimed for updating the portion of the emergency procedure systems relating to earthquakes and to allocate the mandate-related time to provide some reimbursement to the claimant.<sup>77</sup>

The Commission finds, however, that the documentation provided by the claimant does not provide evidence of the time spent by Mr. Camozzi on the mandate-related activities. Mr. Camozzi was both an employee and a consultant during the audit years. The 1991 parameters and guidelines require that when claiming costs for employees, the claimant is required to

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<sup>72</sup> Statutes 2004, chapter 895 made sections 35295-35297 applicable only to private schools in California, and recast the earthquake emergency procedure system requirements for public schools by consolidating them with the comprehensive school safety plan.

<sup>73</sup> *McClung, supra*, 34 Cal.4th 467, 471; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

<sup>74</sup> Exhibit E, Claimant’s comments on the draft proposed decision, page 6.

<sup>75</sup> Exhibit E, Claimant’s comments on the draft proposed decision, pages 11-38.

<sup>76</sup> Exhibit E, Claimant’s comments on the draft proposed decision, pages 39-62.

<sup>77</sup> Exhibit E, Claimant’s comments on the draft proposed decision, page 6.

identify the number of hours devoted to the mandate. Similarly, when claiming costs for consultants, the claimant is required to specify the functions performed relative to the mandate and to itemize the costs for such services. Source documents or worksheets are required to be provided to evidence that the costs claimed relate to the mandated program. The training package submitted by the claimant focuses on earthquakes, but it was not prepared by Mr. Camozzi and there is no information provided to show how the package relates to the actual services provided by Mr. Camozzi in the three fiscal years at issue. The claimant simply states that the training package is “representative” of the “scope of subject matter for which Mr. Camozzi was responsible.” And the time sheets provide no evidence of the time spent by Mr. Camozzi on earthquake-related activities. None of the documents provided by claimant show Mr. Camozzi’s time was limited to earthquake emergencies, which is the subject of the mandate.

Accordingly, the Commission finds that the Controller’s reduction of \$32,405 for updating the claimant’s emergency procedures system in fiscal years 2000-2001, 2001-2002, and 2002-2003 is correct as a matter of law.

2. The Reduction of \$19,452 to Update the Earthquake Emergency Procedure System is Correct as a Matter of Law and Supported by Evidence in the Record.

For each fiscal year at issue, reimbursement was also claimed for other employees to update the district’s earthquake emergency procedure system. Not including the costs claimed for Mr. Camozzi’s time, costs of \$10,074 in fiscal year 2000-2001, \$17,852 in fiscal year 2001-2002, and \$17,100 in fiscal year 2002-2003 were claimed for district employees to update the earthquake procedures. In the first two fiscal years, the costs claimed were for various employees performing the activity. In the last fiscal year, 2002-2003, the reimbursement claim identifies costs for 31 principals, who spent eight hours each to update the earthquake emergency procedures, at an hourly rate of \$68.95, for a total of \$17,066.60 (rounded up to \$17,100).<sup>78</sup>

The Controller reduced the costs claimed by \$2,189 in fiscal year 2000-2001; \$163 in fiscal year 2001-2002; and \$17,100 in fiscal year 2002-2003, the entire amount claimed in that year to update the earthquake emergency procedure system. The reductions were made on the ground that the claimant provided no supporting documentation for these costs.<sup>79</sup>

Claimants are required by the 1991 parameters and guidelines to provide, upon request of the Controller, source documentation or worksheets to evidence the validity of the costs claimed as follows:

For auditing purposes, all costs claimed may be traceable to source documents and/or worksheets that show evidence of the validity of such costs. These documents must be kept on file by the school district submitting the claim for a period of no less than three years from the date of the final payment of the claim

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<sup>78</sup> Exhibit A, IRC, page 114 (reimbursement claim for fiscal year 2000-2001), page 199 (reimbursement claim for fiscal year 2001-2002), and page 277 (reimbursement claim for fiscal year 2002-2003).

<sup>79</sup> Exhibit B, Controller’s comments on IRC, final audit report, page 154.

pursuant to this mandate, and made available on the request of the State controller or his agent.<sup>80</sup>

Based on the plain language of the parameters and guidelines, and the fact that there is no documentation in the record to support the costs claimed in fiscal year 2002-2003, the Commission finds that the Controller's \$17,100 reduction of costs in fiscal year 2002-2003 for the 31 principals to update the emergency earthquake system, is correct as a matter of law.

With respect to the other two fiscal years, it was impossible to tell from the record, before the draft proposed decision was issued, which costs for the many employees identified in the reimbursement claims were reduced for lack of documentation. In fiscal year 2000-2001, the reduction was \$2,189 out of the \$10,074 claimed. In fiscal year 2001-2002, the reduction was \$163 out of the \$17,852 claimed. In response to the draft proposed decision, the Controller submitted a spreadsheet identifying the reasons for the reductions made during the audit. This spreadsheet shows the reductions of \$2188.51 to costs claimed for M. Atkins, assistant principal, and \$163.09 for K. Blake, instructional assistant, because of "no supporting documentation."<sup>81</sup> Thus, the Controller's representation of fact that the costs claimed were not supported by documentation is now supported by evidence in the record pursuant to section 1185.2(c) of the Commission's regulations. In addition, the claimant has filed no documentation to support the costs claimed for these employees.

Thus, the Commission finds that the Controller's reduction of \$19,452 for claimant to update the earthquake emergency procedure system is correct as a matter of law and supported by evidence in the record.

3. The Reduction of \$11,423 in Salaries and Benefits for the Lack of Contemporaneous Source Documentation for Costs Claimed to Update the Earthquake Emergency Procedure System is Incorrect as a Matter of Law.

The audit also found that \$11,423 for updating the earthquake emergency system in fiscal years 2000-2001, 2001-2002, and 2002-2003 was supported by employee declarations that were not completed contemporaneously and did not identify the date on which the employees performed the mandated activities. The final audit report states:

The audit finding quotes *Parameters and Guidelines* (amended May 29, 2003), which is applicable to claims filed in FY 2000-01 through FY 2002-03. It states that source documents must be contemporaneous, and it specifies that declarations may not be substituted for source documents. The date on which the district prepares its mandated cost claim is irrelevant to the date(s) on which employees prepare documentation that supports costs claimed.<sup>82</sup>

The Commission finds that the Controller's \$11,423 reduction is incorrect as a matter of law. As stated above, the 1991 parameters and guidelines apply to the issues involving appropriate source documentation. The 1991 parameters and guidelines do not require contemporaneous source

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<sup>80</sup> Exhibit A, IRC, pages 17-18.

<sup>81</sup> Exhibit F, Controller's comments on the draft proposed decision, pages 11-12.

<sup>82</sup> Exhibit A, IRC, pages 93-94.

documents, and do not require the claimant to specify the date that the mandated activities were performed. Rather, they require claimants to attach to each claim a “listing of each employee, describ[ing] their function, their hourly rate of pay and related employee benefit cost and the number of hours devoted to their function as they relate to this mandate,”<sup>83</sup> which claimant did here. The parameters and guidelines also require that the costs claimed be traceable to “source documents and/or worksheets that show evidence of the validity of such costs,” which must be kept on file and made available to the Controller for auditing purposes.<sup>84</sup> The claimant’s employee declarations for updating the earthquake procedures that were provided to the Controller during the audit are sufficient documents under the 1991 parameters and guidelines to support the validity of these costs.

Moreover, the *Clovis Unified School District* case declared the contemporaneous source document rule (CSDR), which was not included in the parameters and guidelines for the *Emergency Procedures, Earthquake, and Disasters* program until May 2003, to be unenforceable because it constituted an underground regulation that was not adopted in conformance with the Administrative Procedure Act.<sup>85</sup> The court rejected the Controller’s argument that the contemporaneous source document rule merely restated the source document requirement found in prior parameters and guidelines that did not expressly include the contemporaneous requirement. The court found that prior to the parameters and guidelines amendment that added the contemporaneous source document rule, school districts used employee declarations, certifications, and average time accountings to document the employee time spent on mandated activities, and that “such methods can be deemed akin to worksheets” that properly support a claim for reimbursement.<sup>86</sup> The court concluded by stating:

[W]e conclude that the Controller's CSDR is an underground, unenforceable regulation as applied to the audits of the School Districts' EPEPD [*Emergency Procedures, Earthquake, and Disasters*] Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003. (See fn. 2, *ante*.) These audits are invalidated to the extent they used this CSDR.<sup>87</sup>

Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.<sup>88</sup> Moreover, the Controller was a party to the *Clovis* action, and under principles of

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<sup>83</sup> Exhibit A, IRC, page 36.

<sup>84</sup> Exhibit A, IRC, page 18; and page 114 (reimbursement claim for fiscal year 2000-2001), page 199 (reimbursement claim for fiscal year 2001-2002), and page 277 (reimbursement claim for fiscal year 2002-2003).

<sup>85</sup> *Clovis Unified School District v. Chiang*, *supra*, 188 Cal.App.4th 794, 803-806.

<sup>86</sup> *Id.* at page 804.

<sup>87</sup> *Id.* at page 806.

<sup>88</sup> *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

collateral estoppel, the court's decision is binding on the Controller for these reimbursement claims.<sup>89</sup>

Accordingly, the Commission finds that the Controller's \$11,423 reduction for source documentation that was not contemporaneous is not consistent with the governing parameters and guidelines, is incorrect as a matter of law, and, therefore, these costs should be reinstated to the claimant.

**D. The Reduction of \$645,757 for Training in all Fiscal Years is Partially Correct as a Matter of Law.**

Both the 1991 and 2003 parameters and guidelines authorize ongoing reimbursement for school district employees to review the requirements of the updated earthquake emergency procedure system and for all employees and students to attend training meetings to receive instruction on the emergency system, including instruction on a drop procedure and other protective measures to be taken before, during, and after an earthquake. The parameters and guidelines further state that "in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system is not reimbursable."

For all fiscal years at issue, \$645,757 was claimed for the "disaster drill process" training of 1.5 hours per employee in fiscal years 2000-2001 and 2001-2002, and 1.75 hours in fiscal year 2002-2003. To support these costs, each fiscal year reimbursement claim identifies the employee, job classification, and hourly rate of pay and benefits. The hourly rate of pay and benefits was then multiplied by either 1.5 hours or 1.75 hours, for a total amount claimed for that employee to receive or provide training. In addition, the Controller states that the claimant provided employee declarations, emergency drill reports, and meeting agendas to support the costs claimed, following a September 13, 2004 request to school principals from the claimant's mandates consultant. The Controller quotes claimant in relevant part as follows:

We reported 1.5 hours for each employee in your department for 2000-02 and 2001-02 and 1.75 hours for 2002-03. These hours are based on an original study done a few years ago. These hours include the school site employees going through Emergency Procedure: Earthquake Preparedness training within the school and the district wide training, which usually takes place in the spring.

I have attached a certification for each year for you to sign stating that the training for those years did take place. On the form it asks for a date the training took place; please provide to the best of your ability this information. If you feel that this was reported correctly please sign and return the certifications to by Thursday of this week as we have been asked to provide this backup to the state on Monday the 20<sup>th</sup> of September.

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<sup>89</sup> *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880. Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.

We realize that you may have not [been] at the school at these times so please do the best you can based on the information you have available.<sup>90</sup>

An “example” of the supporting documentation provided by the claimant in response to the consultant’s letter is contained in the Controller’s comments, and these documents are described as follows:<sup>91</sup>

- Certification of Training, Emergency Procedures: Earthquake Preparedness, Fiscal Year 2000-2001 for Meadowbrook Middle School. Dates of training are identified as August 23, 2000, November 8, 2000, and November 21, 2000. All school site employees participated in the training for a total of 1.5 hours. The certification, “that the above is a true and correct statement in compliance with the mandate emergency procedures-earthquake preparedness,” was signed by the principal of the middle school, with the caveat that “I was not principal at the time and am reconstructing dates as well as possible.”<sup>92</sup>
- A disaster drill notice dated November 8, 2000 to “all staff” sent from the assistant principal indicating that “A disaster drill will be held on Tuesday, November 21, 2000 at 9:55 A.M. (Period 3).”<sup>93</sup>
- Certification of Training, Emergency Procedures: Earthquake Preparedness, Fiscal Year 2001-2002 for Meadowbrook Middle School. Dates of training are identified as August 23, 2001, November 20, 2001, and March 6, 2002. All school site employees participated in the training for a total of 1.5 hours. The certification, “that the above is a true and correct statement in compliance with the mandate emergency procedures-earthquake preparedness,” was signed by the principal of the middle school, with the caveat that “I was not principal at the time and am reconstructing dates as well as possible.”<sup>94</sup>
- An Emergency Preparedness Drill Report dated November 20, 2001, indicating that an “Earthquake/Disaster Duck-Cover-Hold drill” was held on November 20, 2001 at 9:35 a.m. The document reports information about the drill efficiency and success and improvements or follow-up needed. The report was signed by the principal and the emergency plan coordinator.<sup>95</sup>

Claimant also submitted copies of time sheets for 15 principals reporting 1.75 hours each for training in response to the draft proposed decision. Claimant said “these documents may not

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<sup>90</sup> Exhibit B, Controller’s Comments on IRC, page 22, and at Tab 4, page 29.

<sup>91</sup> Exhibit B, Controller’s Comments on IRC, page 22 and at Tab 7, pages 52-55.

<sup>92</sup> Exhibit B, Controller’s Comments on IRC, page 52.

<sup>93</sup> Exhibit B, Controller’s Comments on IRC, page 53.

<sup>94</sup> Exhibit B, Controller’s Comments on IRC, page 54.

<sup>95</sup> Exhibit B, Controller’s Comments on IRC, page 55.

have been considered during the audit or for the Controller's March 12, 2008, response to the Incorrect Reduction Claim."<sup>96</sup>

The Controller reduced all costs claimed to zero on the ground that employee declarations are insufficient documentation to support training hours claimed; the employee certifications of the training were not completed contemporaneously, but were prepared in response to the audit; and the claimant did not provide any documentation to support the original study referenced in the consultant's letter.<sup>97</sup> The audit report further states that:

The district also provided various emergency drill reports, and disaster committee and school site staff meeting agendas. Emergency drill reports did not identify which staff performed the mandated activities or the amount of time spent on the mandated activities. In addition, in-classroom teacher time spent during earthquake drills is not reimbursable. Furthermore, disaster committee and school site staff meeting agendas did not identify time spent on mandate-related activities.<sup>98</sup>

The Commission finds that the reduction of the costs claimed for training is partially correct. Both the 1991 and 2003 parameters and guidelines prohibit reimbursement for in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system.<sup>99</sup> And here, the claimant admits that its reimbursement claims included costs for this non-reimbursable activity as follows:

[T]he District's mandate reimbursement consultant incorrectly included in the District claim the time of some of [the] classroom teachers for emergency procedure drills. However, the Controller's audit report does not specify the amounts applicable for this disallowance reason, so it cannot be determined the appropriate amount to be adjusted ....<sup>100</sup>

The Controller explains that it did not specify an exact amount reduced for in-classroom teacher time "because the district's documentation fails to provide adequate information to identify the applicable costs."<sup>101</sup> The reimbursement claims do identify costs claimed for teachers providing or receiving the training.<sup>102</sup> In addition, the claimant now states that it can stipulate that essentially all teachers claimed are in-classroom teachers who should be excluded from reimbursement as follows:

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<sup>96</sup> Exhibit E, Claimant's comments on the draft proposed decision, pages 7 and 63-77.

<sup>97</sup> Exhibit B, Controller's Comments on IRC, pages 22 and final audit report, page 154.

<sup>98</sup> *Ibid.*

<sup>99</sup> Exhibit A, IRC, pages 34 and 41.

<sup>100</sup> Exhibit A, IRC, pages 21-22.

<sup>101</sup> Exhibit B, Controller's comments on IRC, page 21.

<sup>102</sup> Exhibit A, IRC, page 114 (reimbursement claim for fiscal year 2000-2001, with teachers listed primarily on pp. 159-196), page 199 (reimbursement claim for fiscal year 2001-2002), and page 277 (reimbursement claim for fiscal year 2002-2003).

The District can stipulate that essentially all teachers claimed are in-classroom teachers who should be excluded, that is, not claimed, according to the parameters and guidelines. The teachers are already identified on the EFED-2 annual claim form each fiscal year. The Controller staff can subtract these costs when they prepare the revised audit report pursuant to the statement of decision.<sup>103</sup>

Accordingly, to the extent that those teachers identified in the reimbursement claims were “in-classroom” teachers that provided instruction to students on the earthquake emergency procedure system, those costs, as a matter of law, are not reimbursable.

However, the reduction of the remaining costs claimed is incorrect as a matter of law. The Controller reduced the costs of training based on the contemporaneous documentation requirements contained in the parameters and guidelines as amended in 2003. As explained above, the 2003 parameters and guidelines were adopted after the claimant filed the reimbursement claims in this case so that reasonable notice of the substantive change in the documentation requirements was not provided to the claimant. Applying the 2003 documentation requirements retroactively to the reimbursement claims filed for fiscal years 2000-2001, 2001-2002, and 2002-2003, therefore, would violate claimant’s due process rights.<sup>104</sup>

Consequently, the documentation requirements in the 1991 parameters and guidelines govern this audit. The 1991 parameters and guidelines require that all costs claimed must be traceable to “source documents and/or worksheets that show evidence of the validity of such costs.”<sup>105</sup> In *Clovis Unified, supra*, the court determined that the type of documentation submitted by the claimant here - employee declarations, certifications, and average time accountings to document employee time - “can be deemed akin to worksheets” that properly support the costs claimed.<sup>106</sup> The Commission therefore finds that the employee declarations, principal certifications, emergency drill notices and reports, and meeting agendas submitted by the claimant in this case meet the documentation requirements of the 1991 parameters and guidelines and properly support the costs claimed for training.

Accordingly, the Commission finds that the reduction of costs claimed for training based on the documentation requirements is not consistent with the parameters and guidelines and is therefore not correct as a matter of law. All training costs reduced based on the documentation requirements should be reinstated by the Controller pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations.

## V. Conclusion

The Commission finds that the 2003 parameters and guidelines apply retroactively to the claimant’s reimbursement claims on the scope of the reimbursable activities. However, for due process reasons, the documentation requirements in the 2003 parameters and guidelines cannot apply to the audit of the 2000-2001, 2001-2002 and 2002-2003 claims. Rather, on issues

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<sup>103</sup> Exhibit E, Claimant’s comments on the draft proposed decision, page 7.

<sup>104</sup> *City of Modesto, supra*, 128 Cal.App.4th at page 527.

<sup>105</sup> Exhibit A, pages 17 and 37.

<sup>106</sup> *Clovis Unified School Dist., supra*, 188 Cal.App.4th at page 804.

involving adequate source documentation, the parameters and guidelines adopted in 1991 apply because they were in effect when the claimant incurred costs for the program and filed the reimbursement claims.

Based on the plain language of the governing parameters and guidelines and the evidence in the record, the Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission concludes that the following reductions are not consistent with the documentation requirements in the parameters and guidelines adopted in 1991, are *incorrect* as a matter of law, and should be reinstated to the claimant:

- The reduction of \$11,423 in salaries and benefits claimed for fiscal years 2000-2001, 2001-2002, and 2002-2003, to update the earthquake emergency procedure system;
- The reduction of the portion of the \$645,757 claimed for fiscal years 2000-2001, 2001-2002, and 2002-2003, for training that is *not* attributable to "in-classroom teacher time spent on the instruction of students on the earthquake emergency procedure system."

Finally, the Commission concludes that the following reductions are supported by the parameters and guidelines and the evidence in the record, and are therefore *correct* as matter of law:

- The reduction of \$32,405 for claimant's consultant to update the emergency procedures system in fiscal years 2000-2001, 2001-2002, and 2002-2003, on the ground that claimant provided no supporting documentation to show that the costs were incurred to comply with the limited scope of the mandate.
- The reduction of \$19,452 for fiscal year 2002-2003 for employees to update the emergency earthquake system, on the ground that the claimant provided no supporting documentation to show that the costs were incurred to comply with the mandate.
- The reductions for fiscal years 2000-2001, 2001-2002, and 2002-2003 for "in-classroom" teachers to provide instruction to students on the earthquake emergency procedure system, on the ground that both the 1991 and 2003 parameters and guidelines plainly state that such costs are not reimbursable.

The Commission hereby remands the reimbursement claims to the Controller, and requests that the Controller reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

**COMMISSION ON STATE MANDATES**

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**RE: Decision**

*Emergency Procedures, Earthquake, and Disasters* 05-4241-I-06  
Education Code Sections 35295, 35296, 35297, 40041.5 and 40042  
Statutes 1984, Chapter 1659  
Fiscal Years 2000-2001, 2001-2002, and 2002-2003  
Poway Unified School District, Claimant

On January 23, 2015, the foregoing decision of the Commission on State Mandates was adopted in the above-entitled matter.

  
\_\_\_\_\_  
Heather Halsey, Executive Director

Dated: January 27, 2015

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 27, 2015, I served the:

**Proposed Decision**

*Emergency Procedures, Earthquake, and Disasters* 05-4241-I-06  
Education Code Sections 35295, 35296, 35297, 40041.5 and 40042  
Statutes 1984, Chapter 1659  
Fiscal Years 2000-2001, 2001-2002, and 2002-2003  
Poway Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 27, 2015 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

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**Claim Number:** 05-4241-I-06

**Matter:** Emergency Procedures, Earthquakes, and Disasters

**Claimant:** Poway Unified School Districts

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