

COMMISSION ON STATE MANDATES

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November 10, 2014

Mr. Keith B. Petersen
SixTen & Associates
P.O. Box 340430
Sacramento, CA 95834-0430

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: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Emergency Procedures, Earthquakes, 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:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **December 1, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, January 23, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 9, 2015. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

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

Emergency Procedures, Earthquakes, and Disasters
Fiscal Years 2000-2001, 2001-2002 and 2002-2003
05-4241-I-06

Poway Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This incorrect reduction claim (IRC) challenges reductions made by the State Controller's Office (Controller) to Poway Unified School District's (claimant) reimbursement claims for the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, claimant challenges reductions of \$738,364 for salaries and benefits and training of school-site staff for fiscal years 2000-2001, 2001-2002, and 2002-2003.

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.

Claimant requests a determination from the Commission on State Mandates (Commission) pursuant to Government Code section 17551(d) that the Controller incorrectly reduced the claims and requests that the Controller reinstate the reduced costs claimed.

Procedural History

Claimant signed and dated its 2000-2001 reimbursement claim on January 8, 2002 (according to documentation submitted by the claimant) or January 15, 2002 (according to documentation submitted by the Controller). Claimant signed and dated the reimbursement claim for 2001-2002 on January 6, 2003. Claimant signed and dated the reimbursement claim for 2002-2003 on January 9, 2004. The Controller held the audit entrance conference on September 20, 2004 and issued the draft audit report on June 24, 2005. Claimant submitted comments on the draft audit report to the Controller on July 11, 2005. The Controller issued the final audit report on August 31, 2005. Claimant filed the IRC on November 10, 2005. The Controller filed comments on the

IRC on March 12, 2008. Claimant filed rebuttal comments on September 3, 2009. Commission staff issued the draft proposed decision on the IRC on November 13, 2014.

Commission Responsibilities

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 statement of decision to the Controller and request that the costs in the claim be reinstated.

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 6.¹ 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."²

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support.³ This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁴ 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 claimant.⁵ In addition, section 1185.2(c) of the Commission's regulations requires that any assertions 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.⁶

¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

² *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.

³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁴ *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.

⁵ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁶ Government Code section 17559(b): [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."

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Whether the audit of the fiscal year 2000-2001 claim is barred by the deadlines Government Code Section 17558.5.	Claimant asserts that the claim for fiscal year 2000-2001 was beyond the statute of limitations when the Controller issued its audit report on August 31, 2005. Claimant argues that the 2000-2001 claim was subject to audit no later than December 31, 2004 (based on the claim filing date of January 8, 2002), and that the Controller was required to <i>complete</i> the audit within the two-year statute of limitations for IRCs.	<i>The audit of the 2000-2001 reimbursement claim was timely.</i> The plain language of Government Code section 17558.5 does not require the Controller to "complete" the audit within any specified period of time, but says that reimbursement claims are "subject to audit" within two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" merely sets a time during which a claimant is on notice that an audit of a claim may occur, but does not require audit completion. Also, the 2002 amendment to section 17558.5 clarified the intent that the claim be "subject to the initiation of an audit" and extended the time to initiate it from two years after the calendar year the claim was filed in to three years after the date the claim is filed or last amended. The California Supreme Court has said that an enlargement of a statute of limitations applies to matters pending but not already barred. The 2003 amendment to section 17558.5 gave the Controller until January 2005 to initiate the audit, so regardless of whether the claim was filed on January 8 or January 15, 2002, the audit was initiated September 20, 2004 and was timely. The Commission also finds that the audit was completed within the two-year statute of limitations, on August 31, 2005, well within the

		two-year deadline of September 20, 2006.
Whether the parameters and guidelines as amended in 1991 or as amended in 2003 govern.	<p>Controller assumes that the parameters and guidelines, amended on May 29, 2003, govern the audit because they expressly state that they apply to the reimbursement period beginning July 1, 2000. The 2003 parameters and guidelines added the requirement for claimants to maintain contemporaneous source documents, among other changes.</p> <p>Claimant argues that the documentation requirements in the 1991 parameters and guidelines should apply to the audit.</p>	<p><i>The 1991 parameters and guidelines govern the documentation requirements but the 2003 parameters and guidelines govern the scope of the mandated activities.</i></p> <p>The 2003 parameters and guidelines apply retroactively to the claimant's reimbursement claims regarding the scope of the reimbursable activities, such as clarifying that reimbursement for the emergency and disaster procedures is limited to earthquake emergencies. The Commission's clarification is merely a statement of what the law has been from the time it was enacted.</p> <p>The documentation requirements in the 1991 parameters and guidelines apply to the audit because an amendment cannot be applied retroactively when due process considerations prevent it as they do here. Moreover, in <i>Clovis Unified School Dist. v. Chiang</i>, the court found 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.</p>
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.	<p>The Controller reduced salaries and benefits claimed in all three fiscal years for updating the district's standardized emergency management system in the amount of \$63,280 for the following three reasons: (1) \$32,405 was reduced because the claimant did not provide any documentation to show that the</p>	<p><i>Some of these reductions are correct as a matter of law, but some are entirely lacking in evidentiary support and are therefore incorrect.</i></p> <p>The Controller's reduction of \$32,405 for the district's consultant to update the district's emergency procedures system is correct as a matter of law. The Commission's 2003 amendment limited</p>

	<p>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.</p>	<p>reimbursement to only earthquake emergencies. Moreover, the 1991 parameters and guidelines required claimant to provide source documents and/or worksheets that show evidence of the validity of all costs claimed. Claimant did not provide documentation to show the costs claimed were limited to earthquake procedures.</p> <p>The reduction of \$19,452 to update the earthquake emergency procedure system because claimant provided no supporting documentation is partially correct. The Controller's reduction of \$17,100 in fiscal year 2002-2003 for the 31 principals to update the emergency earthquake system is correct as a matter of law based on lack of documentation in the record. For costs incurred during the other two fiscal years, it is impossible to tell from the record which costs for the many employees identified in the reimbursement claims were reduced for lack of documentation because the Controller's working papers were not included in the record for this IRC. With no evidence in the record to support the Controller's factual assertions that claimant did not provide documentation, the reductions of \$2,189 in fiscal year 2000-2001 and \$163 in fiscal year 2001-2002 are entirely lacking in evidentiary support and should be reinstated to the claimant.</p> <p>The audit reduction of \$11,423 in salaries and benefits for the lack of <i>contemporaneous</i> source documentation for costs claimed to update the earthquake emergency</p>
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		<p>procedure system is not correct as a matter of law. Documentation in claimant's reimbursement claims complied with the 1991 parameters and guidelines that do not require contemporaneous source documents, and do not require the claimant to specify the date that the mandated activities were performed. Pursuant to the <i>Clovis Unified School District</i> case, claimant's declarations for updating the earthquake procedures that were provided to the Controller are sufficient documents under the 1991 parameters and guidelines to support the validity of these costs.</p>
Whether the reduction of \$645,757 for training is correct as a matter of law.	<p>The audit found the 1.5 hours per employee claimed for training for fiscal years 2000-2001 and 2001-2002, and 1.75 hours per employee claimed for 2002-2003, were not supported with sufficient documentation because the declarations were not signed contemporaneously and the number of hours claimed per employee was based on a consultant letter that cited a study about which there was no information. Claimant provided employee declarations signed by school principals that indicated all school site employees attended 1.5 or 1.75 hours of training.</p>	<p><i>Some of these reductions are correct as a matter of law, but some are incorrect as a matter of law.</i></p> <p>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. And the claimant admitted that "... the District's mandate reimbursement consultant incorrectly included in the District claim the time of some of [the] classroom teachers for emergency procedure drills." 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.</p> <p>The reduction of the remaining costs claimed is not correct as a matter of law. The Controller reduced the costs of training based</p>

		on the contemporaneous documentation requirements contained in the parameters and guidelines as amended in 2003, although documentation requirements in the 1991 parameters and guidelines govern this audit. The employee declarations, principal certifications, emergency drill notices and reports, and meeting agendas submitted by the claimant meet the documentation requirements of the 1991 parameters and guidelines and comply with the court's holding in the <i>Clovis Unified</i> case.
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Staff Analysis

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

Claimant asserts that the claim for fiscal year 2000-2001 was beyond the statutory deadline for an audit when the Controller issued its audit report on August 31, 2005 and that the audit adjustments for that fiscal year should be reinstated.

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

At the time the reimbursement claims were filed, the reimbursement claim would be “subject to audit,” pursuant to the 1995 version of section 17558.5, within two years after the end of the calendar year that the reimbursement claim was filed. The phrase “subject to audit” does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This interpretation is consistent with the plain language of the second sentence, which establishes a longer period of time to initiate the audit when no funds are appropriated for the program. 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 in September 2004, it was timely initiated.

This interpretation is also 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.”

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.” 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 enlarged the deadline to three years after the date the 2000-2001 reimbursement claim was filed or last amended, gives the Controller additional time to initiate the audit until January 2005. Regardless of whether the 2000-2001 claim was filed January 8 or January 15, 2002 (a date disputed by the claimant and the Controller) 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.

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. In this case, the audit was completed when the final audit report was issued on August 31, 2005, eleven months after the audit was initiated.

Effective January 1, 2005, when the audit was still pending in this case, the rule changed to require that “an audit shall be completed not later than two years after the date that the audit is commenced;” which in this case would be 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 (like the Controller’s unspecified time to complete an audit before January 1, 2005), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all pending claims.

The audit in this case is subject to the statutory two-year deadline imposed by section 17558.5, as amended in 2004. It was completed when the final audit report was issued on August 31, 2005, well before the two-year deadline of September 20, 2006 to complete the audit. 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 deadline 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. 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. 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 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. 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 in the analysis, staff finds that the 2003 parameters and guidelines apply retroactively to the claimant's reimbursement claims regarding the scope of the reimbursable activities because the 2003 amendment merely clarified what the scope of reimbursement has always been.

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. In *Clovis Unified School Dist. v. Chiang*⁷, the court found 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. Therefore, 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 at issue in this IRC.

Section VI, "Claim Preparation," of the 1991 parameters and guidelines require that claimants "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." The 1991 parameters and guidelines also require:

A listing to support the following reimbursable items . . . 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.⁸

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.⁹

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

⁷ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

⁸ Exhibit A, IRC, page 36.

⁹ Exhibit A, IRC, pages 17-18 and 37.

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.

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 costs claimed for the consultant's time to update claimant's emergency procedures system were \$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).¹⁰ All of these costs claimed were reduced to zero by the Controller because claimant did not provide documentation that identifies its standardized emergency management system costs applicable to earthquakes. Claimant argues, based on the 1991 parameters and guidelines, that earthquake procedures are not the only disaster procedures covered by the mandate.¹¹

As stated above, the Commission amended the parameters and guidelines in 2003, to clarify that the mandate was limited to earthquakes 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 updating a "district earthquake emergency procedure system" was eligible for reimbursement. Moreover, the test claim statutes, Education Code sections 35295-35297, include section 35925(c) that 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]." The Commission's 2003 parameters and guidelines amendment was a statement of what the mandate has always been and is a final, binding decision of the Commission, which applies to this audit.¹² Thus, the Controller's reduction is correct as a matter of law to the extent that costs were claimed for updating the standardized emergency management system for emergencies that are not earthquake related.

Moreover, the 1991 parameters and guidelines required 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 the consultant's time was limited to the scope of the mandate. And no evidence in the record shows that the consultant's time updating the district's emergency procedure system was limited to earthquake emergencies.

¹⁰ 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).

¹¹ Exhibit A, IRC, pages 17-19.

¹² *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

Accordingly, staff 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 Because Claimant Provided No Supporting Documentation is Partially Correct.

For each fiscal year at issue, reimbursement was claimed for employees (not including the consultant) to update the district's earthquake emergency procedure system: \$10,074 in fiscal year 2000-2001, \$17,852 in fiscal year 2001-2002, and \$17,100 in fiscal year 2002-2003. 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).¹³

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 2002-2003) to update the earthquake emergency procedure system, because the claimant provided "no supporting documentation" for these costs.¹⁴

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.¹⁵ In fiscal year 2002-2003, claimant provided no documentation to support the \$17,100 claimed for 31 principals to update the emergency earthquake system. Since the claimant did not comply with the requirements in the parameters and guidelines, this reduction is correct as a matter of law.

For the other two fiscal years, it is impossible to tell from the record which costs for the many employees identified in the reimbursement claims were reduced for lack of documentation. In any event, it is evident that claimant provided *some* documentation for those years. 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. The final audit report states that the Controller had working papers to support the reductions for which the claimant provided no supporting documentation, but those working papers were not filed as evidence in this record.¹⁶ Section 1185.2(c) of the Commission's regulations requires that all representations of fact made in comments to an IRC shall be supported by documentary evidence and submitted with the comments. The Commission finds that there is no evidence in the record to support the Controller's factual assertions that documentation was not provided by the claimant during the audit. Consequently, the reductions of \$2,189 in fiscal year 2000-2001 and \$163 in fiscal year 2001-2002 are entirely lacking in evidentiary support and should be reinstated to the claimant.

¹³ 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).

¹⁴ Exhibit B, Controller's comments on IRC, final audit report, page 154.

¹⁵ Exhibit A, IRC, pages 17-18.

¹⁶ Exhibit B, Controller's comments on IRC, final audit report, page 157.

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 the district claimed \$11,423 for updating the earthquake emergency system in fiscal years 2000-2001, 2001-2002, and 2002-2003, which was supported by employee declarations, but district employees did not complete the declarations contemporaneously and did not identify the date on which the employees performed the mandated activities.¹⁷ Staff finds that this reduction is incorrect as a matter of law.

As stated above, based on principles of due process, the 1991 parameters and guidelines apply to the issues involving appropriate source documentation. The 1991 parameters and guidelines do not require contemporaneous source documents, and do not require the claimant to specify the date that the mandated activities were performed. Rather, the 1991 parameters and guidelines 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,”¹⁸ 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.¹⁹ The claimant’s employee declarations for updating the earthquake procedures that were provided to the Controller 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, which was not included in the parameters and guidelines for the *Emergency Procedures, Earthquakes, 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.²⁰ 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.²¹ The court concluded that the CSDR is an underground unenforceable regulation for as applied to the audits of the *Emergency Procedures, Earthquakes, and Disasters* program for applicable periods roughly encompassing “fiscal years 1998 to 2003.”²²

¹⁷ Exhibit A, IRC, pages 93-94.

¹⁸ Exhibit A, IRC, page 36.

¹⁹ 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).

²⁰ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803-806.

²¹ *Id.* at page 804.

²² *Id.* at page 806.

Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission is required to apply the rule set forth by the court.²³

Accordingly, staff 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 Fiscal Years 2000-2003 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 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, a total of \$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 reimbursement claim identifies the employee, the employee's 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 that were "based on an original study done a few years ago." Examples of supporting documentation included certification by a school principals and disaster drill notices or reports.²⁴

The Controller reduced all costs claimed on the ground that employee declarations are insufficient documentation to support training hours claimed in that 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.²⁵

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.²⁶ And the claimant admitted that ". . . the District's mandate reimbursement consultant

²³ *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

²⁴ Exhibit B, Controller's Comments on IRC, page 22 and at Tab 7, pages 52-55.

²⁵ Exhibit B, Controller's Comments on IRC, pages 22 and final audit report, page 154.

²⁶ Exhibit A, IRC, pages 34 and 41.

incorrectly included in the District claim the time of some of [the] classroom teachers for emergency procedure drills.”²⁷

The reimbursement claims do identify costs claimed for teachers providing or receiving the training.²⁸ 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 not correct 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, although 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.”²⁹ In the *Clovis Unified* case, 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.³⁰

Staff therefore finds that the employee declarations, principal certifications, emergency drill notices and reports, and meeting agendas submitted by the claimant meet the documentation requirements of the 1991 parameters and guidelines and properly support the costs claimed for training and that the reduction based on supporting documentation is incorrect as a matter of law.

Conclusion

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 Commission also 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, which were in effect when the claimant incurred costs for the program and filed the reimbursement claims, must be applied.

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

²⁷ Exhibit A, IRC, pages 21-22.

²⁸ 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).

²⁹ Exhibit A, pages 17 and 37.

³⁰ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th at page 804.

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 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.”

The Commission further concludes that the following reductions are not supported by evidence in the record, are *incorrect*, and should be reinstated to the claimant:

- The reduction of \$2,189 for fiscal year 2000-2001 and \$163 for fiscal year 2001-2002 to update the earthquake emergency procedures 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 \$17,100 for fiscal year 2002-2003 for the 31 principals 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 the Controller to reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission’s regulations.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to partially approve the IRC and request that the Controller reinstate to the claimant the amounts specified above, and authorize staff to make any technical, non-substantive changes following the hearing.

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, Earthquakes, 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)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claims (IRC) during a regularly scheduled hearing on January 23, 2015. [Witness list will be included in the adopted decision.]

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/modified] the staff analysis to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision].

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, Earthquakes, 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 parameters and guidelines for this program have been amended, and the parties dispute which version governs this audit. The Commission finds that the 2003 parameters and guidelines apply retroactively on the issue 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, which were in effect when the claimant incurred costs for the program and filed

the reimbursement claims, must be applied.

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."

The Commission further concludes that the following reductions are not supported by evidence in the record, are *incorrect*, and should be reinstated to the claimant:

- The reduction of \$2,189 for fiscal year 2000-2001 and \$163 for fiscal year 2001-2002 to update the earthquake emergency procedures 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 \$17,100 for fiscal year 2002-2003 for the 31 principals 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 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.³¹
- 01/06/03 Claimant signed and dated the reimbursement claim for fiscal year 2001-2002.³²
- 01/09/04 Claimant signed and dated the reimbursement claim for fiscal year 2002-2003.³³
- 09/24/04 The audit entrance conference was held.³⁴
- 06/24/05 Controller issued the draft audit report.³⁵
- 07/11/05 Claimant submitted comments on the draft audit report.³⁶
- 08/31/05 Controller issued the final audit report.³⁷
- 11/10/05 Claimant filed the IRC.³⁸
- 03/12/08 Controller filed comments on the IRC.³⁹
- 09/03/09 Claimant filed rebuttal comments.⁴⁰
- 11/13/14 Commission staff issued the draft proposed decision on the IRC.

II. Background

The Emergency Procedures, Earthquakes, and Disasters Program

The *Emergency Procedures, Earthquakes, 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.⁴¹ The program required the governing board of each school

³¹ 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.)

³² Exhibit A, IRC, page 198.

³³ Exhibit A, IRC, page 276.

³⁴ Exhibit B, Controller's comments on IRC, pages 7 and 22.

³⁵ Exhibit A, IRC, page 90. The draft audit report is not part of the record.

³⁶ Exhibit A, IRC, pages 90 and 107-111.

³⁷ Exhibit A, IRC, pages 85-100.

³⁸ Exhibit A, IRC.

³⁹ Exhibit B, Controller comments on IRC.

⁴⁰ Exhibit C, Claimant's rebuttal comments.

⁴¹ Former Education Code section 35295 (Stats. 1984, ch. 895).

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.⁴²

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.⁴³

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 reimbursement was not required for in-classroom teacher time to instruct students about the earthquake emergency procedure systems.⁴⁴

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.⁴⁵ 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

⁴² Education Code sections 35926, 35297.

⁴³ Former Education Code section 40041.5. This IRC does not involve the activities required by former Education Code section 40041.5.

⁴⁴ The 1991 parameters and guidelines are contained in Exhibit B, Controller’s comments on IRC, page 93.

⁴⁵ The 2003 parameters and guidelines are contained in Exhibit B, Controller’s comments on IRC, page 99.

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, 2004.⁴⁶

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 the costs of \$63,280 claimed for updating the standardized emergency management system for the following reasons:

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.⁴⁷

The final audit report states that the Controller reduced the costs claimed by \$645,757 for training staff for the following reasons:

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 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"

⁴⁶ 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.

⁴⁷ Exhibit B, Controller's comments on IRC, final audit report, page 145.

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.⁴⁸

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 request for reimbursement of the costs 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 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 contained in the 2003 parameters and guidelines until they were transmitted to the claimants after the reimbursement claims were filed in this case. Claimant argues that it is impossible for the district to go back in time and comply with documentation standards in the

⁴⁸ *Ibid.*

2003 version that did not exist when the costs were incurred. Claimant also argues that the 1991 parameters and guidelines govern the audit in this case and that contemporary source document rule (CSDR), which had not yet been included in parameters and guidelines, was invalidated by the trial court in *Clovis v. Chang*.⁴⁹

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; and that this IRC should be denied.

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.

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 6.⁵⁰ 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."⁵¹

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.⁵² Under this standard, the courts have found that:

⁴⁹ 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.

⁵⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁵¹ *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.

⁵² *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.

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.’ [Citation.]’ ”⁵³

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.⁵⁴ 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.⁵⁵

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.⁵⁶

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 2002,⁵⁷ 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

⁵³ *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at 547-548.

⁵⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁵⁵ 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.

⁵⁶ Exhibit A, IRC, pages 20-24.

⁵⁷ 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.)

Controller to initiate an audit shall commence to run from the date of initial payment of the claim.⁵⁸

The claimant asserts that funds were provided for this program and, thus, 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...”⁵⁹ 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. 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 providing notice to 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, 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.⁶⁰

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, the audit of this reimbursement claim is barred.

The Controller contends that the audit of the reimbursement claim is timely. The Controller argues that the phrase “subject to audit” in section 17558.5, as amended in 1995, means 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 contends that the audit was timely initiated “no later than September 20, 2004, when the entrance conference was held.”⁶¹ Alternatively, the Controller asserts that the deadline to initiate the audit was extended by Government Code section 17558.5, as amended effective January 1, 2003,⁶² to three years from the day the claim is

⁵⁸ 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.

⁵⁹ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11); Exhibit A, IRC, beginning on page 24.

⁶⁰ Exhibit C, Claimant’s rebuttal comments, pages 9-10.

⁶¹ Exhibit B, Controller’s comments on IRC, page 2.

⁶² Statutes 2002, chapter 1128.

filed, or by 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.

The Commission finds, from the context of section 17558.5 (a), that 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 difference in meaning was intended, Commission staff finds that inference is not supportable in this case.⁶³

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 is with regards to 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 these two situations (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 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 between the two situations is the triggering event (an appropriation) that determines when the two-year period to initiate an audit begins to run.

The phrase "subject to audit" does not require the completion of 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 on 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.

⁶³ *Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, 62.

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.⁶⁴

In addition, the Controller received additional time to initiate the audit when section 17558.5 was amended by Statutes 2002, chapter 1128. 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.”⁶⁵ 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 enlarged the statute of limitations 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 State Controller’s Office.⁶⁶ Regardless of 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.

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.⁶⁷ In this case, the audit was completed when the final audit report was issued on August 31, 2005, eleven months after the audit was initiated.

Effective January 1, 2005, when the audit was still pending in this case, 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;” which in this case would be 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 (like the Controller’s unspecified time to complete an audit before January 1, 2005), the restriction in the new law becomes effective immediately upon the operative date of the change in law for all

⁶⁴ Statutes 2002, chapter 1128 (AB 2834).

⁶⁵ *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, at p. 465.

⁶⁶ 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.

⁶⁷ Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant. (*Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.)

pending claims. In *California Employment Stabilization Commission v. Payne* (1948) 1931 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.⁶⁸ 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.⁶⁹ 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 claimed with contemporaneous source documents "created at or near the same time the actual cost was incurred."

⁶⁸ See Exhibit B, Controller's comments on IRC, page 10.

⁶⁹ The provision is now in Government Code section 17557(d) as of Statutes 2004, chapter 890.

The amended parameters and guidelines were not in effect when the costs in this case were incurred.⁷⁰ 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.⁷¹
 - 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.)

2. On-Going Activities

⁷⁰ 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.

⁷¹ 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.)

- 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.⁷²

Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.⁷³ Interpretation of an administrative agency's rule, like the parameters and guidelines, is a question of law.⁷⁴ 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.⁷⁵

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.⁷⁶ 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.⁷⁷ 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.⁷⁸ A statutory change is substantive if it imposes new, additional, or different liabilities

⁷² Exhibit B, Controller's comments on IRC, page 99.

⁷³ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

⁷⁴ *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93.

⁷⁵ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.

⁷⁶ The period of reimbursement for amended parameters and guidelines is now in Government Code section 17557(d).

⁷⁷ *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

⁷⁸ *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.⁷⁹ In addition, due process requires that a claimant have reasonable notice of any change that affects the substantive rights and liabilities of the parties.⁸⁰

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.)⁸¹

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.⁸²

Therefore, the documentation requirements added to the parameters and guidelines in 2003 must be interpreted to operate 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. 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
 - a. For those employees whose function is to prepare and implement emergency plans and to provide instruction, provide a listing of each

⁷⁹ *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

⁸⁰ *In. re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784.

⁸¹ *Clovis Unified School Dist.*, *supra* 188 Cal.App.4th 794, 809, fn. 5.

⁸² *Id.* at pages 812-813.

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 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.⁸³

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.⁸⁴

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.⁸⁵ Each of these issues is addressed below.

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. 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),⁸⁶ for Mr. Camozzi's time to update claimant's emergency procedures system were denied by the Controller on the following grounds:

The district claimed salary and benefit costs related to updating its standardized emergency management system (SEMS). The district updated its SEMS

⁸³ Exhibit A, IRC, pages 17-18, and 37.

⁸⁴ Exhibit B, Controller's comments on IRC, page 93.

⁸⁵ Exhibit A, IRC, pages 93-94.

⁸⁶ 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).

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.⁸⁷

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.⁸⁸

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 earthquakes 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 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].”⁸⁹

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.⁹⁰ Thus, to the extent that costs were claimed for updating the standardized

⁸⁷ 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.

⁸⁸ Exhibit A, IRC, pages 17-19.

⁸⁹ 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.

⁹⁰ *McClung, supra*, 34 Cal.4th 467, 471; *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

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. And no evidence in the record shows that Mr. Camozzi's time updating the district's emergency procedure system was limited to earthquake emergencies.

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 Because Claimant Provided No Supporting Documentation is Partially Correct.

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).⁹¹

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.⁹²

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 pursuant to this mandate, and made available on the request of the State controller or his agent.⁹³

⁹¹ 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).

⁹² Exhibit B, Controller's comments on IRC, final audit report, page 154.

⁹³ Exhibit A, IRC, pages 17-18.

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.

However, with respect to the other two fiscal years, it is impossible to tell from the record 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. The final audit report states that the Controller had working papers to support the reductions for which the claimant provided no supporting documentation, but those working papers have not been filed as evidence in this record.⁹⁴ Section 1185.2(c) of the Commission's regulations requires that all representations of fact made in comments to an IRC shall be supported by documentary evidence and submitted with the comments. Thus, the Commission finds that there is no evidence in the record to support the Controller's factual assertions that documentation was not provided by the claimant during the audit and, thus, the reductions of \$2,189 in fiscal year 2000-2001 and \$163 in fiscal year 2001-2002 are entirely lacking in evidentiary support and should be reinstated to the claimant.

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.⁹⁵

The Commission finds that the Controller's \$11,423 reduction is incorrect as a matter of law. As stated above, based on principles of due process, the 1991 parameters and guidelines apply to the

⁹⁴ Exhibit B, Controller's comments on IRC, final audit report, page 157, which states the following:

On April 1, 2005, we provided detailed supporting working papers to the district's Director of Accounting. We provided the same working papers to all exit conference attendees present on May 3, 2005. The supporting working papers specifically identify costs claimed for which the district provided no supporting documentation. The district is required to provide supporting documentation that meets the requirements of the Parameters and Guidelines.

⁹⁵ Exhibit A, IRC, pages 93-94.

issues involving appropriate source documentation. The 1991 parameters and guidelines do not require contemporaneous source documents, and do not require the claimant to specify the date that the mandated activities were performed. Rather, the 1991 parameters and guidelines 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,”⁹⁶ 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.⁹⁷ 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, which was not included in the parameters and guidelines for the *Emergency Procedures, Earthquakes, and Disasters* program until May 2003, to be unenforceable because it constituted a state agency regulation that was not adopted in conformance with the Administrative Procedure Act.⁹⁸ 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.⁹⁹ The court concluded by stating the following:

[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, Earthquakes, 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.¹⁰⁰

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.¹⁰¹ Moreover, the Controller was a party to the *Clovis* action, and under principles of

⁹⁶ Exhibit A, IRC, page 36.

⁹⁷ 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).

⁹⁸ *Clovis Unified School District v. Chiang, supra*, 188 Cal.App.4th 794, 803-806.

⁹⁹ *Id.* at page 804.

¹⁰⁰ *Id.* at page 806.

¹⁰¹ *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.¹⁰²

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. 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 20th of September.

¹⁰² *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.¹⁰³

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:¹⁰⁴

- 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.”¹⁰⁵
- 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).”¹⁰⁶
- 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.”¹⁰⁷
- 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.¹⁰⁸

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

¹⁰³ Exhibit B, Controller’s Comments on IRC, page 22, and at Tab 4, page 29.

¹⁰⁴ Exhibit B, Controller’s Comments on IRC, page 22 and at Tab 7, pages 52-55.

¹⁰⁵ Exhibit B, Controller’s Comments on IRC, page 52.

¹⁰⁶ Exhibit B, Controller’s Comments on IRC, page 53.

¹⁰⁷ Exhibit B, Controller’s Comments on IRC, page 54.

¹⁰⁸ Exhibit B, Controller’s Comments on IRC, page 55.

the claimant did not provide any documentation to support the original study referenced in the consultant's letter.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ And here, the claimant admits that its reimbursement claims included costs for this non-reimbursable activity as follows:

. . . the 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 adjusted¹¹²

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."¹¹³ The reimbursement claims do identify costs claimed for teachers providing or receiving the training.¹¹⁴ 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. Since the burden of providing source documentation to evidence the validity of the costs claimed is on the claimant, as the party that maintains its employee records, the claimant should be able to identify, based on its records, the appropriate amount claimed for in-classroom instruction that was properly reduced by the Controller.¹¹⁵

¹⁰⁹ Exhibit B, Controller's Comments on IRC, pages 22 and final audit report, page 154.

¹¹⁰ *Ibid.*

¹¹¹ Exhibit A, IRC, pages 34 and 41.

¹¹² Exhibit A, IRC, pages 21-22.

¹¹³ Exhibit B, Controller's comments on IRC, page 21.

¹¹⁴ 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).

¹¹⁵ Parameters and guidelines, section VIII, adopted in 1991. See also, Evidence Code section 500, which states that "Except as otherwise provided by law, a party has the burden of as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is

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, however, 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.¹¹⁶

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."¹¹⁷ In *Clovis Unified, supra*, the court determined that the type of documentation submitted 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.¹¹⁸ 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 costs attributable to this reduction of costs for training 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 involving adequate source documentation, the parameters and guidelines adopted in 1991, which were in effect when the claimant incurred costs for the program and filed the reimbursement claims, must be applied.

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

asserting." Thus, the burden of proof as to a particular fact is normally on the party to whose case the fact is essential. "[W]hen a party seeks relief the burden is upon him to prove his case, and he cannot depend wholly upon the failure of the defendant to prove his defenses." (*Cal. Employment Comm'n v. Malm* (1943) 59 Cal.App.2d 322, 323.)

¹¹⁶ *City of Modesto, supra*, 128 Cal.App.4th at page 527.

¹¹⁷ Exhibit A, pages 17 and 37.

¹¹⁸ *Clovis Unified School Dist., supra*, 188 Cal.App.4th at page 804.

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.”

The Commission further concludes that the following reductions are not supported by evidence in the record, are *incorrect*, and should be reinstated to the claimant:

- The reduction of \$2,189 for fiscal year 2000-2001 and \$163 for fiscal year 2001-2002 to update the earthquake emergency procedures 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 \$17,100 for fiscal year 2002-2003 for the 31 principals 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 made to costs claimed 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.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

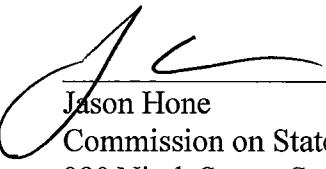
I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 10, 2014, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Emergency Procedures, Earthquakes, 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 November 10, 2014 at Sacramento, California.



Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/10/14

Claim Number: 05-4241-I-06

Matter: Emergency Procedures, Earthquake Procedures and Disasters

Claimant: Poway Unified School Districts

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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