



BETTY T. YEE
California State Controller



LATE FILING

July 10, 2020

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Incorrect Reduction Claim
The Stull Act, 19-9825-I-03
Education Code Sections 44660-44665;
Statutes of 1983, Chapter 498; Statutes of 1999, Chapter 4
Fiscal Years: 2005-2006, 2006-2007, 2007-2008, 2010-2011, 2011-2012, 2012-2013
Fairfield-Suisun Unified School District, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-named Incorrect Reduction Claim.

If you have any questions, please contact me by telephone at (916) 327-3138.

Sincerely,

A handwritten signature in blue ink that reads "L. Kurokawa".

LISA KUOKAWA, Chief
Compliance Audits Bureau
Division of Audits

LK/as

20341

**RESPONSE BY THE STATE CONTROLLER’S OFFICE
TO THE INCORRECT REDUCTION CLAIM BY
FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT**

The Stull Act Program

Table of Contents

<u>Description</u>	<u>Page</u>
State Controller’s Office Response to District Comments	
Declaration.....	Tab 1
State Controller’s Office Analysis and Response	Tab 2
Email Correspondence between Fairfield-Suisun Unified School District and State Controller’s Office auditors	Tab 3
Commission on State Mandates’ Statement of Decision, The Stull Act Program (Carlsbad Unified School District), July 30, 2018	Tab 4
Commission on State Mandates’ Statement of Decision, The Stull Act Program (Oceanside Unified School District), September 28, 2016.....	Tab 5

Note: References to Exhibits relate to the district’s Incorrect Reduction Claim filed on March 2, 2020, as follows:

- Exhibit A – Final Evaluation Write-Up Time Tracking Results – PDF pages 5-36
- Exhibit B – Sample Evaluation Write-Ups – PDF pages 38-108
- Exhibit C – Collective Bargaining Agreements – PDF pages 110-240
- Exhibit D – Declarations – PDF pages 241-242
- Exhibit E – Claiming Instructions – PDF pages 244-247
- Exhibit E – Commission on State Mandates’ Adopted Parameters and Guidelines, The Stull Act (September 27, 2005) – PDF pages 248-255
- Exhibit E – Claim for Payment (Template), The Stull Act – PDF pages 256-261
- Exhibit F – Fairfield-Suisun Unified School District Final Audit Report, The Stull Act Program, Dated June 22, 2018 – PDF pages 263-284
- Exhibit G – Reimbursement Claims for the Audit Period – PDF pages 286-332
- Claim Certification, Declaration of Service by Email, and Mailing List – PDF pages 333-337

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

3301 C Street, Suite 725

2 Sacramento, CA 94816

3 Telephone No.: (916) 323-5849

4 BEFORE THE

5 COMMISSION ON STATE MANDATES

6 STATE OF CALIFORNIA

8
9
10 INCORRECT REDUCTION CLAIM (IRC)
ON:

No.: IRC 19-9825-I-03

11 The Stull Act Program

AFFIDAVIT OF BUREAU CHIEF

12 Education Code Sections 44660-44665;
13 Statutes of 1983, Chapter 498;
14 Statutes of 1999, Chapter 4

15 FAIRFIELD-SUISUN UNIFIED SCHOOL
16 DISTRICT, Claimant

17
18 I, Lisa Kurokawa, make the following declarations:

- 19 1) I am an employee of the State Controller's Office and am over the age of 18 years.
- 20 2) I am currently employed as a bureau chief, and have been so since February 15, 2018.
21 Before that, I was employed as an audit manager for six years.
- 22 3) I reviewed the work performed by the State Controller's Office auditor.
- 23 4) Any attached copies of records are true copies of records, as provided by the Fairfield-
24 Suisun Unified School District or retained at our place of business.


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- 5) The records include claims for reimbursement, along with any attached supporting documentation, explanatory letters, and other documents relating to the above-entitled Incorrect Reduction Claim.
- 6) An audit of the claims for fiscal year (FY) 2005-2006, FY 2006-2007, FY 2007-2008, FY 2010-2011, FY 2011-2012 and FY 2012-2013 started on August 31, 2016 (initial contact email with the district) and ended on June 22, 2018 (issuance of the final audit report).

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: July 10, 2020

OFFICE OF THE STATE CONTROLLER

By: 
Lisa Kurokawa, Chief
Compliance Audits Bureau
Division of Audits
State Controller's Office

Tab 2

**STATE CONTROLLER’S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT**

**For Fiscal Year (FY) 2005-06, FY 2006-07, FY 2007-08, FY 2010-11, FY 2011-12, and
FY 2012-13**

**Education Code Sections 44660-44665;
Statutes of 1983, Chapter 498; Statutes of 1999, Chapter 4**

SUMMARY

The following is the State Controller’s Office’s (SCO) response to the Incorrect Reduction Claim (IRC) that the Fairfield-Suisun Unified School District (District) submitted on March 2, 2020. The SCO performed an audit of the District’s claims for costs of the legislatively mandated Stull Act Program for the period of July 1, 2005, through June 30, 2008; and July 1, 2010, through June 30, 2013. The SCO issued its audit report on June 22, 2018 (**Exhibit F – pages 263-284**).

The District submitted claims totaling \$624,988—\$54,361 for fiscal year (FY) 2005-06; \$111,932 for FY 2006-07; \$120,519 for FY 2007-08; \$93,013 for FY 2010-11; \$123,742 for FY 2011-12; and \$121,421 for FY 2012-13 (**Exhibit G – pages 286-332**). Subsequently, the SCO performed an audit of these claims and determined that \$197,670 is allowable and \$427,318 is unallowable because the District claimed reimbursement for unsupported costs. The State paid the District \$345,551.

The following table summarizes the audit results:

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
<u>July 1, 2005, through June 30, 2006</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 51,106	\$ 36,730	\$ (14,376)
Total direct costs	51,106	36,730	(14,376)
Indirect costs	3,255	2,340	(915)
Total program costs	<u>\$ 54,361</u>	39,070	<u>\$ (15,291)</u>
Less amount paid by the State ¹		<u>(54,361)</u>	
Amount paid in excess of allowable costs claimed		<u>\$ (15,291)</u>	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
<u>July 1, 2006, through June 30, 2007</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 104,845	\$ 44,623	\$ (60,222)
Total direct costs	104,845	44,623	(60,222)
Indirect costs	7,087	3,017	(4,070)
Total program costs	<u>\$ 111,932</u>	47,640	<u>\$ (64,292)</u>
Less amount paid by the State ¹		(111,932)	
Amount paid in excess of allowable costs claimed		<u>\$ (64,292)</u>	
<u>July 1, 2007, through June 30, 2008</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 114,106	\$ 20,387	\$ (93,719)
Total direct costs	114,106	20,387	(93,719)
Indirect costs	6,413	1,146	(5,267)
Total program costs	<u>\$ 120,519</u>	21,533	<u>\$ (98,986)</u>
Less amount paid by the State ¹		(120,519)	
Amount paid in excess of allowable costs claimed		<u>\$ (98,986)</u>	
<u>July 1, 2010, through June 30, 2011</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 87,906	\$ 29,003	\$ (58,903)
Total direct costs	87,906	29,003	(58,903)
Indirect costs	5,107	1,685	(3,422)
Total program costs	<u>\$ 93,013</u>	30,688	<u>\$ (62,325)</u>
Less amount paid by the State ¹		-	
Amount paid in excess of allowable costs claimed		<u>\$ 30,688</u>	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
<u>July 1, 2011, through June 30, 2012</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 115,983	\$ 28,843	\$ (87,140)
Total direct costs	115,983	28,843	(87,140)
Indirect costs	7,759	1,930	(5,829)
Total program costs	<u>\$ 123,742</u>	30,773	<u>\$ (92,969)</u>
Less amount paid by the State ¹		<u>(30,773)</u>	
Amount paid in excess of allowable costs claimed		<u>\$ -</u>	
<u>July 1, 2012, through June 30, 2013</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 114,397	\$ 26,348	\$ (88,049)
Total direct costs	114,397	26,348	(88,049)
Indirect costs	7,024	1,618	(5,406)
Total program costs	<u>\$ 121,421</u>	27,966	<u>\$ (93,455)</u>
Less amount paid by the State ¹		<u>(27,966)</u>	
Amount paid in excess of allowable costs claimed		<u>\$ -</u>	
<u>Summary: July 1, 2005, through June 30, 2008; and July 1, 2010, through June 30, 2013</u>			
Direct costs:			
Salaries and benefits			
Evaluation activities	\$ 588,343	\$ 185,934	\$ (402,409)
Total direct costs	588,343	185,934	(402,409)
Indirect costs	36,645	11,736	(24,909)
Total program costs	<u>\$ 624,988</u>	197,670	<u>\$ (427,318)</u>
Less amount paid by the State ¹		<u>(345,551)</u>	
Amount paid in excess of allowable costs claimed		<u>\$ (147,881)</u>	

¹ Payment information current as of June 16, 2020.

I. STULL ACT PROGRAM CRITERIA

Parameters and Guidelines

On September 27, 2005, the Commission on State Mandates (Commission) adopted parameters and guidelines for Education Code Sections 44660-44665; Statutes of 1983, Chapter 498; and Statutes of 1999, Chapter 4 (**Exhibit E – pages 248-255**). These parameters and guidelines are applicable to the District's FY 2005-2006, FY 2006-2007, FY 2007-2008, FY 2010-2011, FY 2011-2012 and FY 2012-2013 claims.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local school districts in claiming mandated program reimbursable costs.

SCO Claiming Instructions

The SCO annually issues mandated cost-claiming instructions, which contain filing instructions for mandated cost programs. For the Stull Act Program, the SCO issued claiming instructions on December 12, 2005 (**Exhibit E – pages 244-247**). For the years represented by this IRC, the claiming instructions for this program did not change.

II. OVERSTATED SALARIES AND BENEFITS AND RELATED INDIRECT COSTS

Issue

The SCO determined that \$402,409 in salaries and benefits is unallowable (**Exhibit F – pages 263-284**). The costs are unallowable primarily because the District claimed reimbursement for costs not supported by source documentation. The District overstated salaries and benefits because the District did not provide contemporaneous time documentation to support the reimbursable evaluation activities. In an IRC filed on March 2, 2020, the District states its belief that it properly supported the claimed employee hours.

State Controller's Office Analysis:

The SCO found that \$402,409 in salaries and benefits claimed by the District was not supported by source documentation. The District believes that this adjustment is erroneous. The District did not provide contemporaneous time documentation to support reimbursable evaluation activities. In lieu of contemporaneous time documentation, the district provided collective bargaining agreements for the audit period. These bargaining agreements require that at least two formal observations be held during an employee's evaluation year, and that those formal observations each be at least 30 minutes in length. Therefore, each evaluation would be based on a minimum of 60 minutes of observational time for the evaluation period. The District's collective bargaining agreement does not indicate a time increment associated with writing the final evaluation. The District believes that it should be reimbursed for time spent writing the final evaluation, as determined by the District's time survey performed in Spring 2017.

District's Response

FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT'S PROGRAM COST CLAIM; SECTIONS 7 AND 8

7. WRITTEN DETAILED NARRATIVE

The Fairfield-Suisun Unified School District is filing this incorrect reduction claim to officially contest finding #1 of the STULL Audit conducted by the State Controller's Office during 2017 and 2018.

The District is formally contesting the following:

Excerpt of the State Controller's final statement from Final Audit Report dated June 2018 page 13:

We used the district's own collective bargaining agreement (CBA) to ascertain a time increment associated with the evaluation process. The district is required to spend at least 60 minutes providing observational activities for each evaluation, and that time increment was the basis for determining allowable costs for the audit period.

The District would like to draw attention to the fact that both the observations and the final evaluation write-up are required by the CBAs and are reimbursable mandated costs. For the State Controller's Office (SCO) to allow time for one activity and not the other means one bullet within the Collective Bargaining Agreements has more relevance than the other, which is arbitrary and inconsistent.

Specifically, the SCO is asserting that one sentence requiring an activity by the administrators supports reimbursement from the State while another sentence also requiring an activity by the administrators does not support reimbursement. Exhibit D of this filing shows that in the 2005-2007 CBA Article 10, Section 3, paragraphs d & g, in the 2008-2010 CBA Article 10, Section 3, paragraphs d & g, and in the 2012-2014 CBA Article 10, Section 3, paragraphs d & g are in exactly the same section of the agreements and both contain required administrative activities. Thus, the SCO's reasoning for disallowing all costs related to the final [write-ups] is flawed. If the district's CBA for each year is the basis for the allowance of a mandated activity, specifically observations by administrators, then the SCO should be allowing at least some time for the final write-up by administrators, as the two activities are required [for] the same employees within the same section of all the CBAs listed above.

In addition, because the District was confident [that] the SCO would allow time for the final write-ups it took the initiative in the Spring of 2017 [to] ask all site administrators to [track] their time writing the mandated final evaluations. The Districts did this to determine the actual average amount of time spent on the final write-up, and to expedite the SCO's audit process. Twenty-one school sites participated in the data collection. 188 individual records of time spent on final evaluation write-ups were obtained from the site administrators during that time. The District was able to determine [that] the average amount of time spent by administrators completing each final write up was 1.55 hours – See Exhibit A.

Unfortunately, the data obtained by the District regarding the actual time spent by administrators on the final write-up was completely rejected by the State Controller's Office because three of the administrators admitted [that] the time they reported was not tracked to the minute, but instead was estimated to the nearest reasonable time increment.

7. WRITTEN DETAILED NARRATIVE – CONTINUED

The District respectfully requests [that] the data from these three administrators...who estimated their time be excluded from the average time calculation but that all the time tracking done in the Spring of 2017 not be annulled only because three administrators may not have had a stopwatch handy to record the exact time spent when preparing their final write-ups.

The District is only requesting that 1.55 hours be reimbursed for each documented final write-up when, in reality, this is substantially less [time] than it actually took the administrators during the early years of the audit. [This is because] during the early years of the audit period the District was still using paper forms for final write-ups, which took much longer to complete than the electronic forms used during the time tracking period discussed above – See Exhibit B.

In conclusion, by [its own] admission on page 2 of the Final Audit Report, the State Controller's office even states [that it]:

Requested and reviewed lists of employees evaluated for the entire audit period. Using a random number generator, we randomly selected a non-statistical sample and tested 655 evaluations (out of 2,613) for the audit period. During testing, we identified 39 errors in the sample that were not projected to the population.

Having reviewed 655 final write-ups it is completely unreasonable for the SCO to not allow any time at all for the activity. The District pulled thousands of evaluations from its archives for this audit, spending hundreds of staff hours to support costs claimed. It was more than clear to the State Controller's auditors when they were on-site that each evaluation in the District's records had a WRITTEN FINAL EVALUATION included in the records. For the State Controller's Office to conclude [that no] time is allowable for an activity that is clearly documented by the actual paper records is illogical and capricious.

The District respectfully requests [that] the Commission on State Mandates require the SCO [to] revisit Finding #1 from [its] STULL audit and allow some reasonable amount of time for each final write-up.

SCO Comment

Background

Timeline relevant to the IRC:

- **August 31, 2016:** The initial contact date for the audit engagement. We submitted a records request by email, and asked for “Employee time sheets or time logs to support claimed hours.” (Tab 3 – page 1-2)
- **September 20, 2016:** Entrance conference held for the audit engagement.
- **October 12, 2016:** The District responded to our request for supporting time documentation via email, stating: “The District is currently compiling all support documents which are available and will let the SCO know the results of their findings A.S.A.P.” (Tab 3 – page 3) In a separate email, the District also provided excerpts of the Fairfield-Suisun Unified Teachers Association contracts related to teacher evaluations for the audit period (Exhibit C – pages 110-240).

- **October 27, 2016:** When asked again if the district had time records for the audit period, the District responded: “Not at this time, we are still hoping to find the records but thus far it appears the District does not have time records [for] evaluators.” (Tab 3 – page 5-6) In the same email, the District requested to “negotiate a way of determining how much time” it takes to perform the written evaluation at the end of the year.
- **September 26, 2017:** The District provided an Excel document from a time sample compiled “last spring by the District’s Assistant Supt of Human Resources (HR) and all the site administrators. In it, the site administrators were asked to ‘track only the time it took them to write up the final evaluations for certificated [employees].” (Tab 3 – page 7)
- **September 27, 2017:** The SCO auditor interviewed the first site administrator regarding the time sample for writing final evaluations (Tab 3 – page 8).
- **December 21, 2017:** The SCO auditor interviewed the second site administrator regarding the time sample for writing final evaluations (Tab 3 – page 9).
- **January 9, 2018:** The SCO auditor interviewed the third site administrator regarding the time sample for writing final evaluations (Tab 3 – page 10). We also received the original email sent to school administrators requesting that they fill in a Google Docs spreadsheet (Tab 3 – page 11-12).
- **January 31, 2018:** SCO auditors provided the District with the preliminary Finding and supporting schedules (in preparation for the exit conference) (Tab 3 – page 13).
- **March 6, 2018:** The District provided a letter response (dated March 2, 2018) to the Finding indicating that it did not want to conduct an exit conference (Tab 3 – page 14-15).
- **April 19, 2018** – The District provided an official response to the draft audit report (issued on April 13, 2018) (Tab 3 – page 16-18).
- **June 22, 2018:** SCO issued the final audit report for this engagement (Exhibit F – pages 263-284).
- **March 2, 2020:** The District filed an IRC for this engagement.

In its IRC, the District contends that the SCO’s reasoning for disallowing all costs related to the final write-up is flawed. We disagree.

The parameters and guidelines state:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred

for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Additionally, it is the claimant's "burden to show that its claimed costs are eligible for reimbursement pursuant to the Test Claim Decision and Parameters and Guidelines." (**Tab 4 – page 21**)

Discussion of Incorrect Reduction Claim appeal

For this engagement, the District provided contemporaneous records to support the number of evaluations conducted during the audit period, but did not provide contemporaneous records to support the time associated with performing the reimbursable activities.

In its IRC response, the District states:

The District would like to draw attention to the fact that both the observations and the final evaluation write-up are required by the CBAs and are reimbursable mandated costs. For the State Controller's Office (SCO) to allow time for one activity and not the other means one bullet within the Collective Bargaining Agreements has more relevance than the other, which is arbitrary and inconsistent.

Specifically, the SCO is asserting that one sentence requiring an activity by the administrators supports reimbursement from the State while another sentence also requiring an activity by the administrators, does not support reimbursement.

The SCO makes no assessment to the relevancy of one activity versus another in the collective bargaining agreements. Our role is to determine whether the claims submitted by the District contain actual costs traceable to and supported by contemporaneous source documentation.

In the Commission's decision for Oceanside Unified School District's IRC related to The Stull Act, the Commission notes the following (**Tab 5 – page 20-21**):

The Controller's reduction of costs to \$0, when the Controller concluded that 1,149 of the evaluations were performed by the claimant and fall within the scope of the mandate, and agrees that the claimant "(1) performed the required evaluations as contained in its Collective Bargaining Agreements, (2) confirmed that the activities were performed, and (3) provided the SCO auditors with the district's procedure and forms," is arbitrary and capricious and without evidentiary support. Thus, the claimant is entitled to some reimbursement for the time taken to perform the 1,149 evaluations under the mandate. The time taken by the each employee to perform the mandate, however, is disputed by the parties.

We have a strikingly similar situation with this IRC. We agree that the District performed 2,574 reimbursable evaluations during the audit period (**Exhibit F – page 274**). For the SCO to reduce the allowable costs to \$0 for this audit would have been "arbitrary and capricious" (per the Commission's prior decision); therefore, we used District's own collective bargaining agreements (in place of contemporaneous time records for each claimed individual) to account for the time associated with observational activities.

Regarding the evaluation process, the Fairfield-Suisun Unified School District 2008-2010 contract states (**Exhibit C – page 136**):

At least two (2) formal observations, one scheduled, and the other may be scheduled or unscheduled, will be held during a unit member's evaluation year to observe unit members...These formal observations will be at least thirty (30) minutes in length.

No time component is associated with writing the final evaluation in the collective bargaining agreements for the audit period.

On April 28, 2017, HR sent an email to all principals and assistant principals asking for them to document "the total amount of time that was spent on actually writing the F-3 Summary Evaluation document." The information was due to HR on May 5, 2017 (**Tab 3 – page 11-12**).

On September 27, 2017, the district provided an email to the SCO auditors (with an attached spreadsheet) (**Exhibit A – pages 12-36**) documenting the time that it took various administrators to complete the "final F-3 evaluation" during the spring of 2017.

We had many concerns while reviewing the spreadsheet (253 total line items):

- Of the 44 total evaluators on the spreadsheet, six did not list any time for completing the final F-3 evaluation.
- Listed time varied wildly between employees of the same classification:
 - Permanent – Between 0 and 120 minutes
 - Probationary 0 – Between 0 and 300 minutes
 - Probationary 1 – Between 0 and 300 minutes
 - Probationary 2 – Between 0 and 300 minutes
- The original email from the district originated on April 28, 2017, but the e-signature dates listed for each evaluation covered a six month time span:
 - November, 2016 – 1 signature
 - December, 2016 – 1 signature
 - January, 2017 – 30 signatures
 - February, 2017 – 142 signatures
 - March, 2017 – 43 signatures
 - April, 2017 – 36 signatures

Approximately 86% of the time increments listed fell outside of the month of April, which is cause for concern regarding the accuracy of the data provided.

- The entries were not signed by each evaluator confirming their listed time increment for each evaluated employee.

After reviewing the spreadsheet, we selected three individuals to interview. These three evaluators totaled 36 of the 253 line items, or approximately 14% of the entire population. We selected these three employees for the following reasons:

- First employee (Elementary): Listed an identical time increment for each evaluation, and conducted those evaluations in January and February.
- Second employee (High School): Listed an identical time increment for each evaluation, and conducted those evaluations between February and April.
- Third employee (Elementary): Listed the overall highest time increments of all evaluators, and conducted those evaluations in January and February.

We interviewed the three employees, and they stated that the time entered on the spreadsheet was not the actual time taken to complete the write up activity; rather, the time listed was an “approximate” or a “best guess.” (**Tab 3 – page 8-10**) There is no “approximate” or “best guess” standard present in the Parameters and Guidelines for reporting claimed hours.

The District states:

Unfortunately, the data obtained by the District regarding the actual time spent by administrators on the final write-up was completely rejected by the State Controller’s Office because three of the administrators admitted [that] the time they reported was not tracked to the minute, but instead was estimated to the nearest reasonable time increment.

The site administrators did not say that the costs were “estimated to the nearest reasonable time increment.” In fact, one administrator said that some principals/vice principals may have misunderstood exactly what was to be recorded on the spreadsheet, as some of the larger time increments may have included activities beyond the write-up (**Tab 3 – page 8-10**). We also raised additional questions about the time tracking spreadsheet, including the lack of a signed declaration for each administrator, how the spreadsheet was created, who had access to the spreadsheet, and what controls were placed over the data to ensure accurate reporting (**Tab 3 – page 9**). We did not receive responses to those questions.

The District is asking the Commission to exclude the three site administrators interviewed during the course of the audit from the average time calculation (which the District has determined to be 1.55 hours). The District is also asking the Commission to require that the SCO revisit Finding 1 of the June 22, 2018 audit report and “allow some reasonable amount of time for each final write-up.”

We disagree. The District contradicts itself by first requesting 1.55 hours of reimbursement for each documented final write-up, then asking that “some reasonable amount of time” be allowed for the same activity. Furthermore, by commenting that the three administrators “may not have had a stopwatch handy” to record the exact time spent writing final evaluations, the District admits that the time logs presented to SCO were not actual contemporaneous documents.

III. CONCLUSION

The SCO performed an audit of the Fairfield-Suisun Unified School District’s claims for costs of the legislatively mandated Stull Act Program (Education Code Sections 44660-44665; Statutes of 1983, Chapter 498; Statutes of 1999, Chapter 4) for the period of July 1, 2005,

through June 30, 2008; and July 1, 2010, through June 30, 2013. The district claimed \$624,988 for the mandated program. Our audit found that \$197,670 is allowable and \$427,318 is unallowable. The costs are unallowable primarily because the district claimed reimbursement for unsupported costs.

The Commission should find that: (1) the SCO correctly reduced the District's FY 2005-06 claim by \$15,291; (2) the SCO correctly reduced the District's FY 2006-07 claim by \$64,292; (3) the SCO correctly reduced the District's FY 2007-08 claim by \$98,986; (4) the SCO correctly reduced the District's FY 2010-11 claim by \$62,325; (5) the SCO correctly reduced the District's FY 2011-12 claim by \$92,969; and (6) the SCO correctly reduced the District's FY 2012-13 claim by \$93,455.

IV. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on July 10, 2020, at Sacramento, California, by:



Lisa Kurokawa, Chief
Compliance Audits Bureau
Division of Audits
State Controller's Office

Tab 3

Stull Act Audit- Initial Contact and Records Request List

Tuesday, September 13, 2016 3:58 PM

Subject	Stull Act Audit- Initial Contact and Records Request List
From	SCO Auditor-in-charge (AIC)
To	Asst. Sup, Business Services (ASST., B.S.)
Cc	SCO Audit Manager (Mgr.)
Sent	Wednesday, August 31, 2016 3:46 PM

Hi

Thank you for speaking with me this afternoon regarding the Stull Act Program audit that we have initiated for claims filed (FY 2005-06 through FY 2007-08, and FY 2010-11 through FY 2012-13) to the State.

Once we schedule a date and time for the entrance conference, we will send the district an official audit notification letter which includes a records request list.

We will provide the records request list in advance. Please see below:

1. Board-approved policy on evaluation of certificated instructional and certificated non-instructional employees
2. Collective bargaining agreement sections (in effect for the audit period) pertaining to evaluation of certificated instructional and certificated non-instructional employees
3. District procedures and forms that implement the Stull Act program
4. List of certificated instructional and certificated non-instructional employees evaluated for the audit period, including the following:
 - a. Dates of completed evaluations
 - b. Evaluatee name and unique identification number
 - c. Evaluatee tenure dates and employment status (substitute, temporary, probationary, or permanent)
 - d. Education program assignment (math, science, English, special education, etc.)
 - e. School site assignment
 - f. Evaluation rating (satisfactory or unsatisfactory)
 - g. Evaluator name and title
 - h. Fiscal year of evaluation
5. List of evaluators (names and titles) performing mandated activities per the program's parameters and guidelines, sections IV.A and IV.B for the audit period
6. Employee time sheets or time logs to support claimed hours
7. Evidence of performance of the Stull Act mandated activities (samples of completed evaluations)
8. Documents that support the hourly rates used, including support for benefit rates and productive annual hours, for all claimed employees

G.2.PRG

Please note, item number 4 and 6 are the most important pieces of information that we need at this point.

Please feel free to contact us if you have any question.

Thank you,

AIC

Auditor
State Controller's Office
Division of Audits / Mandated Cost Bureau

Mgr.

Audit Manager
State Controller's Office
Division of Audits / Mandated Cost Audits Bureau

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Re: Stull Act Audit- Internal Control Questions

Friday, January 13, 2017 8:39 AM

Subject	Re: Stull Act Audit- Internal Control Questions
From	ASSY. Sup, B.S.
To	AIC
Sent	Wednesday, October 12, 2016 5:33 PM

AIC
Hello

This email is the **first of three today** from Fairfield Suisun Unified School District in regards to your letter requesting information for the Stull Act audit. Below is the list your office requested at the audit entrance conference along with the Districts comments in red below.

1. Board-approved policy on evaluation of certificated instructional and certificated non-instructional employees – The District is currently working on this and will send it as soon as it is available.
2. Collective bargaining agreement sections (in effect for the audit period) pertaining to evaluation of certificated instructional and certificated non-instructional employees. Will send today in a separate email.
3. District procedures and forms that implement the Stull Act program. These are part of the documents requested in #2 above and will be sent today in a separate email.
4. List of certificated instructional and certificated non-instructional employees evaluated for the audit period, including the following: This data is too large to email and will be sent to the SCO via CD A.S.A.P.
 - a. Dates of completed evaluations
 - b. Evaluatee name and unique identification number
 - c. Evaluatee tenure dates and employment status (substitute, temporary, probationary, or permanent)
 - d. Education program assignment (math, science, English, special education, etc.)
 - e. School site assignment
 - f. Evaluation rating (satisfactory or unsatisfactory)
 - g. Evaluator name and title (same as #5?)
 - h. Fiscal year of evaluation
5. List of evaluators (names and titles) performing mandated activities per the program's parameters and guidelines, sections IV.A and IV.B for the audit period. Please refer to number 4 above as this request seems to be the same as g in #4 above, please clarify if this is something different.
6. Employee time sheets or time logs to support claimed hours. The District is currently compiling all support documents which are available and will let the SCO know the results of their findings A.S.A.P.

7. Evidence of performance of the Stull Act mandated activities (samples of completed evaluations). The District is currently compiling these documents and will send them to the SCO as soon as they are available.

8. Documents that support the hourly rates used, including support for benefit rates and productive annual hours, for all claimed employees. Attached

9. Internal Control Document – Attached (The District is still working on item #5 for the Fraud Risk for the Management section of the Internal Controls document and will send the answer to that question as soon as possible.)

Please let me know if you have any questions.

Sincerely,

Asst. Sup. B. J.

On Wed, Sep 21, 2016 at 3:36 PM

> wrote:

Please see the attached document for the Internal Control Questions.

Feel free to contact us if you have any questions.

Thanks,

AIC

Auditor
State Controller's Office
Division of Audits / Mandated Cost Bureau

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--

FSUSD STULL Audit Questions

Thursday, January 19, 2017 11:50 AM

Subject	FSUSD STULL Audit Questions
From	Consultant
To	AIC
Cc	Howell, Kenneth; 'Michelle Henson'; 'Christine Draa'; jolenetollenaar@gmail.com
Sent	Thursday, October 27, 2016 5:36 PM

Hi

Please see below for my comments and let me know if you have any questions.

Thank you,

Consultant

Senior Consultant
MGT of America

From:

Sent: Monday, October 24, 2016 12:02 PM

To:

Cc:

Subject: RE: Stull Act Audit- Received the CD

AIC

Asst. Sup. B.S., Consultant

Mgr.

Good morning,

We will use the list to calculate allowable costs for actual evaluations conducted. In addition, we will select our sample for testing from the list provided. The list can be used for population count; however, the line items without a date can't be counted because we don't know when the evaluation was conducted. Also, we will only schedule an employee one time per fiscal year (some employees are listed more than once per fiscal year). Please note: each employee was required to be observed at least twice each year if they were due to have an evaluation per the FUTA contract each observation was required to be half an hour. Also, the District has documentation showing each certificated employee did have an end of the year written evaluation which is in each employee's file, and we would like to negotiate a way of determining how much time this takes as the District has the written evaluations to show the work was done.

Our plan is to schedule the list provided; however, we have some questions. Please see the list below:

1. Does this list represent the entire population for FY 2005-06, FY 2006-07, and FY 2007-08 or does the district have any additional records for these years under audit? There is no way to obtain the answer to the first part of this question. Regarding part two of this question - I believe it was answered in our last email and I don't mean to be too direct but you and I have discussed this exact issue several times at the entrance conference, over the phone and in a prior email and we are hoping to put this to bed. Please understand we are all very busy and we are not sure why we don't seem to be communicating that the old report is all the District has and does not have any way to know if there are additional records for those years. The report I sent you on CD represents what the Consultant used to file the claims as far as we can tell, that is all we know. To try and determine what was left in or left out is not possible.
2. Are the names reflective as of 2007-08? For example, if we select someone that has changed their last name (i.e., due to marriage or divorce). How would we know that? Due to the age of the data and the fact the District isn't able to reproduce the 05-06 to 07-08 list there is no way to ascertain this information except by possibly using the change rate which occurs during the 10-11 to 12-13 years and applying it to the older report. My personal opinion is that the number of name changes is probably inconsequential to the total number as it is probably very small.
3. What do the codes under Status represent (T, A, R, RS, P, S, I, etc..)? We will check with

HR to find out if they may have a key to these codes, and let you know.

Additional questions:

1. What is the status update for the employee list for FY 2010-11 through FY 2012-13? The District is still working on compiling the employee list for FY 2010-11 through FY 2012-13, I will double check on that and let you know.
2. Does the district have time records (time recorded by the evaluators to conduct the evaluation activities) for the audit period? Not at this time, we are still hoping to find the records but thus far it appears the District does not have time records by evaluators.

G.2

----- Forwarded message -----

From:

AIC

Date: Mon, Oct 24, 2016 at 11:01 AM

Subject: RE: Stull Act Audit- Received the CD

To:

Asst. Sup, B.S., Consultant

Cc:

Mgr.

Good morning,

We will use the list to calculate allowable costs for actual evaluations conducted. In addition, we will select our sample for testing from the list provided. The list can be used for population count; however, the line items without a date can't be counted because we don't know when the evaluation was conducted. Also, we will only schedule an employee one time per fiscal year (some employees are listed more than once per fiscal year).

Our plan is to schedule the list provided; however, we have some questions. Please see the list below:

1. Does this list represent the entire population for FY 2005-06, FY 2006-07, and FY 2007-08 or does the district have any additional records for these years under audit?
2. Are the names reflective as of 2007-08? For example, if we select someone that has changed their last name (i.e., due to marriage or divorce). How would we know that?
3. What do the codes under Status represent (T, A, R, RS, P, S, I, etc..)?

Additional questions:

1. What is the status update for the employee list for FY 2010-11 through FY 2012-13?
2. Does the district have time records (time recorded by the evaluators to conduct the evaluation activities) for the audit period?

Thank you,

AIC

From:

Consultant

Sent: Wednesday, October 19, 2016 2:33 PM

To:

AIC, Asst. Sup, B.S.

Cc:

Mgr.

Subject: RE: Stull Act Audit- Received the CD

Hi

AIC


The files which held the list did not indicate if the list represented the employees evaluated through 2007-08 or those scheduled to be evaluated. I am thinking at the time it may have been both - those both due to be and those actually evaluated, but I am not sure why that would make a difference, can you explain? The only way to determine what was actually done is by pulling the actual employee files. Also, unfortunately we have already asked the HR Department if there is any way they could provide this same exact list (which came directly from the boxes and files the Consultant used to create the claims) and the District said they could not re-create the file or provide this list in excel.

: may want to give us added guidance but I did want to let you know these details to ensure you

G.2

RE: Fairfield USD STULL Audit Update

Friday, September 29, 2017 11:28 AM

Subject	RE: Fairfield USD STULL Audit Update
From	Consultant
To	AIC, mgr.
Cc	
Sent	Tuesday, September 26, 2017 7:49 PM
Attachments	 <u>E.2.56</u> F-3 Evaluatio...

Asst. Supt., B.S.

Hello

As you know the District is in the process of compiling the sample data you requested for the STULL Audit. Currently, we have pulled the majority of the data which includes compiling the Microfiche data in one file for easy access, and pulling the hard copy files from our storage area. It has taken a little longer than expected as the files are saved by evaluator not evaluatee and have to be re-categorized for easy access. It looks like the District should have the data compilation completed by mid-October. We are hoping to set up a meeting with your staff in early November to show you how to access the data and give your team the ability to review it all. Based on the information from our HR Department the hope is your team will have what they need and can review the full sample quickly and easily. Please let us know if the week of November 6th works for your staff and if so what day/days will work best and we will set up a room as a work space for the team.

Also, attached is the excel data from the time sample compiled last spring by the District's Asst. Supt of HR and all the site administrators. The site administrators were ask to track only the time it took them to write up the final evaluations for certificated. The data is still very raw, but the sites did record quite a bit of data and the District is hoping you will consider using to support the time claimed for writing of the final evaluation. Please review the attached and let us know if you would consider allowing the District to use the data. If not, possibly suggest other ways to quantify this activity as the District is very hopeful it can support and retain the final write up costs.

Thank you very much,

Senior Consultant
MGT of America

Fairfield-Suisun Unified School District
 The Stull Act Program
 Phone Log
 Audit ID #: S17-MCC-0006

Date of Phone Conversation	Brief Description <i>Consultant</i>
09/27/17	<p>(Audit Manager) and (AIC) spoke with (Principal Elementary) regarding the email sent by on Sept. 26th. The call began at 10:43 am. <i>Principal</i> said that she, and other administrators received an email on April 28th, 2017 (from [REDACTED] asking them to document the time spent on the "F3" (final evaluation) write up time. It said the district was subject to audit, and they needed administrators to document their time spent on the final write-up of current evaluations. The email also said the information was due May 5th.</p> <p>We asked <i>Principal</i> why some administrators claimed wide variety of times (5 hours) while other claimed 45 minutes for the same activity. She said that some may have misunderstood the request from the district office, and that she personally blocks off 90 minutes for this portion of the evaluation process. She said that all of the probationary evaluations are required to be complete by the end of February, and the permanent evaluations by the end of April. The evaluations are e-signed/filed into system called "Evaluated" which the district's HR department maintains and operates. She also stated that prob employees are to be evaluated on all 6 components of the Standards of the Teacher Profession, while the permanent teachers only need to be evaluated on 3 of those standards (meaning perm evals should require less time to complete/write up). Call ended at ~11:10 am.</p>

From: Mgr.
Sent: Thursday, December 21, 2017 3:14 PM
To: Principal, H.S.
Cc: Director of H.R.
Subject: Recap of phone conference - Stull Act

Good afternoon,

I wanted to provide a recap of our conversation from earlier this morning. If you'd like to expand/clarify the responses, let me know:

- The call began at 8:30 a.m. when (Principal - High School) and (Director - HR) contacted (Audit Manager-SCO) to discuss additional time records submitted by the district on September 26th, 2017.
- The district sent an email request (*auditor's note - exact date not determined, as of now*) asking administrators to track their time spent writing up the final evaluation in the Spring 2017 semester.
- Principal said the listed 45 minutes (per employee) was to prepare/gather various comments together for the employee and write up the final evaluation narrative, primarily from the two observations. He approximated the 45 minutes was a "best guess" as to the time spent gathering together the notes and writing the final evaluation narrative, and is about the average time spent per employee. Typically, an hour is blocked off in his calendar for this process. This narrative would be written before the meeting between the evaluator and evaluatee.
- Principal also described the overall evaluation process: An employee receives at least two formal observations, each one at least 30 minutes in length. Before each observation, there is a pre-observation meeting held and after each observation, a post-observation conference is held. The final evaluation write up is the accumulation of all the observation notes, meeting notes, and conversations throughout the school year.
- As for the varying levels of effort (listed time for write-ups) identified by evaluators on the Excel spreadsheet for seemingly similar employees (Prob 0,1,2), Principal theorized that those Principals/VP's reporting time for the write up process of up to 5 hours may have misunderstood exactly what was to be recorded on the spreadsheet. The higher time increments may be documenting activities beyond just the write-up time.
- The call ended approximately 8:45 a.m.

I had a few follow-up questions I forgot to ask during the call. How was the Excel spreadsheet generated? Did each site administrator input their data into a Google Doc shared file? Did each site maintain their own file, and someone else gathered up the data? What controls were placed over the data to ensure accurate reporting? To date, we're not sure.

Thank you,

| Audit Manager
 Office of the State Controller Betty T. Yee
 Division of Audits, Mandated Cost Audits Bureau

Recap of phone conference - Stull Act

Wednesday, January 10, 2018 7:28 AM

Subject	Recap of phone conference - Stull Act
From	Mgr.
To	Principal
Cc	Director of H.R., AIC
Sent	Tuesday, January 09, 2018 5:33 PM

Good afternoon,

I wanted to provide a recap of our conversation from earlier this morning. If you'd like to expand/clarify the responses, please let me know:

- The call began at 8:00 a.m. when *Elementary* (Principal –) and (Director - HR) contacted (Audit Manager-SCO), (Auditor-in-Charge-SCO) to discuss additional time records submitted by the district on September 26th, 2017. indicated she has been a Principal for seven years with the district.
- The district sent an email request on April 28th, 2017, asking administrators to track their time spent writing up each employee's final evaluation in the Spring 2017 semester. indicated this information was tracked on a Google Document spreadsheet that was sent as part of the email. We asked who had access to this file, and she believed only those that were sent the email (with attached link) were allowed to enter their time for each employee evaluated. We asked if she was able to see only her spreadsheet of evaluated employees, or all of the spreadsheets tracked at each school site. said she wasn't sure, as she was just focused on time for her evaluated employees. We also asked about the controls placed over the gathered information, and she also wasn't sure, but surmised that only those given access would be able to input time. Since all of the evaluations were "e-signed" between January 23, 2017, and February 17, 2017, the time spent for each evaluation was gathered approximately three months after the activities were performed.
- We asked why listed time varies (from 2 hours to 5 hours) and what her understanding was of that time. said that is the time it took her to complete the written portion of the final evaluation, as she writes comments on all 6 standards (for Probationary employees) and 3 standards (for Permanent employees). For the two Probationary employees that list 5 hours, those two individuals were "non-reelect", meaning they would not be brought back the following year. We asked if this time was actual time spent, or approximate time, and said the time was "approximate", as she often spends time on the weekends/evenings completing write-up portions of evaluations.
- The call ended around 8:17 a.m.

Thanks,

| Audit Manager
Office of the State Controller Betty T. Yee
Division of Audits, Mandated Cost Audits Bureau

From: *Director of H.R.*
Sent: Tuesday, January 9, 2018 11:38 AM
To: *MGR.*
Subject: Fwd: Original email for F-3 Evaluation Tracking request - 04/28/17

Hi
 Here is the email requesting the information from each site.

Director of Human Resources
 Fairfield-Suisun Unified School District
 2490 Hilborn Road
 Fairfield, CA 94534

----- Forwarded message -----

From: *> Admin Asst, H.R.*
Date: Thu, Dec 21, 2017 at 7:57 AM
Subject: Original email for F-3 Evaluation Tracking request - 04/28/17
To: *Dir. of H.R.*

Here is the original email requesting the information from the administrators.

*Administrative Assistant
 Human Resources
 Fairfield-Suisun Unified School District*

----- Forwarded message -----

From: *Admin Asst., H.R.*
Date: Fri, Apr 28, 2017 at 3:53 PM
Subject: F-3 Evaluation Tracking
To: All Principals <all-principals@fsusd.org>, All Assistant Principals <all-assistant-principals@fsusd.org>
Cc:

Happy Friday!

The District is undergoing an audit by the California State Controller's Office regarding the Stull Act.

Each school site is being asked to review the data found in this link:

F-3 Evaluation Tracking Sheet

This information has been pulled from Evaluat'd, then fill in the first column, which would be the total amount of time that was spent on actually "writing" the F-3 Summary Evaluation document.

Each school is identified by tabs at the bottom of the spreadsheet.

We are hopeful that our Ed. Services Team has advised you that this data would be coming soon, and we ask that you complete the form by the end of next week, May 5, 2017.

We anticipate capturing similar data over March, and April of this school year, and we will send subsequent emails at the appropriate time.

Should you have any questions, please do not hesitate to contact me.

Kind regards,

Administrative Assistant
Human Resources
Fairfield-Suisun Unified School District

From: Mgr.
Sent: Wednesday, January 31, 2018 4:52 PM
To: Dir of H.R, Asst. Sup, HR.,
 Asst Sup, B.S.
Cc: Consultancy, AIC
Subject: Fairfield-Suisun USD Stull Act - Exit conference support
Attachments: E.2.101 ALL Evaluator's PHR Claimed for the Audit Period (Auditor Generated).xlsx; Allowable E.2
 POST Testing Evaluations(Auditor Generated).xlsx; Fairfield-Suisun USD Stull Act (S17- E
 MCC-0006) - Finding.pdf; Summary of Allowable and Unallowable Evaluations (Auditor E
 Generated).pdf; Summary of Indirect Costs (Auditor Generated).pdf; Summary of E.2.105
 Program Costs - Schedule (Auditor Generated).pdf; Total Salaries and Benefits (Auditor
 Generated).pdf E.2.107

Good afternoon,

As we prepare for the exit conference for this audit, we wanted to send the district several schedules that support our audit finding. Please review the attached schedules and let us know if you have any questions.

We will send the final document (exit conference handout) once we determine the date and time of the exit conference.

Our schedules are relatively open for the next two weeks to hold the exit conference. Please let us know what date/time works best.

Thank you,

Audit Manager
 Office of the State Controller Betty T. Yee
 Division of Audits, Mandated Cost Audits Bureau

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Fairfield-Suisun Unified School District

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www.fsusd.org

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Joan Gaut
John Silva
Chris Wilson

Superintendent

Kris Corey

March 2, 2018

– Audit Manager
Office of the State Controller Betty T. Yee

Dear

In response to your email of January 31st:

1. The District would like to have specific detailed information regarding the amounts listed as “Less Amount Paid by the State” on the “Summary of Program Costs,” worksheet included in the January 31st email, as it is our understanding these payments were made to the District recently and are not part of the normal mandate payment process but paid out based on ADA.
2. Regarding the “Findings” attachment, the District disagrees strongly with the SCO’s finding that only time for observation is supported. Specifically, the SCO states “each evaluation shall be based on a minimum of 60 minutes of observational time for the evaluation period.” This language was identical for every collective bargaining agreement in place for the audit period. The District interviewed staff members responsible for conducting evaluations during this time period, and they confirmed a similar evaluation process as listed in the agreement”. It is of specific concern that it appears that the SCO is not allowing any time for the final evaluation write up, although:
 - A. The District provided copies of all the final write up reports requested during the SCO’s visit as well as a listing of all employees who received a final write up and who were included in the original claims.
 - B. Last spring the District asked all Administrators to vigorously record their time spent writing up final evaluations. The District was able to obtain a large amount of data showing an average write up time of 1.56 hours per final evaluation, which is in addition to (not included in) the 60 min observation time.

For these reasons the District believes the finding allowing zero costs for the final write up is unreasonable, and unjustified. The District specifically requests the SCO recommend an allowable time increment for Administrators for writing up each final evaluation. Allowing zero time - when the actual final write ups exist - is entirely unfounded, without merit, and does not appear to demonstrate the true burden of time that exists for our Administrators in developing these evaluations.

Additionally, the District reserves the right to file an Incorrect Reduction Claim any time within the allowable three years after the close of the audit, based on what FSUSD believes to be unreasonable findings in this audit.

Consultant

Per your conversations with _____ it appears the claims will be paid based on District ADA and not on amounts owed. The District staff have spent many hours on this audit, gathering documents, preparing documents for review, and confirming much of the work that has been accomplished as evidence that the work of Administrators was accomplished, and confirmed, and it now appears that the exit interview seems to be a mere formality to again indicate that the SCO offices have made a determination without consideration of the evidence provided. Unless the exit interview will be an opportunity to broaden the SCO's perspective on the evidence, and or provide an opportunity for perception changing, it appears that the SCO has made a foregone conclusion to not remedy their findings. Thus, it doesn't appear to be a need to continue to plan an exit interview at this point in time.

Sincerely,

Assistant Superintendent of Human Resources

CC:

Consultant, Dir. of HR, Asst. Supt., B.S.



Fairfield-Suisun Unified School District

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Kris Corey

April 19, 2018

Chief, Compliance Audits Bureau
 State Controller's Office, Division of Audits
 P.O. Box 942850
 Sacramento, CA 94250-5874

Dear Ms.

Please consider this letter the official response from Fairfield-Suisun Unified School District regarding the Stull Act Program draft audit report issued on April 13, 2018 by your office.

First, the District has concern with the accuracy of the audit finding as it completely ignores all hard and written evidence presented to the State Controller's Office during the audit. The evidence supplied by FSUSD proves that the District incurred a high amount of costs for the activity of writing up the final evaluations for more than two thousand certificated employees, yet the audit disallows these costs entirely due to "unsupported costs". We would be interested to know what supported costs look like if written evidence is considered "insufficient."

Additionally, it appears the draft audit report is attempting to cloud this disallowance by grouping both the observation activities and the final write up activities into a single new category, which has never been brought before the Commission. Specifically, on page 8 of the draft audit report the two activities become one new activity listed as "evaluation activities." The claiming instructions list the two activities separately as **a.** and **b.** Please see below for the exact language from the claiming instructions:

"A. Certificated Instructional Employees "

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats.1983, ch. 498). (Reimbursement period begins July 1, 1997).

Reimbursement for this activity is limited to:

a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and

b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:

- once each year for probationary certificated employees;
- every other year for permanent certificated employees; and
- beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S. C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

It is unclear why the audit report combines the two activities, when the claiming instructions clearly list them as two separate activities. What is actually occurring is the auditors are allowing one hour for the observation (**activity a**) and zero hours for the final write up (**activity b**), which we assert is out of compliance with the State's claiming instructions and frankly, egregious and manipulative.

Furthermore, the District expended more than one hundred district-paid hours complying with the State's request to supply requested files for this audit. The District staff provided the State Controller's auditors with actual paper copies of hundreds of final evaluation write ups to support **both** the observation costs and the final write up costs separately. The State Controller's auditors reviewed each and every final write up, yet disallowed all costs for the final write ups stating these costs were "not supported." Again, we claim that the actual paper copies serve as complete and more than sufficient support for time spent.

In prior correspondence with the State Controller's auditors, the District has requested the auditors revisit this finding. To date, no response has been made by the auditors to the District, only the issuance of the final draft of the audit. To recap the District's original plea for a reasonable outcome to this audit I am enclosing several paragraphs from the March 2nd letter written to Audit Manager _____, from _____, Fairfield-Suisun's Assistant Superintendent of Human Resources:

*Regarding Finding #1, the District disagrees strongly with the SCO's finding that only time for observation is supported. Specifically, the SCO states "each evaluation shall be based on a minimum of 60 minutes of observational time for the evaluation period." This language was identical for every collective bargaining agreement in place for the audit period. The District interviewed staff members responsible for conducting evaluations during this time period, and they confirmed a similar evaluation process as listed in the agreement". It is of specific concern that it appears that **the SCO is not allowing any time for the final evaluation write up, although:***

- A. *The District provided copies of all the final write up reports requested during the SCO's visit as well as a listing of all employees who received a final write up and who were included in the original claims.*

- B. Last spring the District asked all Administrators to vigorously record their time spent writing up final evaluations. The District was able to obtain a large amount of data showing an average write up time of 1.56 hours per final evaluation, which is in addition to (not included in) the 60 min observation time.*

For these reasons the District believes that the **finding that allows zero costs for the final write up is unreasonable, and unjustified.** The District respectfully requests the State Controller's Office recommend an allowable time increment for Administrators for writing up each final evaluation. Allowing **zero** time - **when the actual final write ups exist** — is entirely unfounded, without merit, and does not appear to demonstrate the true burden of time that exists for our Administrators in developing these evaluations.

Finally, the District reserves the right to file an Incorrect Reduction Claim any time within the allowable three years after the close of the audit, based on what Fairfield Suisun Unified School District believes to be unreasonable findings in this audit.

Thank you very much for your time and consideration of this important matter.

Assistant Superintendent, Business Services
Fairfield-Suisun Unified School District

Tab 4



July 30, 2018

Mr. Christian Keiner
Dannis Woliver Kelly
555 Capitol Mall, Suite 645
Sacramento, CA 95814

Ms. Jill Kanemasu
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

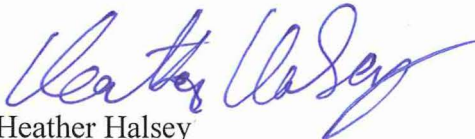
And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**
The Stull Act, 14-9825-I-02
Education Code Sections 44660-44665;
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4
Fiscal Years: 2005-2006, 2006-2007, 2007-2008, and 2008-2009
Carlsbad Unified School District, Claimant

Dear Mr. Keiner and Ms. Kanemasu:

On July 27, 2018, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,


Heather Halsey
Executive Director

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
 ON:
 Education Code Sections 44662 and 44664¹
 Statutes 1983, Chapter 498 and Statutes 1999,
 Chapter 4
 Fiscal Years 2005-2006, 2006-2007, 2007-
 2008, and 2008-2009
 Filed on June 9, 2015
 Carlsbad Unified School District, Claimant

Case No.: 14-9825-I-02

The Stull Act

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

(Adopted July 27, 2018)

(Served July 30, 2018)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 27, 2018. Sean Mick appeared on behalf of the claimant, and Masha Vorobyova appeared on behalf of the State Controller’s Office (Controller).

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

The Commission adopted the Proposed Decision to deny the IRC by a vote of 5-0 as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Ken Alex, Director of the Office of Planning and Research	Absent
Richard Chivaro, Representative of the State Controller	Absent
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Andre Rivera, Representative of the State Treasurer, Vice Chairperson	Yes
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	Yes

¹ Note that this caption differs from the Test Claim and Parameters and Guidelines captions because it only includes those code sections approved for reimbursement by the Commission and not those pled in the Test Claim but denied.

Summary of the Findings

This analysis addresses reductions made by the Controller to reimbursement claims filed by the Carlsbad Unified School District (claimant) for costs incurred during fiscal years 2005-2006 through 2008-2009 (audit period) for the *Stull Act* program. The claimant disputes reductions totaling \$274,101 for the audit period.

The Commission denies this IRC, finding that reductions related to the claimant's time study, and disallowances of completed employee evaluations in all four fiscal years were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Specifically, the Controller reduced costs based on denial of 19 of 22 discrete activities identified in the claimant's time study, relating to training, meetings, observation, report writing, conferences between evaluators and teachers, and other activities relating to planning, preparation, and organizing notes, and STAR testing. These activities are beyond the very narrow scope of the approved higher level of service, and the claimant has presented no argument or evidence establishing the relationship to the mandated activities included in the Parameters and Guidelines. The reduction based on the 19 denied activities is therefore correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

In addition, the Controller reduced reimbursement based on disallowed completed evaluations for non-instructional certificated employees, such as administrators, counselors, and librarians, among others; and preschool teachers. Preschool teachers do not perform the requirements of educational programs mandated by state or federal law, and therefore evaluations of preschool teachers are not reimbursable. Similarly, evaluations of non-instructional certificated personnel are reimbursable under Part IV.B. of the Parameters and Guidelines only if such employees' last regularly-scheduled evaluation resulted in an unsatisfactory evaluation; those facts are not supported in the record. The reduction based on disallowed completed evaluations is therefore correct as a matter of law.

COMMISSION FINDINGS

I. Chronology

- 12/28/2006 The claimant filed its 2005-2006 reimbursement claim.²
- 01/25/2008 The claimant filed its 2006-2007 reimbursement claim.³
- 02/13/2009 The claimant filed its 2007-2008 reimbursement claim.⁴
- 01/29/2010 The claimant filed its 2008-2009 reimbursement claim.⁵

² Exhibit A, IRC, page 338 [Claim Documentation for Fiscal Year 2005-2006].

³ Exhibit A, IRC, page 270 [Claim Documentation for Fiscal Year 2006-2007].

⁴ Exhibit A, IRC, page 184 [Claim Documentation for Fiscal Year 2007-2008].

⁵ Exhibit A, IRC, page 85 [Claim Documentation for Fiscal Year 2008-2009].

- 06/24/2010 The Controller issued a letter informing the claimant of the initiation of the audit.⁶
- 05/02/2012 The Controller issued the Draft Audit Report.⁷
- 05/09/2012 The claimant responded to the Draft Audit Report
- 06/15/2012 The Controller issued its Final Audit Report.⁸
- 07/13/2012 The Controller issued “results of review” letters.⁹
- 06/09/2015 The claimant filed the IRC.¹⁰
- 10/02/2015 The Controller filed late comments on the IRC.¹¹
- 05/22/2018 Commission staff issued the Draft Proposed Decision.¹²
- 05/29/2018 The Controller filed comments on the Draft Proposed Decision.¹³

II. Background

The Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of “certificated personnel” within each school district. (Former Ed. Code, §§ 13485-13490.) As originally enacted, the Stull Act required the governing board of each school district to develop and adopt specific guidelines to evaluate and assess certificated personnel, and to avail itself of the advice of certificated instructional personnel before developing and adopting the guidelines.¹⁴ The evaluation and assessment of the certificated personnel was required to be reduced to writing and a copy transmitted to the employee no later than sixty days before the end of the school year.¹⁵ The employee then had the right to initiate a written response to the evaluation, which became a permanent part of the employee’s personnel file.¹⁶ The school district was also required to hold a meeting with the employee to discuss the evaluation.¹⁷

⁶ Exhibit B, Controller’s Late Comments on the IRC, page 62 [Audit Entrance Conference Letter].

⁷ Exhibit A, IRC, page 62 [Final Audit Report, p. 3].

⁸ Exhibit A, IRC, page 57 [Final Audit Report Cover Letter].

⁹ Exhibit A, IRC, page 4.

¹⁰ Exhibit A, IRC, page 1.

¹¹ Exhibit B, Controller’s Late Comments on the IRC.

¹² Exhibit C, Draft Proposed Decision.

¹³ Exhibit D, Controller’s Comments on the Draft Proposed Decision.

¹⁴ Former Education Code sections 13486-13487.

¹⁵ Former Education Code section 13488.

¹⁶ Former Education Code section 13488.

¹⁷ Former Education Code section 13488.

Prior law also required that the evaluation and assessment be continuous.¹⁸ For probationary employees, the evaluation had to occur once each school year. For permanent employees, the evaluation was required every other year. Former section 13489 also required that the evaluation include recommendations, if necessary, for areas of improvement in the performance of the employee. If the employee was not performing his or her duties in a satisfactory manner according to the standards, the “employing authority” was required to notify the employee in writing, describe the unsatisfactory performance, and confer with the employee making specific recommendations as to areas of improvement and endeavor to assist in the improvement. Reimbursement for these prior requirements was denied by the Commission.¹⁹

The test claim statutes amended the Stull Act in 1983 and 1999 to expand the scope of evaluation and assessment of certificated personnel. The test claim statutes added additional criteria that must be included in those evaluations: the employee’s instructional techniques and strategies, and adherence to curricular objectives; and the performance of instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 (i.e., the STAR test subjects) as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests.²⁰ And, in the case the employee receives an unsatisfactory result, the test claim statutes require an additional evaluation “in the years in which the permanent certificated employee would not have otherwise been evaluated.”²¹

Since prior law already required evaluation and assessment of certificated personnel, the Commission partially approved the Test Claim on May 27, 2004, for those activities that represent the *limited* new program or higher level of service mandated by the state by the test claim statutes. The Test Claim Decision also found that the mandate was limited to certificated personnel performing the requirements of educational programs mandated by state or federal law; in other words, if the personnel being evaluated are performing the duties of voluntary school programs, the evaluation of those personnel would not be mandated by the state.²²

The Parameters and Guidelines were adopted September 27, 2005. As relevant to this IRC, the Parameters and Guidelines identify the following reimbursable activities and limitations:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.).

¹⁸ Former Education Code section 13489.

¹⁹ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 2; 17-18.

²⁰ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 29-33.

²¹ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 33-34.

²² See Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 5-12.

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.).

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

B. Certificated (Instructional and Non-Instructional) Employees

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an *unsatisfactory evaluation* in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498).

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

*Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.*²³

²³ Exhibit A, IRC, pages 31-33 [Parameters and Guidelines, pp. 3-5].

Additionally, the Parameters and Guidelines require that actual costs claimed “must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”²⁴

Controller’s Audit and Summary of the Issues

The Controller’s Final Audit Report states that “[i]nitially, all costs claimed [for employee salaries and benefits] by the district were unallowable because they were based on average time increments supported with time records that were not completed contemporaneously.”²⁵ In other words, the claimant did not provide adequate source documentation, and utilized average times to calculate the reimbursement requested. The Controller initially disallowed the entire claim. The claimant’s representatives then conducted a time study in fiscal year 2010-2011, as a substitute for records of actual time spent on evaluations, to determine the costs for the audit period (fiscal years 2005-2006 through 2008-2009).²⁶ The Controller accepted and applied that time study to the audit period, but as explained below determined that the scope of the time study included unallowable activities and costs.

There is no indication in the record that claimant disputes the Controller’s initial rejection of the claimant’s source documentation; the dispute in this IRC is focused on the development and application of the claimant’s time study.²⁷

The claimant’s time study documented the time to perform 22 “activities of the teacher evaluation process,” and determined that it takes evaluators approximately 10 hours and 38 minutes, on average, to complete each required evaluation.²⁸ Of those 22 “activities” included in the time study, the Controller disallowed 19, as follows:

1. Preparing before training or planning meetings/conferences;
2. Training or planning meetings/conferences;
3. Preparing/organizing notes from training or planning meetings/conferences;
4. Preparing before meeting with teachers;
5. Conducting actual conference with teachers;
6. Preparing or organizing notes from meetings with teachers;
7. Preparing before “Pre-Observation” conferences with teachers;

²⁴ Exhibit A, IRC, page 30 [Parameters and Guidelines, p. 3].

²⁵ Exhibit A, IRC, page 65 [Controller’s Final Audit Report, p. 6].

²⁶ Exhibit A, IRC, page 65 [Controller’s Final Audit Report, p. 6].

²⁷ Exhibit A, IRC, page 11 [“In response to the Controller’s exclusion at the beginning of the audit of all of the original claim documentation, the District with the agreement of the auditor prepared a time study based on the FY 2010-2011 certificated staff evaluation cycle.”].

²⁸ Exhibit A, IRC, page 65 [Controller’s Final Audit Report, p. 6]. See also, Exhibit A, IRC, page 11 [“The time study identified 22 discrete activities established as a result of staff interviews.”].

8. Conducting “Pre-Observation” conferences with teachers;
9. Preparing/organizing notes form “Pre-Observation” conferences with teachers;
10. Preparing before classroom observations of teachers;
11. Preparing/organizing notes from classroom observations, finalizing Collect Data forms;
12. Reporting observations, preparing the Standards for Excellence in Teaching observation checklists;
13. Preparing before “Post-Observation” conferences with teachers;
14. Conducting “Post-Observation” conferences with teachers;
15. Preparing notes from “Post-Observation” conferences and preparing Reflecting Conference worksheets;
16. Preparing before Final Evaluation conferences with teachers;
17. Conducting Final Evaluation conferences with teachers;
18. Preparing/organizing notes from Final Evaluation conferences with teachers; and
19. Discussing the STAR results with teachers and assessing how to improve instructional abilities.²⁹

The Controller determined that activities related to planning, preparation, and organizing notes are not reimbursable because they are not required activities under the Parameters and Guidelines; that the claimant duplicated costs by including training in the time study, which was identified as a separate reimbursable activity in the Parameters and Guidelines on a one-time basis for each employee performing the mandate; and that conferences between teachers and evaluators are not reimbursable because they were required under prior law.³⁰

Accordingly, the Controller allowed three elements, or “activities” of the time study:

- Conducting “informal” classroom observations;
- Conducting “formal” classroom observations; and
- Writing Final Evaluation Reports and/or preparing Teacher Evaluation Report.³¹

²⁹ Exhibit A, IRC, pages 65-66 [Controller’s Final Audit Report, pp. 6-7].

³⁰ Exhibit A, IRC, page 66 [Controller’s Final Audit Report, p. 7].

³¹ Exhibit A, IRC, page 67 [Controller’s Final Audit Report, p. 8].

Based on these three activities, the Controller found that it takes approximately 5 hours and 8 minutes to complete each required teacher evaluation under the mandated program.³²

In addition to limiting the elements of the time study, the Controller disallowed costs for 46 of 660 completed evaluations, which the Controller determined were claimed in excess of the scope of the mandate. The evaluations that the Controller found to be non-reimbursable were for:

- Principals, vice principals, directors, coordinators, counselors, psychologists, librarians, and library media specialists who are not certificated *instructional* employees;
- Preschool teachers who do not perform the requirements of the program that is mandated by state or federal law;
- Duplicate teacher evaluations claimed multiple times in one school year;
- Permanent biannual teacher evaluations claimed every year rather than every other year; and
- Permanent five-year teacher evaluations claimed multiple times in a five-year period rather than once every five years.³³

The claimant responded to these findings in the Draft Audit Report, concurring with the findings on duplicate evaluations and evaluations conducted in years that they were not mandated, but asserting that the remaining reductions for administrative or library personnel, who were also certificated employees, and for preschool teachers, were not supported in the audit report or by any law or rule cited by the Controller.³⁴ In addition, the claimant conceded that training activities and costs were duplicated in the time study, and agreed that because the Parameters and Guidelines permitted training only once for each employee, the Controller's adjustment is reasonable.³⁵

Accordingly, based on the claimant's response to the audit report and its IRC filing, the following issues are in dispute:

- Reductions based on the 19 disallowed activities in the claimant's time study; and
- Disallowed completed evaluations based on the type of certificated employee (i.e., Principals, vice principals, directors, coordinators, counselors, psychologists, librarians, and library media specialists, which are not certificated *instructional* employees; and preschool teachers, which the Controller found were not

³² Exhibit A, IRC, page 67 [Controller's Final Audit Report, p. 8].

³³ Exhibit A, IRC, page 67 [Controller's Final Audit Report, p. 8].

³⁴ Exhibit A, IRC, pages 70-71 [Controller's Final Audit Report, pp. 11-12].

³⁵ Exhibit A, IRC, page 70 [Controller's Final Audit Report, p. 11].

performing the requirements of state- or federally-mandated educational programs).³⁶

III. Positions of the Parties

A. Carlsbad Unified School District

1. Time Study

The claimant groups the 19 disallowed activities from the time study into four categories: evaluation conferences; preparation activities; training activities; and STAR testing results.³⁷ The claimant acknowledges that the audit report allows reimbursement for training costs elsewhere in the findings, and therefore the claimant “does not dispute removal of the training time from the time study.”³⁸ With respect to evaluation conferences, the claimant cites the Controller’s finding that evaluation conferences are not new to the test claim statute, and argues that “[t]he Controller has confused the subject matter of the old and new mandates with the method of implementation.”³⁹ The claimant notes that the Commission’s Test Claim Decision found that the test claim statute added two new factors or criteria for evaluation of certificated instructional employees: “the instructional techniques and strategies used by the employee, and the employee’s adherence to curricular objectives.”⁴⁰ The claimant argues that “the fact that districts used evaluation conferences to implement the previous mandated activities does not exclude reimbursement to use the same method to implement the new activities.”⁴¹

With respect to “preparation activities,” the claimant argues that preparation time was stated as a separate element in the time study only to promote accuracy: “preparation time could have been logically merged with the activity relevant to the preparation.”⁴² The claimant notes that the Parameters and Guidelines “enumerates the subject matter of the evaluation process and not the entire process to implement the mandate.”⁴³ The claimant further notes, “[e]ven the Controller characterizes the parameters and guidelines as an ‘outline.’”⁴⁴ The claimant therefore concludes that preparation relating to evaluation conferences “is a rational, relevant, reasonable and

³⁶ The total disputed reduction over four fiscal years is \$258,812 in salaries and benefits, and \$15,289 in related indirect costs. (Exhibit A, IRC, page 65 [Controller’s Final Audit Report, p. 6].)

³⁷ Exhibit A, IRC, pages 13-16.

³⁸ Exhibit A, IRC, page 16.

³⁹ Exhibit A, IRC, page 13.

⁴⁰ Exhibit A, IRC, page 14.

⁴¹ Exhibit A, IRC, page 14.

⁴² Exhibit A, IRC, page 15.

⁴³ Exhibit A, IRC, page 15.

⁴⁴ Exhibit A, IRC, page 15.

necessary part of implementing the mandated activities in the usual course of business and the Controller has stated no basis to exclude it from the scope of the evaluation process.”⁴⁵

And with respect to STAR testing results, the claimant argues that the audit disallows time to review STAR test results “as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11...” despite such review being found reimbursable in the Commission’s Test Claim Decision.⁴⁶

Accordingly, the claimant alleges that the Controller incorrectly denied costs for activities properly included within the time study, and, incorrectly reduced the average time resulting from the study.

2. Excluded Evaluations

The claimant’s time study assigned a value (in staff time) to each evaluation, for purposes of tracking costs and claiming reimbursement. The Controller, however, disallowed costs for 46 of 660 completed evaluations claimed, based on findings that those evaluations were beyond the scope of the mandate. Evaluations claimed beyond the scope of the mandate include those that were conducted at a time they were not required, including duplicate evaluations within a single school year and evaluations conducted more than once every five years for permanent five-year-tenured teachers, or more than every other year for permanent non-tenured teachers.⁴⁷ The remaining disallowances were for certificated employees who were not required to be evaluated under the mandate (specifically, administrative and other non-instructional personnel, and preschool instructors).⁴⁸ While the claimant concurs with the Controller’s findings relating to evaluations conducted in a year they were not required, the claimant also notes in its IRC that the Controller has not identified the number of evaluations excluded based on each of these grounds.⁴⁹ With respect to excluded employees, such as “principals, vice principals, directors, coordinators, counselors, psychologists, librarians, and library media specialists,”⁵⁰ the claimant argues that the Test Claim Decision and Parameters and Guidelines do not limit reimbursement to employees providing classroom instruction. Rather, the claimant argues that the Test Claim Decision includes all certificated personnel “involved in the education process...”⁵¹

⁴⁵ Exhibit A, IRC, page 15.

⁴⁶ Exhibit A, IRC, page 16 [citing the Test Claim Decision, *The Stull Act*, 98-TC-25].

⁴⁷ Exhibit A, IRC, page 67 [Controller’s Final Audit Report, p. 8].

⁴⁸ Exhibit A, IRC, page 67 [Controller’s Final Audit Report, p. 8].

⁴⁹ Exhibit A, IRC, pages 19-20.

⁵⁰ Exhibit A, IRC, page 67 [Controller’s Final Audit Report, p. 8].

⁵¹ Exhibit A, IRC, page 17 [citing the Test Claim Decision, *The Stull Act*, 98-TC-25, pages 18-20 (“Certificated employees are those employees directly involved in the educational process and include both instructional and non-instructional employees such as teachers, administrators, supervisors, and principals.”)].

With respect to the exclusion of completed evaluations for preschool teachers, the claimant argues that the Commission identified a number of voluntary educational programs for which reimbursement for this mandate was not required, and preschool instruction was not among them.⁵² Accordingly, the claimant asserts that “[t]here is no stated basis to exclude certificated preschool instructors.”⁵³

The claimant did not file comments on the Draft Proposed Decision.

B. State Controller’s Office

The Controller explains that “[i]nitially, all costs claimed by the district were unallowable because they were based on average time increments supported with time records that were not completed contemporaneously.”⁵⁴ The claimant conducted a time study in fiscal year 2010-2011, “as a substitute for records of actual time spent on teacher evaluations.”⁵⁵ The Controller accepted and applied that time study to the audit period, but determined that the scope of the time study included unallowable activities and costs:

The time study documented the time it took district evaluators to perform 22 separate activities of the teacher evaluation process. The time study results reported time for training, planning, preparation, meetings, observation, report writing and other activities within the evaluation process. We determined that 19 activities reported in the time study were unallowable.⁵⁶

The claimant disputed those 19 disallowed activities, and grouped them into four categories: evaluation conferences; preparation activities; training activities; and STAR testing results.⁵⁷ Responding to the claimant’s categories, the Controller asserts that “evaluation conferences” as described by the claimant are not reimbursable for two reasons: first, section IV.B.1. of the Parameters and Guidelines only provides reimbursement for evaluation conferences every other year, unless a previous evaluation results in an unsatisfactory evaluation. The Controller states that no unsatisfactory evaluations were reported.⁵⁸ And second, the Controller maintains that section IV.A.1. and IV.A.2. do not provide reimbursement for evaluation conferences, and the Commission’s Statement of Decision expressly found that conferences were not reimbursable “because they were required before the enactment of the test claim legislation.”⁵⁹ The Controller

⁵² Exhibit A, IRC, pages 18-19 [citing Parameters and Guidelines, p. 3; Test Claim Decision, p. 11, Fn 42].

⁵³ Exhibit A, IRC, page 19.

⁵⁴ Exhibit B, Controller’s Late Comments on the IRC, page 10.

⁵⁵ Exhibit B, Controller’s Late Comments on the IRC, page 10.

⁵⁶ Exhibit B, Controller’s Late Comments on the IRC, page 10.

⁵⁷ Exhibit A, IRC, pages 13-16.

⁵⁸ Exhibit B, Controller’s Late Comments on the IRC, page 14.

⁵⁹ Exhibit B, Controller’s Late Comments on the IRC, page 14.

notes that the test claim statutes added “two new evaluation factors,” but the evaluation itself was required under prior law.⁶⁰

With respect to “preparation activities,” the Controller argues that reimbursement is limited to those activities outlined in the Parameters and Guidelines, which do not list any preparation activities as reimbursable.⁶¹ To the extent the claimant asserts that preparation activities are “reasonable and necessary,” the Controller suggests that “[t]he district may file an amendment with the Commission on State Mandates to amend the existing parameters and guidelines.”⁶²

And with respect to “STAR testing results,” the Controller asserts that the claimant “did not claim any activity that is reimbursable.”⁶³ The Controller notes that “[r]eimbursement for the activity IV.A.2 is limited to ‘review of the results of the STAR test...and to include in the written evaluation...the assessment of the employee’s performance based on STAR results...’”⁶⁴ The claimant instead claimed reimbursement for “discussing the STAR results with teachers and how to improve instructional abilities.”⁶⁵ The Controller asserts that “these two activities are not interchangeable,” and “[w]e believe conference activities are not reimbursable, as they are not listed as allowable activities in the respective section of the program’s parameters and guidelines.”⁶⁶

Finally, with respect to the number of completed evaluations claimed, and the number disallowed, the Controller notes that the claimant disagrees with the disallowed evaluations for “non-instructional certificated personnel,” including administrators, counselors, librarians, and others; and disallowed evaluations for preschool teachers.⁶⁷ The Controller maintains that the claimant is reading the Commission’s Test Claim Decision out of context, and therefore misinterpreting the Parameters and Guidelines with respect to employees for whom evaluations are reimbursable.⁶⁸ Addressing preschool teachers specifically, the Controller argues that the claimant failed to identify any specific state or federal law making preschool instruction mandatory, and therefore evaluations of preschool teachers are beyond the scope of this mandate.⁶⁹

⁶⁰ Exhibit B, Controller’s Late Comments on the IRC, page 14.

⁶¹ Exhibit B, Controller’s Late Comments on the IRC, page 15.

⁶² Exhibit B, Controller’s Late Comments on the IRC, page 15.

⁶³ Exhibit B, Controller’s Late Comments on the IRC, page 15.

⁶⁴ Exhibit B, Controller’s Late Comments on the IRC, page 15.

⁶⁵ Exhibit B, Controller’s Late Comments on the IRC, page 15.

⁶⁶ Exhibit B, Controller’s Late Comments on the IRC, page 15.

⁶⁷ Exhibit B, Controller’s Late Comments on the IRC, pages 18-19.

⁶⁸ Exhibit B, Controller’s Late Comments on the IRC, page 18.

⁶⁹ Exhibit B, Controller’s Late Comments on the IRC, page 19.

The Controller's Comments on the Draft Proposed Decision state that the Controller agrees with the findings and recommendations in the Draft Proposed Decision.⁷⁰

IV. Discussion

Government Code section 17561(d) 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 of the California Constitution.⁷¹ 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."⁷²

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁷³ Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational

⁷⁰ Exhibit D, Controller's Comments on the Draft Proposed Decision.

⁷¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁷² *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁷³ *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (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.

connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”⁷⁴

The Commission must 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.⁷⁵ In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require 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.⁷⁶

A. The Claimant Timely Filed this IRC Within Three Years From the Date It First Received From the Controller Written Notice of the Adjustment as Required by Former Section 1185.1 of the Commission’s Regulations.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.⁷⁷ The claimant may then file an IRC with the Commission “pursuant to regulations adopted by the Commission” contending that the Controller’s reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.⁷⁸

To be complete, an IRC filing must be timely filed “no later than three years following the date of the Office of State Controller’s final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim.”⁷⁹

Here, the Final Audit Report is dated June 15, 2012.⁸⁰ The IRC was filed with the Commission on June 9, 2015.⁸¹ Less than three years having elapsed between the issuance of the final audit

⁷⁴ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th, 534, 547-548.

⁷⁵ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁷⁶ 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.

⁷⁷ Government Code section 17558.5(c).

⁷⁸ Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

⁷⁹ Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21).

⁸⁰ Exhibit A, IRC, pages 4; 57.

⁸¹ Exhibit A, IRC, page 1.

report and the filing of the IRC, this IRC was filed within the period prescribed in former Code of Regulations, title 2, section 1185.1.

Based on the foregoing, the Commission finds the IRC was timely filed.

B. The Controller’s Reductions Based on the Denial of Activities Included in the Claimant’s Time Study that the Controller Found Were Beyond the Scope of the Mandate Are Correct as Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Parameters and Guidelines for this program, adopted September 27, 2005, require that reimbursement be based on *actual costs* supported by contemporaneous source documents created at or near the same time the actual cost was incurred, as follows:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.⁸²

The claimant’s original reimbursement claim documentation is comprised of forms and schedules containing administrators’ assertions of estimated staff time spent on the mandate, which were then compiled to produce average times to perform the mandated activities, and translated into costs.⁸³ The Controller rejected the claimant’s initial claimed costs for fiscal years 2005-2006 through 2008-2009 “because they were based on average time increments supported with time records that were not completed contemporaneously.”⁸⁴ This amounts to a finding that the claimant did not comply with the contemporaneous source document rule, and did not claim actual costs, as required by the Parameters and Guidelines.⁸⁵ There is no assertion or evidence in the record rebutting that finding. Pursuant to Government Code section 17564, reimbursement claims filed with the Controller shall be filed in the manner prescribed in the Parameters and Guidelines, and the Parameters and Guidelines, as a quasi-judicial decision of the Commission, are final and binding.⁸⁶ The claimant failed to comply with the Parameters and

⁸² Exhibit A, IRC, page 30 [Parameters and Guidelines, p. 3].

⁸³ Exhibit A, IRC, pages 85-366. See, e.g., Exhibit A, IRC, pages 101; 104-122; 124-125; 141.

⁸⁴ Exhibit A, IRC, page 65 [Final Audit Report, p. 6].

⁸⁵ See Exhibit A, IRC, page 30 [Parameters and Guidelines, p. 3]; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-803 [Discussing non-enforceability of the Controller’s Contemporaneous Source Document Rule when imposed only by Controller’s Claiming Instructions, prior to valid incorporation within Parameters and Guidelines, a regulatory document].

⁸⁶ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

Guidelines, and therefore the Controller could have reduced the entire claim to zero. Any such reduction would have been correct as a matter of law.

Instead, the Controller permitted the claimant to conduct a time study based on fiscal year 2010-2011 activities, “as a substitute for records of actual time spent on teacher evaluations.”⁸⁷ The results of that time study were then applied to the earlier audit period, and the issue before the Commission in this IRC is whether the Controller’s adjustments to and application of the time study is arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant’s time study identified 22 discrete activities involved in the teacher evaluation process, and identified the time spent on each item, in order to determine average times to perform the reimbursable activities.⁸⁸ Those items included time for training, planning, preparation, meetings, observation, report writing, and other activities, for a total (average) of 10 hours, 38 minutes per evaluation.⁸⁹

The Controller disallowed 19 of the 22 discrete activities of the time study, based on the following findings:

- (1) The activities related to planning, preparation, and organizing notes are not reimbursable under the mandate.
- (2) Training-related activities were included in the time study, but were also claimed as a direct cost item in each fiscal year. “We determined allowable time spend on training from the district’s original claims.”
- (3) Conferences between the evaluators and teachers are not reimbursable because they were required before the enactment of the test claim legislation.⁹⁰

And, according to the claimant’s narrative, the Controller also denied one activity related to evaluation and assessment of teachers with respect to their pupils’ STAR testing results, and progress toward state standards.⁹¹

The Controller found that each completed evaluation takes an average of 5 hours and 8 minutes, based on the three allowed activities from the claimant’s time study.⁹²

The claimant disputes the disallowance of activities related to evaluation conferences, preparation and planning activities, and reviewing STAR test results.⁹³ Specifically, the claimant argues that evaluation conferences are “a method of implementing this mandate, and

⁸⁷ Exhibit A, IRC, page 65 [Final Audit Report, p. 6].

⁸⁸ See Exhibit A, IRC, page 11.

⁸⁹ Exhibit A, IRC, page 65 [Final Audit Report, p. 6].

⁹⁰ Exhibit A, IRC, page 66 [Final Audit Report, p. 7].

⁹¹ Exhibit A, IRC, page 16.

⁹² Exhibit A, IRC, page 67 [Final Audit Report, p. 8].

⁹³ Exhibit A, IRC, pages 13-16.

not just a subject matter activity.”⁹⁴ The claimant further asserts that preparation activities were not explicitly considered or denied by the Test Claim Decision, and “[p]reparation is a rational, relevant, reasonable and necessary part of implementing the mandated activities in the usual course of business and the Controller has stated no basis to exclude it from the scope of the evaluation process.”⁹⁵ In addition, the claimant argues that the Test Claim Decision approved “the review of the results of the STAR test as it reasonably relates to the performance of those certificated employees [that teach STAR test subjects], and to include in the written evaluation of those certificated employees the assessment of the employee’s performance based on the STAR results for the pupils they teach.”⁹⁶

The Commission finds that the Controller’s denial of the 19 activities included in the claimant’s time study is correct as a matter of law, and not arbitrary, capricious, or without evidentiary support.

The Parameters and Guidelines limit reimbursement for evaluation and assessment of certificated employees as follows:

- Evaluate and assess the performance of certificated instructional employees *that perform the requirements of educational programs mandated by state or federal law* as it reasonably relates to the instructional techniques and strategies used by the employee; and the employee’s adherence to curricular objectives.

Reimbursement for this activity is limited to:

- *review* of the employee’s instructional techniques and strategies and adherence to curricular objectives, and
 - *include in the written evaluation* of the certificated instructional employees the assessment of these factors during the specified evaluation periods.
- Evaluate and assess the performance of certificated instructional employees that teach [STAR test subjects, reading, writing, mathematics, etc.] in grades 2 to 11 as it reasonably relates to the progress of pupils toward [STAR test statewide standards].

Reimbursement for this activity is limited to:

- *review* of the results of the STAR test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- *include in the written evaluation* of those certificated employees the assessment of the employee’s performance based on the STAR results for the pupils they teach during the specified evaluation periods.

⁹⁴ Exhibit A, IRC, page 13.

⁹⁵ Exhibit A, IRC, pages 13-15.

⁹⁶ Exhibit A, IRC, page 16.

- Evaluate and assess permanent *certificated, instructional and non-instructional employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation* in the years in which the permanent certificated employee would not have otherwise been evaluated. The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district. The following activities are reimbursable:
 - evaluate and assess the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel;
 - the evaluation and assessment shall be reduced to writing. The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance;
 - transmit a copy of the written evaluation to the certificated employee;
 - attach any written reaction or response to the evaluation by the certificated employee to the employee's personnel file; and
 - conduct a meeting with the certificated employee to discuss the evaluation.⁹⁷

This is a very narrow higher level of service, and reimbursement is not required for the full evaluation and assessment of those certificated employees who have received satisfactory evaluations. For those employees, reimbursement is limited to the review and the inclusion of the new criteria mandated by the test claim statutes in the written evaluation. Further, the Parameters and Guidelines require the claimant to identify the state or federal law that mandates the educational program being performed by the employee being evaluated.⁹⁸

Nowhere in the time study documentation, the response to the Draft Audit Report, or the IRC narrative itself, does the claimant attempt to isolate the narrow higher level of service approved by the Commission in the Test Claim Decision, or to tie the 19 disallowed time study items to the approved activities. As explained in the Test Claim Decision, prior law already required

⁹⁷ Exhibit A, IRC, pages 31-33 [Parameters and Guidelines, pp. 4-6].

⁹⁸ Exhibit A, IRC, pages 31-33 [Parameters and Guidelines, pp. 4-6].

evaluation of certificated employees.⁹⁹ The test claim statutes merely added additional criteria to be considered within those evaluations, and required a follow-up evaluation when a certificated employee receives an unsatisfactory evaluation and annual evaluations thereafter until the employee receives a satisfactory evaluation or, is separated from the school district.¹⁰⁰ The time study activities proposed by the claimant make are not restricted to the time and costs of evaluations pertaining to only the new evaluation and assessment criteria,¹⁰¹ nor are they limited to only those evaluations required for employees whose last regularly-scheduled evaluation resulted in an unsatisfactory rating.¹⁰² The Parameters and Guidelines require documentation to establish the relationship between the activities and costs claimed and the reimbursable activities stated in the Parameters and Guidelines.¹⁰³ The claimant’s time study activities (which generally include evaluation conferences, preparation and planning activities) are described too generally to establish that connection.¹⁰⁴

Furthermore, the activity proposed for claimant’s time study related to STAR testing goes beyond the scope of the reimbursable activity. The claimant argues that the Commission approved “the review of the results of the STAR test as it reasonably relates to the performance of those certificated employees [teaching STAR test subjects] and to include in the written evaluation of those certificated employees the assessment of the employee’s performance based on the STAR results for the pupils they teach...”¹⁰⁵ That description is substantially similar to and consistent with the Parameters and Guidelines, which indeed provide reimbursement to evaluate and assess the performance of teachers of STAR test subjects¹⁰⁶ “as it reasonably relates to the progress of pupils towards the state adopted academic content standards...” The Parameters and Guidelines also clarify that reimbursement for this activity is limited to “reviewing the results” of the STAR test and “including in the written evaluation...the assessment of the employee’s performance based on the [STAR test] results for the pupils they teach.”¹⁰⁷ However, the activity stated in the claimant’s proposed time study pertaining to STAR testing is “*Discussing* the STAR results with teachers and assessing how to improve instructional abilities.”¹⁰⁸ The activity as described in the claimant’s time study implies interaction between

⁹⁹ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 18-25.

¹⁰⁰ Exhibit A, IRC, pages 31-32 [Parameters and Guidelines, pp. 4-5].

¹⁰¹ Exhibit A, IRC, pages 31-32 [Parameters and Guidelines, pp. 4-5, Parts IV.A.1. & 2.].

¹⁰² Exhibit A, IRC, page 32 [Parameters and Guidelines, p. 5, Part IV.B.1.].

¹⁰³ Exhibit A, IRC, page 30 [Parameters and Guidelines, p. 3]. Actual costs claimed “must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”

¹⁰⁴ Exhibit A, IRC, pages 31-32 [Parameters and Guidelines, pp. 4-5].

¹⁰⁵ Exhibit A, IRC, page 16 [citing Test Claim Decision, *The Stull Act*, 98-TC-25, p. 31].

¹⁰⁶ Grades 2 through 11, teaching Reading, Writing, Mathematics, History/Social Science, and Science.

¹⁰⁷ Exhibit A, IRC, page 31 [Parameters and Guidelines, p. 4].

¹⁰⁸ Exhibit A, IRC, page 13.

the teacher and the evaluator that is not required by the plain language of the approved activity as stated in the Parameters and Guidelines. Both reviewing the results of the STAR test, and including an assessment in the written evaluation can be done unilaterally by the evaluator, and do not require a discussion.

And, to the extent certain elements of the claimant's time study related to evaluation conferences, preparation, and planning activities seem "rational, relevant, reasonable and necessary part[s] of implementing the mandated activities,"¹⁰⁹ they are not identified as reimbursable activities in the Parameters and Guidelines. The claimant had an opportunity to include those activities within the Parameters and Guidelines as "reasonably necessary activities" pursuant to Government Code section 17557(a) and Code of Regulations, title 2, section 1183.7(d). Section 1183.7 describes the "Content of Parameters and Guidelines," and subdivision (d) defines "reasonably necessary activities" as those activities "necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program." The section further states that "[w]hether an activity is reasonably necessary is a mixed question of law and fact," the assertion of which must be supported by documentary evidence submitted in accordance with section 1187.5.¹¹⁰ In other words, if the claimant seeks reimbursement for the various elements of its time study as "reasonably necessary" elements of the reimbursable mandate, those activities have to be approved by the Commission based on substantial evidence in the record and included within the Parameters and Guidelines, either when the Parameters and Guidelines were first adopted, or as an amendment request.¹¹¹ To the extent the activities claimed exceed the scope of the mandate as stated in the Parameters and Guidelines, they are not eligible for reimbursement. The Parameters and Guidelines, as adopted, are binding on the parties.¹¹² The argument that such items are "reasonably necessary" cannot now be employed as an end-run around the Parameters and Guidelines.

Finally, it is the claimant's burden to establish actual costs, using "source documents that show the validity of such costs, when they were incurred, and *their relationship to the reimbursable activities.*"¹¹³ The claimant argues that the Controller's reduction of costs is incorrect or arbitrary or capricious, and frames these issues in terms of the Controller's failure to state a reason for the reduction.¹¹⁴ The claimant, however, ignores its duty to establish the relationship to the reimbursable activities. The Controller's concession permitting the use of a time study does not alter the scope of the mandate, which is a question of law, or otherwise relieve the claimant of the burden to show that its claimed costs are eligible for reimbursement pursuant to the Test Claim Decision and Parameters and Guidelines. Moreover, there is no evidence in the

¹⁰⁹ Exhibit A, IRC, page 15.

¹¹⁰ California Code of Regulations, title 2, section 1183.7.

¹¹¹ See California Code of Regulations, title 2, section 1183.17.

¹¹² *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

¹¹³ Exhibit A, IRC, page 30 [Parameters and Guidelines, p. 3].

¹¹⁴ See, e.g., Exhibit A, IRC, page 15 [Discussing "Preparation Activities," the claimant states that the Controller "has stated no basis to exclude it from the scope of the evaluation process."].

record that the Controller's reduction of costs based on the denial of these 19 activities is arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the Controller's reduction of costs based on the Controller's denial of 19 of the activities included in claimant's time study is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The Controller's Disallowance of Completed Evaluations that Are Beyond the Scope of the Mandate Is Correct as a Matter of Law.

As noted above, the Parameters and Guidelines for *The Stull Act* program require reimbursement for the following:

- Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to
 - the instructional techniques and strategies used by the employee; and
 - the employee's adherence to curricular objectives;
- Evaluate and assess the performance of certificated instructional employees that teach [STAR test subjects, reading, writing, mathematics, etc.] in grades 2 to 11 as it reasonably relates to the progress of pupils toward [STAR test statewide standards]; and
- Evaluate and assess permanent certificated, instructional, and non-instructional employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated. The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district.¹¹⁵

The Parameters and Guidelines further require the claimant to identify the state or federal law mandating the educational program being performed by the employee being evaluated and assessed.¹¹⁶

The Controller disallowed reimbursement for evaluations completed for employees that are not within the scope of the mandate. Specifically, as disputed here, the Controller disallowed reimbursement for evaluations of the following employees:

¹¹⁵ Exhibit A, IRC, pages 31-33 [Parameters and Guidelines, pp. 4-6].

¹¹⁶ Exhibit A, IRC, pages 31-33 [Parameters and Guidelines, pp. 4-6]. Note that this caveat is not stated under section IV.A.2. of the Parameters and Guidelines, with respect to certificated instructional employees that teach STAR test subjects in grades 2 to 11 (presumably because simply claiming costs under this very specific activity makes clear which state and federal laws are implicated).

- Principals, vice principals, directors, coordinators, counselors, psychologists, librarians, and library media specialists who are not certificated instructional employees; and
- Preschool teachers [because they] do not perform the requirements of the program that is mandated by state or federal law.¹¹⁷

The claimant argues that all certificated employees are “instructional personnel even if they are not ‘classroom teachers’” and that preschool teachers are not excluded by the Parameters and Guidelines.¹¹⁸ Addressing preschool instructors specifically, claimant argues that “[t]he audit report excludes preschool teachers in general based on the Controller’s opinion that preschool teachers do not perform the requirements of an educational program mandated by state or federal law.”¹¹⁹ The claimant further argues that the Commission identified voluntary programs for which reimbursement is not required in a footnote in the Test Claim Decision, “and preschool is not included in that enumeration.”¹²⁰ Accordingly, claimant asserts that “[t]here is no stated basis to exclude certificated preschool instructors.”¹²¹

With respect to other personnel, such as administrators, librarians, and others for whom evaluations and assessments were excluded from reimbursement, the claimant states that the audit report misstates the standard for judging which employees’ evaluations are reimbursable and which are not:

The intent of this component is to evaluate the elements of classroom instruction. Principals, vice principals, directors, coordinators, counselors, psychologists, librarians, and library media specialists do not provide classroom instruction and are considered “non-instructional” certificated personnel.¹²²

The claimant concedes that “the portion of the mandate relating to the evaluation of compliance with the testing assessment standards (the STAR component) is limited to classroom teachers because the parameters and guidelines specifically state ‘employees that teach’ specified curriculum.”¹²³ However, the claimant maintains that all certificated employees are instructional personnel and that “[i]t has not been established as a matter of law that involvement in the educational process requires a ‘classroom.’”¹²⁴

¹¹⁷ Exhibit A, IRC, pages 73-74 [Final Audit Report, pp. 14-15].

¹¹⁸ Exhibit A, IRC, pages 18-19 and 71.

¹¹⁹ Exhibit A, IRC, page 18.

¹²⁰ Exhibit A, IRC, page 19.

¹²¹ Exhibit A, IRC, page 19.

¹²² Exhibit A, IRC, page 17 [quoting Controller’s Final Audit Report, p. 15 (Exhibit A, IRC, p. 74)].

¹²³ Exhibit A, IRC, page 71 [Controller’s Final Audit Report, p. 12].

¹²⁴ Exhibit A, IRC, page 18 and 71.

The claimant is wrong on both counts. The Test Claim Decision analyzed at length the distinction between instructional and non-instructional personnel, in an attempt to isolate the higher level of service imposed by the test claim statutes. The Commission found that prior law “required school districts to develop evaluation and assessment guidelines and to evaluate both instructional and non-instructional certificated employees based on the guidelines on a continuing basis.”¹²⁵ The Commission also found case law to support the conclusion that the Stull Act, prior to the test claim statutes, applied to both instructional and non-instructional certificated personnel.¹²⁶ In analyzing the test claim statutes the Commission found, and the Department of Finance and the test claimant agreed, that the new categories of “instructional techniques and strategies,” and “the employee’s adherence to curricular objectives,” represented new criteria for the evaluation and assessment of certificated *instructional* personnel equating the term “instructional” with “teachers.”¹²⁷

Accordingly, Part IV.A.1. of the Parameters and Guidelines limits reimbursement for the higher level of service imposed by the test claim statutes to “certificated *instructional* employees,” and to the *two new components* of the evaluation, both of which relate to the provision of *instruction*: “instructional techniques and strategies used by the employee and the employee’s adherence to curricular objectives.”¹²⁸ In addition, as noted, Part IV.A.1. *requires the claimant* to identify the state or federal law mandating the educational program being performed by the certificated instructional personnel.¹²⁹ Therefore, this section provides reimbursement for evaluation and assessment of *instructional* employees only, and only those performing the requirements of educational programs mandated by state or federal law. Although administrators, librarians, counselors, and psychologists are positions requiring certification, they generally do not provide instruction to students.¹³⁰ The claimant argues that these employees are *not excluded* by the

¹²⁵ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, page 22.

¹²⁶ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 22-23.

¹²⁷ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, pages 28-30; 21 [The plain language of these statutes does not distinguish between instructional employees (teachers) and non-instructional employees (principals, administrators), or specifically exclude certificated non-instructional employees.].

¹²⁸ Exhibit A, IRC, page 31 [Parameters and Guidelines, p. 4].

¹²⁹ Exhibit A, IRC, page 31 [Parameters and Guidelines, p. 4].

¹³⁰ Education Code section 44065, which governs teaching and services credential requirements. See also, California Code of Regulations, title 5, section 80049.1, which authorizes a school psychologist with a services credential to “provide services that enhance academic performance; design strategies and programs to address problems of adjustment; consult with other educators and parents on issues of social development, behavioral and academic difficulties; conduct psycho-educational assessments for purposes of identifying special needs; provide psychological counseling for individuals, groups and families; and coordinate intervention strategies for management of individual and school-wide crises.”

California Code of Regulations, title 5, section 80049.1 also authorizes a school counselor with a services credential to “develop, plan, implement and evaluate a school counseling and guidance

Parameters and Guidelines, but neither do they necessarily fall within the higher level of service that the Commission determined to be reimbursable, absent some evidence that they are indeed performing the requirements of educational programs mandated by state or federal law; a requirement that the Parameters and Guidelines expressly requires the claimant to establish and for which the claimant has submitted no evidence. Thus, the Controller correctly concludes that “instructional” employees excludes administrators, librarians, counselors, and psychologists, and others, absent additional evidence.¹³¹

With regard to preschool instruction, the claimant mistakenly relies on a footnote in the Test Claim Decision, which listed examples of voluntary educational programs funded by the Budget Act, to suggest that preschool instruction, which was not among the programs listed, must therefore be mandatory.¹³² The list in the Test Claim Decision was not intended to represent an exhaustive cataloging of voluntary (or non-mandatory) educational programs, as the claimant suggests.¹³³ Rather, the Parameters and Guidelines expressly require the claimant to specifically identify the educational programs mandated by state or federal law being performed by the certificated instructional employee in order to get reimbursed for the evaluation, which the claimant has not done. In addition, Education Code section 48200 et seq., provides for compulsory education for pupils aged 6 to 18, but does not as a matter of law apply to preschool-

program that includes academic, career, personal and social development; advocate for the higher academic achievement and social development of all students; provide school-wide prevention and intervention strategies and counseling services; provide consultation, training and staff development to teachers and parents regarding students' needs; and supervise a district-approved advisory program as described in Education Code Section 49600.”

California Code of Regulations, title 5, section 80053, authorizes the librarian with a services credential to “instruct students in accessing, evaluating, using and integrating information and resources in the library program; to plan and coordinate school library programs with the instructional programs of a school district through collaboration with teachers; to select materials for school and district libraries; to develop programs for and deliver staff development for school library services; to coordinate or supervise library programs at the school, district or county level; to plan and conduct a course of instruction for those pupils who assist in the operation of school libraries; to supervise classified personnel assigned school library duties; and to develop procedures for and management of the school and district libraries.”

California Code of Regulations, title 5, section 80054.5, authorizes the school administrator with a services credential to develop, coordinate, and assess instructional programs; supervise and evaluate certificated and classified personnel; discipline students; manage fiscal services; develop, coordinate, and supervise student support services.

And, Code of Regulations, title 5, section 16043 states that persons employed by a school district as librarians may supplement classroom instruction, or conduct “a planned course of instruction for those pupils who assist in the operation of school libraries.”

¹³¹ Exhibit A, IRC, pages 73-74 [Final Audit Report, pp. 14-15].

¹³² Exhibit A, IRC, pages 18-19.

¹³³ Exhibit E, Test Claim Decision, *The Stull Act*, 98-TC-25, page 12, Fn 42.

aged children. The claimant argues that federal special education law requires preschool instruction for pupils when part of a pupil's Individualized Education Plan.¹³⁴ However, the claimant has not provided any evidence that preschool teachers evaluated and claimed provided instruction in educational programs mandated by federal law, as required by the Parameters and Guidelines.

In addition, Part IV.A.2. requires reimbursement only for evaluations of "certificated instructional employees that teach..." STAR test subjects in grades 2 to 11.¹³⁵ This provision also excludes non-instructional administrative and support personnel, and excludes preschool teachers, based on nothing more than its plain language.

Part IV.B.1. does provide for reimbursement for evaluation and assessment of certificated instructional *and* non-instructional employees, but only those whose last regularly-scheduled evaluation resulted in an unsatisfactory evaluation (i.e., off-year evaluations for permanent certificated employees, and more often than once every five years for permanent "tenured" certificated employees). Part IV.B.1. also includes the same caveat as above, that the claimant must identify the state or federal law mandating the educational program being performed. There has been no specific argument or evidence in the record to support a finding that any of the non-instructional personnel whose evaluations were disallowed were evaluated on the basis of having a previously unsatisfactory evaluation.

The claimant, with all of its arguments, attempts to shift the burden to the Controller to support its reductions, but it is the claimant's burden to make out its claim.¹³⁶ In addition, sections 1185.1(f)(3), 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Parameters and Guidelines specifically and expressly require the *claimant* to identify the state or federal law mandating the educational program being performed by the employee(s) evaluated, except in the case of STAR subject instructors in grades 2 to 11 (for whom the mandatory nature of the educational program is presumed).¹³⁷ The claimant has not complied with the Parameters and Guidelines.

Based on the foregoing, the Commission finds that the Controller's disallowance of 46 completed evaluations that were beyond the scope of the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the foregoing, the Commission finds that the IRC was timely filed and denies this IRC. The Commission finds that the Controller's reduction of costs based the denial of 19 activities included in the claimant's time study and the disallowance of 46 completed evaluations that were beyond the scope of the mandate, are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

¹³⁴ Exhibit A, IRC, pages 71-74 [Controller's Final Audit Report, pp. 12-15].

¹³⁵ Exhibit A, IRC, pages 31-32 [Parameters and Guidelines, pp. 4-5].

¹³⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹³⁷ Exhibit A, IRC, pages 31-33 [Parameters and Guidelines, pp. 4-6].



RE: **Decision**

The Stull Act, 14-9825-I-02

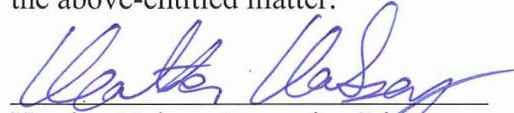
Education Code Sections 44660-44665;

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 2005-2006, 2006-2007, 2007-2008, and 2008-2009

Carlsbad Unified School District, Claimant

On July 27, 2018, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: July 30, 2018

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On July 30, 2018, I served the:

- **Decision adopted July 27, 2018**

The Stull Act, 14-9825-I-02

Education Code Sections 44662 and 44664;

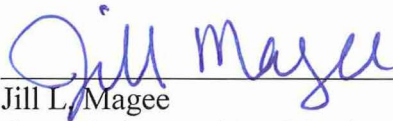
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 2005-2006, 2006-2007, 2007-2008, and 2008-2009

Carlsbad 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 July 30, 2018 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/2/18

Claim Number: 14-9825-I-02

Matter: The Stull Act

Claimant: Carlsbad Unified School District

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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Tab 5



September 28, 2016

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San Diego, CA 92106

Ms. Karen Huddleston
Oceanside Unified School
District
2111 Mission Avenue
Oceanside, CA 92058

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

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

Re: **Decision**

The Stull Act, 14-9825-I-01

Education Code Section 44660-44665

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002,
2002-2003, 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

Dear Mr. Palkowitz, Ms. Huddleston, and Ms. Kanemasu:

On September 23, 2016, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
 ON:**

Education Code Sections 44660-44665

Statutes 1983, Chapter 498;
 Statutes 1999, Chapter 4

Fiscal Years 1997-1998, 1998-1999, 1999-
 2000, 2000-2001, 2001-2002, 2002-2003,
 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

Case No.: 14-9825-I-01

The Stull Act

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

(Adopted September 23, 2016)

(Served September 28, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 23, 2016. Arthur Palkowitz and Dr. Todd McAteer, Director of Human Resources for Oceanside Unified School District, appeared for the claimant. Jim Spano and Ken Howell appeared for the State Controller's Office.

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

The Commission adopted the Proposed Decision to partially approve the IRC by a vote of 6-0 as follows:

Member	Vote
Richard Chivaro, Representative of the State Controller	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Scott Morgan, Deputy Director of Administration and State Clearinghouse Director, Governor's Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Absent
Don Saylor, County Supervisor	Yes

Summary of the Findings

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims of the Oceanside Unified School District (claimant) for fiscal years 1997-

1998 through 2004-2005¹ under *The Stull Act* program. The Controller reduced the claims filed for these fiscal years to \$0 (an audit adjustment of \$1,270,420 in direct and indirect costs) due to lack of supporting documentation.

The Commission finds that:

- 1) The reduction of costs based on the number of employees evaluated under the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant did not provide any evidence of the employees evaluated during the audit. After the audit, however, the claimant provided the Controller with documentation showing that 1,698 employees were evaluated under the mandate during the audit period. The Controller found that of the 1,698 employees listed by the claimant that received evaluations for the audit period, 1,149 evaluations fell within the scope of the mandate. The claimant agrees with this finding, except for a small number of evaluations in fiscal year 1997-1998. The claimant, however, does not provide sufficient evidence to rebut the Controller's findings for that fiscal year.

- 2) Based on this record, the Controller's reduction of costs to \$0 is arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller agrees that the claimant performed the required evaluations under the mandate and concluded that 1,149 evaluations were performed by the claimant during the audit period and, thus, a reduction of costs to \$0 is not supported by the record.

However, the parties dispute the time taken to perform the mandate. The claimant alleges that each evaluation took five to ten hours, and later asserted that each evaluation took 2.5 hours based on time studies conducted by other school districts. There is no evidence in the record to support the conclusion that it took the claimant's employees 2.5 hours, or five to ten hours, to conduct the evaluations under the mandate.

The Controller has offered to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated (which results in reimbursement of \$35,967, which includes both direct and indirect costs), based on the claimant's time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form; teacher evaluation forms provided by the claimant that disclosed 30 minutes of actual classroom observation; and the Controller's review of a sample of written evaluations for teachers for fiscal years 2006-2007 and 2007-2008. There is no evidence in the record that the Controller's findings are wrong, or that the Controller's offer to apply the 30 minutes to the evaluations conducted in fiscal years 1997-1998 through 2004-2005 is arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requests that the Controller reinstate \$35,967, which includes both direct and indirect costs, to the claimant.

¹ Fiscal years 2005-2006, 2006-2007, and 2007-2008 were also part of the audit, but were not included in this IRC.

COMMISSION FINDINGS

I. Chronology

- 08/24/2011 The Controller issued the Final Audit Report.²
- 08/20/2014 The claimant filed the IRC.³
- 11/26/2014 The Controller filed a request for extension of time to file comments on the IRC, which was granted for good cause.
- 02/02/2015 The Controller filed a second request for extension of time to file comments on the IRC, which was granted for good cause.
- 03/27/2015 The Controller filed comments on the IRC.⁴
- 05/04/2015 The Claimant filed late rebuttal comments on the IRC.⁵
- 06/17/2016 Commission staff issued the Draft Proposed Decision.⁶
- 06/29/2016 The Controller filed comments on the Draft Proposed Decision.⁷
- 07/08/2016 The claimant filed comments on the Draft Proposed Decision.⁸

II. Background

A. The Stull Act Program

The Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of “certificated personnel” (including certificated non-instructional personnel) within each school district.⁹ As originally enacted, the Stull Act required the governing board of each school district to develop and adopt specific guidelines to evaluate and assess certificated personnel, and to avail itself of the advice of certificated instructional personnel before developing and adopting the guidelines. The evaluation and assessment of the certificated personnel had to be in writing, conducted once each school year for probationary employees and every other year for permanent employees, and a copy transmitted to the employee no later than sixty days before the end of the school year. If the employee was not performing in a satisfactory manner according to the standards, the “employing authority” was required to notify the employee in writing, describe the unsatisfactory performance, and confer with the employee in making specific recommendations

² Exhibit A, IRC, pages 80-98 (Final Audit Report).

³ Exhibit A, IRC.

⁴ Exhibit B, Controller’s Comments on the IRC.

⁵ Exhibit C, Claimant’s Late Rebuttal Comments.

⁶ Exhibit D, Draft Proposed Decision.

⁷ Exhibit E, Controller’s Comments on the Draft Proposed Decision.

⁸ Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

⁹ Former Education Code sections 13485-13490.

as to areas of improvement and endeavor to assist in the improvement. The employee then had the right to initiate a written response to the evaluation, which became a permanent part of the employee's personnel file. The school district was also required to hold a meeting with the employee to discuss the evaluation.

The Stull Act was amended from 1975 through 1999, and a Test Claim was filed on these amendments. On May 27, 2004, the Commission partially approved the Test Claim and adopted the Statement of Decision, finding that Statutes 1983, chapter 498 and Statutes 1999, chapter 4, which amended Education Code sections 44660-44665, impose a reimbursable state-mandated higher level of service on school districts. The Commission also found that many activities in the Test Claim pertaining to certificated personnel were required under preexisting law and were therefore not reimbursable, such as developing and adopting specific evaluation and assessment guidelines for performance; evaluating and assessing them as it relates to the established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.¹⁰ The Parameters and Guidelines were adopted on consent on September 27, 2005, authorizing reimbursement for only the following activities:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation

¹⁰ Exhibit A, IRC, pages 28 and 35 (Statement of Decision; page number citations refer to the PDF page numbers).

rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
 - b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.
- B. Certificated (Instructional and Non-Instructional) Employees
1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.

C. Training

1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)¹¹

The Parameters and Guidelines, as originally proposed by the test claimant and adopted by the Commission, also require claimants to submit contemporaneous source documentation, such as time records or time logs, to verify their actual costs. Evidence to corroborate the source documents, such as declarations or worksheets, may also be submitted. However, corroborating documents cannot be substituted for the contemporaneous source documentation requirement. In this regard, the introductory paragraphs in Section IV. of the Parameters and Guidelines state the following:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.¹²

Section V. of the Parameters and Guidelines authorizes reimbursement for employee salaries and benefits and directs claimants to:

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

¹¹ Exhibit A, IRC, pages 54-56 (Parameters and Guidelines); Exhibit G, Item 2, Proposed Consent Calendar and 7, Final Staff Analysis and Proposed Parameters and Guidelines, *The Stull Act*, September 27, 2005, pages 10-11.

¹² Exhibit A, IRC, page 53 (Parameters and Guidelines).

And section VI. of the Parameters and Guidelines requires claimants to retain all documentation until the ultimate resolution of any audit findings:

All documentation used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.¹³

Claiming instructions dated December 12, 2005, were issued by the Controller for the filing of the initial reimbursements claims for *The Stull Act* program for costs incurred in fiscal years 1997-1998 through 2004-2005. The claiming instructions include the adopted Parameters and Guidelines and identify the reimbursable claim components and supporting documentation requirements consistent with the Parameters and Guidelines.¹⁴ The Controller states that the claiming instructions issued for subsequent claiming years during the audit period did not change.¹⁵

B. The Controller's Audit and Summary of the Issues

The Controller audited claimant's reimbursement claims for salary and benefit costs in fiscal years 1997-1998 through 2004-2005, and 2006-2007 through 2007-2008 (no claims were filed for 2005-2006). The Controller reduced the claims filed for fiscal years 1997-1998 through 2004-2005 to \$0 (an audit adjustment of \$1,270,420 in direct and indirect costs). No reductions were made to the reimbursement claims for fiscal years 2006-2007 and 2007-2008.¹⁶

For the 1997-1998 through 2004-2005 fiscal year claims, the claimant supported the time claimed for each employee with "Employee Average Time Records for Mandated Costs" forms prepared by the mandate consultant for purposes of claiming costs. The form asks each employee to "report below the *average* amount of time spent (in minutes) by you to implement each of the reimbursable activities for the mandated program" for each fiscal year at issue (fiscal years 1997-1998 through 2004-2005). In February or March 2006, 49 school principals and assistant principals completed and signed the forms under penalty of perjury that a "good faith estimate" of the average time performing the reimbursable activities for each evaluation during the audit period was being reported.¹⁷ For example, the first form provided shows an average time to prepare for the evaluation of 50 minutes, 45 minutes for a goals and objectives conference with the instructor, 20 minutes for a pre-observation conference with the instructor, 40 minutes for the classroom observation of the instructor, 30 minutes for the post-observation conference with the instructor, 40 minutes for the final conference with the instructor, and 80

¹³ Exhibit A, IRC, pages 57-58 (Parameters and Guidelines).

¹⁴ Exhibit A, IRC, pages 61, 75.

¹⁵ Exhibit B, Controller's Comments on the IRC, page 11.

¹⁶ Exhibit A, IRC, pages 80-99 (Final Audit Report), and 100-126 (reimbursement claims).

¹⁷ Exhibit A, IRC, pages 3 and 143-191.

minutes to complete a district report, which totals roughly five hours for one evaluation as follows:¹⁸

<u>Reimbursable Activities Codes:</u> Code 11 Preparing for the evaluation Code 12 Goals and objectives conference with instructor Code 13 Pre-observation conference with instructor Code 14 Classroom observation of instructor Code 15 Post-observation conference with instructor Code 16 Final conference with instructor Code 17 District reporting CLASSROOM TEACHER TIME IS NOT REIMBURSED	<u>Evaluation Criteria:</u> (A) district standards and test results (B) instructional techniques/strategies (C) adherence to curricular objectives (D) suitable learning environment																																
Allocate the average time spent on each criterion (A-D) for each of the following evaluation steps:	Average time in Minutes																																
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Code 14 Classroom observation of instructor	10	10	10	10																													
Code 15 Post-observation conference with instructor	5	10	10	5																													
Code 16 Final conference with instructor	10	10	10	10																													
Code 17 District Reporting	20	20	20	20																													

Other “Employee Average Time Records for Mandated Costs” forms show estimates of five to ten hours per evaluation, for a mean time of about eight hours.¹⁹

The Controller reduced the reimbursement claims for fiscal years 1997-1998 through 2004-2005 to \$0 because the claimant did not support the time claimed with “source documents” in accordance with the Parameters and Guidelines, or provide the Controller access to the employee evaluations completed during the audit period to support the number of employees evaluated pursuant to the mandate.²⁰

The audit also included the reimbursement claims for fiscal years 2006-2007 and 2007-2008, for which there were no reductions made.

For these two years, the district provided a list of employees who evaluated teachers, their title, productive hourly rate detail, as well as contemporaneous time documentation that supported an average time of approximately 30 minutes per allowable evaluation. The district also provided a list of teachers who were

¹⁸ Exhibit A, IRC, page 143.

¹⁹ Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

²⁰ Exhibit A, IRC, pages 84 and 91 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, page 12.

evaluated, which allowed the SCO auditors to determine which evaluations were reimbursable.²¹

The Final Audit Report more specifically states that the claimant provided time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form. The time logs were not dated or signed by the employees, and “the district did not provide source documents supporting the time recorded in the annual forms.”²² So the Controller determined the allowable salaries and benefits by obtaining the district’s teacher evaluation procedures and forms, and interviewing administrators who performed the evaluation activities in these fiscal years. The district’s teacher evaluation forms disclosed 30 minutes of actual classroom observation. The claimant then requested that it be allowed to support its claims with “auditor verification of its written observations and final summary performance teacher evaluations from personnel records.”²³ The Controller also selected a ten percent random sample of 23 school sites in the claimant’s district. The claimant also provided copies of written evaluations and summative evaluations for teachers at El Camino High School, Jefferson Middle School, and Mission Elementary School for fiscal years 2006-2007 and 2007-2008. Actual pay, benefit information, and resource codes for employees claimed in these two fiscal years were also provided to the Controller.²⁴ Based on this information, the Controller determined that the costs claimed for fiscal years 2006-2007 and 2007-2008 were understated by \$4,834, and the Final Audit Report indicates that the claimant “agreed to our recommendation that it allow half an hour for each written observation and final teacher evaluation verified.”²⁵

In the response to the IRC, the Controller explained: “There is no reasonable means of applying the time allowance [from 2006-2008] to FY 1997-98 through FY 2004-05 without knowing the certificated instructional employees evaluated and the reimbursability of the evaluations.”²⁶

C. Post-IRC Negotiations

After the claimant filed the IRC, the Controller contacted the claimant and offered to adjust the audit findings if the claimant provided a list of every employee evaluated during those years.²⁷ The Controller was emailed the list from the claimant on December 19, 2014.²⁸ On December 24, 2014, the Controller emailed the claimant to request clarification because the provided information appeared to be incomplete.²⁹ On January 5, 2015, the claimant emailed the

²¹ Exhibit B, Controller’s Comments on the IRC, page 13.

²² Exhibit A, IRC, page 91.

²³ Exhibit A, IRC, page 91.

²⁴ Exhibit A, IRC, page 92. Exhibit B, Controller’s Comments on the IRC, page 13.

²⁵ Exhibit A, IRC, pages 91 and 92 (Final Audit Report).

²⁶ Exhibit B, Controller’s Comments on the IRC, page 14.

²⁷ Exhibit B, Controller’s Comments on the IRC, page 8.

²⁸ Exhibit B, Controller’s Comments on the IRC, pages 8, 67-97, 100.

²⁹ Exhibit B, Controller’s Comments on the IRC, pages 8, 99, 104-105, which seeks clarification as follows:

Controller to confirm that the information provided was complete.³⁰ On January 21, 2015, the Controller emailed the claimant to explain that of the 1,698 employees listed by the claimant that received evaluations during fiscal years 1997-1998 through 2004-2005, the Controller allowed 1,149 evaluations and excluded the rest because of duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations outside the audit period; and unallowable subjects or programs performed by certificated instructional employees.³¹ The email states in relevant part the following:

The district provided a listing of 1,698 employees that received evaluations for the audit period. We removed evaluations from the population for the following reasons:

- Duplicated evaluations for permanent employees performed in consecutive years, rather than every other year (51)
- Duplicated evaluations performed in the same year (10)
- Items outside the IRC period (472)
- Unallowable subjects/programs performed by certificated instructional employees (16)

The allowable population was 1,149 total evaluations for the IRC period. Here's a breakdown of allowable evaluations per year:

- FY 1997-98 – 4

Namely, does this list exclude certificated instructional and non-instructional employees that have less than 10 years tenure? If so, the list would not represent the complete listing of certificated instructional and non-instructional employees that received evaluations for FY 1997-98 through 2004-05.

Also, the list only mentions CIE (Certificated Instructional Employees) ... does this mean that certificated non-instructional employees are not included? Per the Ps and Gs, permanent certificated instructional and non-instructional employees that receive an unsatisfactory evaluation in the years in which they would not have otherwise been evaluated are considered reimbursable (along with various activities).

My overarching concern with this analysis is that [we] may be working with incomplete data, and I want to provide the district every opportunity to provide the full and complete listing for consideration.

³⁰ Exhibit B, Controller's Comments on the IRC, pages 8, 103-104, where the claimant responds as follows: "The list includes all certificated employees. The District does not [hire] employees that are certificated non-instructional employees. The list represents the complete listing of certificated instructional employees that received evaluations for FY 1997-98 through 2004-05."

³¹ Exhibit B, Controller's Comments on the IRC, pages 15, 108.

- FY 1998-99 – 55
- FY 1999-2000 – 96
- FY 2000-01 – 196
- FY 2001-02 – 249
- FY 2002-03 – 164
- FY 2003-04 – 220
- FY 2004-05 – 165³²

The Controller offered to revise the audit adjustment to reimburse 30 minutes for each of the 1,149 evaluations (the same average time allowed for the 2006-2007 and 2007-2008 claims), and to augment the audit findings for 1997-1998 to 2004-2005 by \$35,967 in allowable costs.

On January 29, 2015, the claimant’s representative sent an email refusing the Controller’s offer, arguing that five to six hours, rather than 30 minutes, is the average time to perform the mandated activities as follows:

As I initially expressed to you, we are not in agreement to the estimate of 30 minutes per evaluation. The reasonable period to conduct the informal classroom observations; formal classroom observations, writing the final evaluation reports and/or preparing the Teacher Evaluation Report is approximately five-six hours. This period of time has been accepted by the Controller in other Stull Act audits.³³

As a result of the impasse, the Controller said it “did not expand [its] audit procedures to test the validity of the FY 1997-98 through FY 2004-05 listing of evaluations the district provided.”³⁴ Therefore, the reimbursement claims at issue in this IRC all remain reduced to \$0.

III. Positions of the Parties

A. Oceanside Unified School District

The claimant argues that the Controller incorrectly reduced the costs claimed for fiscal years 1997-1998 through 2004-2005 and seeks reinstatement of \$1,270,420. The claimant argues that it provided a list of employees, title, and the employees’ hourly rates for each fiscal year that evaluations were performed. It also provided average time records, copies of its collective bargaining agreements containing evaluation requirements, and policies and procedures on evaluations, all of which confirm that the activities were performed during the audit period. The claimant states that “[t]here can be no doubt the District’s school site staff performed the reimbursable activities” and that “sufficient documentation” was provided to prove that each

³² Exhibit B, Controller’s Comments on the IRC, page 108.

³³ Exhibit B, Controller’s Comments on the IRC, pages 15, 118.

³⁴ Exhibit B, Controller’s Comments on the IRC, page 15.

school site performed the activities of assessing and evaluating certificated employees as required by the mandate.³⁵ The claimant also states:

Furthermore, the district complied fully with the requirements of the Stull Act during the claiming period and we feel that we submitted claims appropriate to the costs incurred. While we were able to supply supporting documentation, it was not accepted as sufficient by the audit team. The additional documentation requested was, and is, available but would be a significant drain on district resources, including staff and funds, to provide. Consequently, the district cannot expend any further time or resources to produce the requested records.³⁶

The claimant also relies on the Office of Management and Budget Circular A-87,³⁷ which establishes standards for state and local governments to determine administrative costs applicable to grants, contracts, and other agreements with state and local governments. According to the claimant: “Randomly sampling workers to find out what they are working on is one of the federally approved methods of identifying worker effort. Such method is reasonable and may be implemented rather than 100 percent time reporting method.”³⁸

In late rebuttal comments on the IRC submitted on May 4, 2015, the claimant states that “the time spent by District employees to conduct the reimbursable activities would average 6-7 hours per employee.”³⁹ The claimant further argues that the Controller’s audits on *The Stull Act* of other school district claims supports the average time claimed in this IRC. For example, the claimant refers to an audit finding of the average time spent for evaluations in the Poway Unified School District of 1.52 hours for permanent employees, 3.57 hours for non-permanent employees, and 12.93 hours for unsatisfactory evaluations. For the Norwalk-La Mirada Unified School District, the Controller allowed 1.89 hours for permanent employees, 3.07 hours for non-permanent employees, and 12.99 hours for unsatisfactory evaluations. And the claimant asserts that Long Beach Unified School District provided the same documentation to the Controller as the claimant, and was allowed an average of 2.14 hours for each evaluation for each fiscal year. The claimant argues that:

Documentation submitted by the claimant supports the reasonable time spent per evaluation of 6.40 hours [in] FY 1997-98 and 6.50 hours in FY 1998-99. For the claimant’s time to be limited by the Controller to 30 minutes is far below the other times accepted in School District audits and is inconsistent with the documentation submitted by the claimant. As a result [the] Controller’s decision to disallow the reimbursement claim is unreasonable, as well as arbitrary and capricious.⁴⁰

³⁵ Exhibit A, IRC, pages 6-7.

³⁶ Exhibit A, IRC, (claimant’s response to the Final Audit Report) page 98.

³⁷ Exhibit A, IRC, page 244.

³⁸ Exhibit A, IRC, page 7.

³⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 3.

⁴⁰ Exhibit C, Claimant’s Late Rebuttal Comments, page 4.

The claimant also argues that the Controller's offer to revise the audit findings for fiscal year 1997-1998 after the IRC was filed, by allowing only four evaluations instead of 67, is arbitrary and capricious. The claimant concludes by stating that the "District accepts the Controller's allowable total evaluations of 1,149 . . . adjusted for the evaluations for FY 1997-1998 for a total of 1,212. The Claimant's adjusted reimbursement claim for FY 1997-1998 to FY 2004-2005 in the amount of \$181,800.00 is based on an average hourly rate of \$60.00 per hour at 2.5 hours per evaluation."⁴¹

The claimant filed comments disagreeing with the Draft Proposed Decision, stating:

The guidelines for the Stull Act program were adopted September 27, 2005, by the Commission. The initial claim period, Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, predates the date of guideline adoption. Controller's application of an overly narrow interpretation of the supporting documentation guideline language to claims prior to the fiscal year 2005/06 violates the Clovis Unified School District appellate court decision dated September 21, 2010. This decision found Controller could not apply contemporaneous source documentation requirements (CSDR) prior to the date the CSDR language was actually approved by Commission on State Mandates and added to a program's guidelines.⁴²

Claimant further argues that 2.5 hours incurred for each evaluation is supported by the Controller's audit of a comparable neighboring K-12 school district, as well as other time studies accepted by the Controller for the audits of other school districts. Claimant asserts:

Effectively the time studies included in the Controller's audits created a Reasonable Reimbursement Methodology, a uniform cost allowance, in conformity with Government Code section 17518.5(b), as it is based on cost information from a representative sample of eligible claimants, information provided by association of local agencies and school districts, or other projections of local costs. The time study of 2.5 hours per evaluation is reliable since auditing of reimbursement claims is not a prerequisite for the development and approval of a reasonable reimbursement methodology. (Cal. Code Regs., §1183.12)

Time studies have been acceptable methodologies for reimbursement in lieu of or in support of contemporaneous records. To disregard its application, especially when the time studies have been approved by the Controller is an abuse of discretion. To conclude the reimbursable activities listed above were conducted in 30 minutes, allows less than 4 minutes for each activity to be completed. An analysis of each activity easily concludes otherwise. As such the record includes evidence, as required by the Commission's regulations, to justify reimbursement at 2.5 hours per evaluation.⁴³

⁴¹ Exhibit C, Claimant's Late Rebuttal Comments, page 7.

⁴² Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 2.

⁴³ Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

B. State Controller's Office

The Controller maintains that the reductions are correct and that the audit finding should be upheld because the district's claims do not comply with the documentation requirements in the Parameters and Guidelines. The Controller agrees that the claimant "(1) performed the required evaluations as contained in its Collective Bargaining Agreements, (2) confirmed that the activities were performed, and (3) provided the SCO auditors the district's procedure and forms."⁴⁴ However, the claimant did not provide sufficient source documentation supporting the costs claimed or identify a list of certificated instructional employees evaluated in fiscal years 1997-1998 through 2004-2005. The Controller states the following:

As noted previously, FY 2006-07 and FY 2007-08 were part of the audit period, but were not included in this IRC. For these two years, the district provided a list of employees who evaluated teachers, their title, productive hourly rate detail, as well as contemporaneous time documentation that supported an average time of approximately 30 minutes per allowable evaluation. The district also provided a list of teachers who were evaluated, which allowed the SCO auditors to determine which evaluations were reimbursable.

For FY 1997-98 through FY 2004-05, the district provided only annual certifications that estimated the time spent by evaluators on reimbursable activities. The district did not provide actual cost documentation supporting costs claimed or identify a list of certificated instructional employees evaluated during this period (Exhibit M). Such information is necessary to determine whether the evaluations are reimbursable. Therefore, none of the costs claimed for FY 1997-98 through FY 2004-05 are allowable⁴⁵

As to the claimant's reference to the Office of Management and Budget Circular A-87, the Controller notes that the "district did not provide the auditors with any reasonable sampling methodology to arrive at allowable costs."⁴⁶

The Controller states that after receiving the IRC, it agreed to reevaluate the adjustment if the claimant provided documentation supporting the number of employees evaluated in fiscal years 1997-1998 through 2004-2005. The claimant provided the information in December 2014, and the Controller recalculated allowable salary and benefit costs "based on the time allowance of approximately 30 minutes per evaluation that the district supported with contemporaneous documentation during FY 2006-07 and FY 2007-08." In response to the claimant's argument that the Controller authorized more time per evaluation in its other audits of *The Stull Act* program, the Controller states: "Time documentation supporting the reimbursable activities of the Stull Act Program for other audits is not relevant to this audit. The district's records supported approximately 30 minutes for the reimbursable activities of the Stull Act Program, not five to six hours, as requested by [the claimant]."⁴⁷ The Controller further states that "we

⁴⁴ Exhibit B, Controller's Comments on the IRC, page 14.

⁴⁵ Exhibit B, Controller's Comments on the IRC, page 13.

⁴⁶ Exhibit B, Controller's Comments on the IRC, page 14.

⁴⁷ Exhibit B, Controller's Comments on the IRC, page 14.

reached an impasse in reinstating any of the audit adjustments, and as such, we did not expand our audit procedures to test the validity of the FY 1997-98 through 2004-05 listing of evaluations the district provided.”⁴⁸

The Controller filed comments concurring with the Draft Proposed Decision to deny the IRC.⁴⁹

IV. Discussion

Government Code section 17561(d) 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 standard 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:

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

⁴⁸ Exhibit B, Controller’s Comments on the IRC, page 14.

⁴⁹ Exhibit E, Controller’s Comments on the Draft Proposed Decision.

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

⁵¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁵² *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

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 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, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require 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.⁵⁵

The Controller’s Reduction of Costs Due to Lack of Documentation Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support. However, the Reduction to \$0 Is Not Supported by the Evidence in the Record.

After a test claim is approved, the Commission adopts parameters and guidelines to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs incurred under a state-mandated program.⁵⁶ At the time the earlier reimbursement claims in this case were filed, the Government Code also stated “[c]laims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines.”⁵⁷ The parameters and guidelines are regulatory, in that before their adoption, notice and an opportunity to comment on them are provided, and a full quasi-judicial hearing is held.⁵⁸ Once adopted, whether after judicial review or without it, the parameters and guidelines are final and binding on the parties. The parameters and guidelines may not be amended or set aside by the Commission absent a court order pursuant to Government Code section 17559, or a later request to amend the parameters and guidelines pursuant to section 17557 or request for the adoption of a new test claim decision pursuant to section 17570.⁵⁹ The Controller may audit the records of the claimant “to verify the actual amount of the mandated costs” claimed in a reimbursement claim, and reduce any claim that the Controller determines is excessive or

⁵³ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 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 Government Code section 17557; California Code of Regulations, title 2, section 1183.7(e).

⁵⁷ Government Code section 17564, as amended by Statutes 1999, chapter 643.

⁵⁸ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, 805, and 808.

⁵⁹ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

unreasonable.⁶⁰

In this case, the Controller reduced the costs claimed in fiscal years 1997-1998 through 2004-2005 for salaries and benefits for two reasons: the documentation provided by the claimant during the audit did not identify the employees evaluated in these fiscal years; and the documentation provided by the claimant did not support reimbursement claimed at 5 to 10 hours per evaluation.

1. The reduction of costs based on the number of employees evaluated under the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller's reductions were based, in part, on the fact that the documentation provided by the claimant during the audit did not identify the employees evaluated in these fiscal years, which is necessary to determine whether the costs claimed were limited to the scope of the mandate. This program was approved only as a higher level of service and thus, not all activities required by the Education Code to evaluate employees are reimbursable. The Commission determined that the following activities were required by prior law and *not* eligible for reimbursement when evaluating a certificated instructional employee who did not have prior unsatisfactory evaluations: evaluating and assessing certificated employees as it relates to established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.⁶¹ Thus, the scope of the mandate to evaluate is limited to: (1) review a certificated instructional employee's instructional techniques and strategies and adherence to curricular objectives, and include in the written evaluation the assessment of these factors only during specified years; (2) for certificated instructional employees, review the results of the Standardized Testing and Reporting (STAR) test as it reasonably relates to the performance of those certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and include the assessment of this information in the employee's written evaluation only during specified years; and (3) for those permanent certificated (instructional and non-instructional) employees who perform the requirements of educational programs mandated by state and federal law and receive an *unsatisfactory* evaluation in the years in which the employee would not have otherwise been evaluated (i.e., every other year), continue to evaluate and assess the employee as specified until the employee achieves a positive evaluation or is separated from the school district, reduce the evaluation to writing, transmit a copy of the written evaluation to the employee, attach any written response from the employee to the personnel file, and conduct a meeting with the employee to discuss the evaluation.⁶²

In this respect, after the audit was completed and the IRC filed, the claimant provided to the

⁶⁰ Government Code section 17561(d)(2)(A)(i) and (B).

⁶¹ Exhibit A, IRC, pages 28 and 35 (Statement of Decision; page number citations refer to the PDF page numbers).

⁶² Exhibit A, IRC, pages 54-56 (Parameters and Guidelines).

Controller a list of every employee evaluated during the audit years in question.⁶³ As part of its offer to revise the audit findings, the Controller found that of the 1,698 employees listed by the claimant that received evaluations for the audit period, the Controller would allow 1,149 evaluations. The Controller excluded the rest because the information the claimant provided indicated there were duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations made outside of the IRC period; and unallowable subjects or programs performed by certificated instructional employees.⁶⁴ Except for the adjustment allowing four evaluations in fiscal year 1997-1998 (the claimant alleges that 67 evaluations within the mandate occurred that year), the claimant accepted the Controller's findings and stated the following: "The District *accepts* the Controller's allowable total evaluations of 1,149 . . . adjusted for the evaluations for FY 1997-1998 for a total of 1,212 [evaluations]."⁶⁵

With respect to the four evaluations allowed by the Controller for fiscal year 1997-1998, the claimant asserts that the Controller accepted 67 evaluations for fiscal year 1998-1999 and should accept the same number for fiscal year 1997-1998. The claimant also includes a chart listing the names of the employees who conducted the asserted 67 evaluations in that fiscal year and refers the reader back to the average claim declarations for reference.⁶⁶ However, the claimant's chart does not address the Controller's findings of duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations made outside of the IRC period; and unallowable subjects or programs performed by certificated instructional employees. The claimant's chart simply lists the total number of evaluations performed. And there is no evidence in the record to support the assertion that 67 evaluations under the mandate, rather than four evaluations, were performed in fiscal year 1997-1998.

Accordingly, a reduction of costs based on the number of employees evaluated under the mandate (1,149) is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller's reduction of costs to \$0 is not supported by evidence in the record. However, the Controller's offer to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated is supported by the record and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller's reduction of costs to \$0, when the Controller concluded that 1,149 of the evaluations were performed by the claimant and fall within the scope of the mandate, and agrees that the claimant "(1) performed the required evaluations as contained in its Collective Bargaining Agreements, (2) confirmed that the activities were performed, and (3) provided the SCO auditors the district's procedure and forms," is arbitrary and capricious and without

⁶³ Exhibit B, Controller's Comments on the IRC, page 14. The list is on pages 69-97 of Exhibit B.

⁶⁴ Exhibit B, Controller's Comments on the IRC, pages 15 and 108.

⁶⁵ Exhibit C, Claimant's Late Rebuttal Comments on the IRC, page 7.

⁶⁶ Exhibit C, Claimant's Late Rebuttal Comments on the IRC, page 5.

evidentiary support.⁶⁷ Thus, the claimant is entitled to some reimbursement for the time taken to perform the 1,149 evaluations under the mandate. The time taken by each employee to perform the mandate, however, is disputed by the parties.

The record indicates that the documentation provided to the Controller for fiscal years 1997-2005 to support the time taken on each evaluation consists of average time declarations signed by claimed staff in February or March of 2006. Each employee (evaluator) estimated the average minutes spent annually to perform evaluation activities for 1997-1998 through 2004-2005 on a single form, with estimates generally ranging from 5 to 10 hours per evaluation, and certified under penalty of perjury that a good faith estimate was reported. The “reimbursable activity codes” listed on the forms identify the following activities for which time was estimated: preparing for the evaluation, goals and objectives conference with instructor, pre-observation conference with instructor, classroom observation of instructor, post-observation conference with instructor, final conference with instructor, district reporting.⁶⁸ The claimant did not provide time logs or time sheets to verify the actual time taken to perform the mandate, or any contemporaneous documentation created at or near the same time the actual cost was incurred. The Controller disregarded these declarations, asserting that the declarations were not source documents that verified the actual time taken for each evaluation, as required by the Parameters and Guidelines.⁶⁹

The claimant contends that it has provided sufficient documentation to support the time claimed, and that the Controller’s imposition of the contemporaneous source document rule violates the *Clovis Unified School Dist. v. Chiang* decision, which “found [that the] Controller could not apply contemporaneous source documentation requirements (CSDR) prior to the date the CSDR language was actually approved by Commission on State Mandates and added to a program’s guidelines.”⁷⁰ The claimant is willing to agree to reimbursement based on 2.5 hours per evaluation, which it claims is supported by the Controller’s audit of a comparable neighboring K-12 school district, as well as other time studies accepted by the Controller for the audits of other school districts.⁷¹

The Parameters and Guidelines adopted for *The Stull Act* program authorize claimants to request reimbursement for actual costs incurred and require claimants and to keep contemporaneous source documentation (documentation created at or near the same time the actual costs was incurred) to support the actual costs incurred to implement the mandate:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and

⁶⁷ Exhibit B, Controller’s Comments on the IRC, page 14.

⁶⁸ Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

⁶⁹ Exhibit B, Controller’s Comments on the IRC, page 13.

⁷⁰ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 2.

⁷¹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 2-3.

their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.⁷²

The claimant alleges that the Controller's use of the contemporaneous source document requirement is invalid based on *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794. While the *Clovis Unified* case is helpful in understanding the issues presented here, the case is distinguishable and does not directly apply to the issues here.

Unlike this case, the Commission had *not* adopted parameters and guidelines that contained the contemporaneous source document rule in the parameters and guidelines for the programs at issue in *Clovis*. Instead, the Controller enforced the contemporaneous source document rule through "non-regulatory" claiming instructions issued for three separate programs, without providing notice to school districts and an opportunity for school districts to comment on the rule. Thus, for example, in the *School District of Choice* program reviewed by the court in *Clovis*, the parameters and guidelines required the claimant to report the actual number of hours devoted to each function, supported by "source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed costs."⁷³ However, the Controller later issued amended claiming instructions to set forth, for the first time the contemporaneous source document rule.⁷⁴ The record showed that before the use of the contemporaneous source document rule, school districts obtained state-mandated reimbursement for employee salary and benefit costs based on "(1) declarations and certifications from the employees that set forth, after the fact, the time they had spent on SDC-mandated tasks; or (2) an annual accounting of time determined by the number of mandated activities and the average time for each activity."⁷⁵ After the Controller began using the contemporaneous source document rule in its audits, the Controller deemed the declarations, certifications, and average accounting methods insufficient and reduced the claims accordingly.⁷⁶

⁷² Exhibit A, IRC, page 53 (Parameters and Guidelines).

⁷³ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 801-802.

⁷⁴ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 802.

⁷⁵ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 802.

⁷⁶ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 802.

In addition, the rule, which requires contemporaneous time sheets and time logs, bars the use of employee time declarations and certifications as source documents. Instead, these documents are relegated to the “second-class status of ‘corroborating documents’ that can only serve as evidence that corroborates source documents.”⁷⁷ The school districts that used employee declarations and certifications and average time accountings to document time for reimbursement claims argued that the rule was an underground regulation and “it is *now* physically impossible to comply with the CSDR’s requirement of contemporaneousness that “a source document is a document *created at or near the same time the actual cost was incurred* for the event or activity in question.”⁷⁸ An underground regulation is a rule (which applies generally and implements, interprets, or makes specific the law enforced by the agency) that is not adopted in conformity with “basic procedural requirements that include public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law.”⁷⁹ The court concluded the Controller’s use of the contemporaneous source document rule imposed an invalid and unenforceable underground regulation.⁸⁰ The court authorized the Controller to re-audit the reimbursement claims based on the documentation requirements of the parameters and guidelines and claiming instructions that were in effect when the mandated costs were incurred.⁸¹

Here, the Parameters and Guidelines for *The Stull Act* have always contained the contemporaneous source document rule, and school districts had notice and a full opportunity to comment on the requirement (which was originally proposed by the test claimant) before the Parameters and Guidelines were adopted on consent. Nevertheless, because the Parameters and Guidelines were adopted in 2005, with a period of reimbursement going back to fiscal year 1997-1998, the claimant states that the “District started using File Maker in 2005. The information prior to that time, more than ten years ago, is currently inaccessible.”⁸² The Controller seems to acknowledge the problem since it offered to reimburse salary and benefit costs at 30 minutes for each of the 1,149 evaluations performed under the mandate, based on its findings for fiscal years 2006-2007 and 2007-2008.

Although the claimant accepted the 30 minute time per evaluation beginning in fiscal year 2006-2007, its rebuttal comments conclude that each evaluation conducted in fiscal years 1997-1998 through 2004-2005 should be reimbursed at 2.5 hours. However, the claimant does not explain why the evaluations conducted before fiscal year 2006-2007 took longer than 30 minutes. And there is no evidence in the record to support reimbursement at 2.5 hours, or five to ten hours per evaluation as originally asserted.

⁷⁷ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 804.

⁷⁸ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 804.

⁷⁹ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 800, 803.

⁸⁰ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 805 (where the court states that “the Commission submits regulatory P & Gs to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon”) and pages 812-813.

⁸¹ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 812-813.

⁸² Exhibit C, Claimant’s Late Rebuttal Comments on the IRC, page 5.

The declarations of estimated time to perform the mandate that were originally provided by the claimant to support reimbursement at five to ten hours per evaluation were based on activities that go beyond the scope of the mandate. The “reimbursable activity codes” listed on the declaration forms identify the full spectrum of evaluation activities for which time was estimated as follows: preparing for the evaluation, goals and objectives conference with instructor, pre-observation conference with instructor, classroom observation of instructor, post-observation conference with instructor, final conference with instructor, district reporting.⁸³ The Commission, however, denied reimbursement for evaluating and assessing certificated employees as it relates to established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.⁸⁴ The Commission limited the scope of the mandate for these employees to (1) review a certificated instructional employee’s instructional techniques and strategies and adherence to curricular objectives, and include in the written evaluation the assessment of these factors only during specified years; (2) review the results of the Standardized Testing and Reporting (STAR) test as it reasonably relates to the performance of those certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and include the assessment of this information in the employee’s written evaluation only during specified years. Therefore, the declarations do not provide reliable evidence of the time it took to evaluate each employee under the limited scope of the mandate.

The claimant also argues that 2.5 hours for each evaluation is supported by the Controller’s audit of a comparable neighboring K-12 school district, as well as other time studies accepted by the Controller for the audits of other school districts for this program. Claimant further asserts:

Effectively the time studies included in the Controller's audits created a Reasonable Reimbursement Methodology, a uniform cost allowance, in conformity with Government Code section 17518.5(b), as it is based on cost information from a representative sample of eligible claimants, information provided by association of local agencies and school districts, or other projections of local costs. The time study of 2.5 hours per evaluation is reliable since auditing of reimbursement claims is not a prerequisite for the development and approval of a reasonable reimbursement methodology. (Cal. Code Regs., §1183.12).⁸⁵

However, the Controller’s audits of the records of other school districts are not relevant to the issue of the time it took the claimant to perform the mandated activities and, pursuant to section 1187.5(a) of the Commission’s regulations, and non-relevant evidence must be excluded as a

⁸³ Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

⁸⁴ Exhibit A, IRC, pages 28 and 35 (Statement of Decision; page number citations refer to the PDF page numbers).

⁸⁵ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 2-3.

basis for the Commission's findings.⁸⁶ Nor is there any evidence that a time study based on the claimant's performance of the program was conducted to support reimbursement at 2.5 hours. And, finally, the Commission has not adopted a reasonable reimbursement methodology (RRM) or uniform cost allowance for this program that could be applied to all school districts. An RRM would have to be inserted into the Parameters and Guidelines in accordance with Commission regulations in order to be recognized.⁸⁷ Since no RRM for *The Stull Act* program has been adopted, any discussion of an RRM is not relevant.

Accordingly, there is no evidence to support the claimant's contention that reimbursement is required at least 2.5 hours, or between 5 and 10 hours per evaluation.

Rather, based on the evidence in the record, the Controller's finding that 30 minutes per evaluation in 2006 reasonably represents the time taken by the claimant to perform the mandate during the earlier audit period. The mandated program was not amended or increased, but remained the same. In addition, the Controller's finding of 30 minutes per evaluation was based on the claimant's time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form; teacher evaluation forms provided by the claimant that disclosed 30 minutes of actual classroom observation; and the Controller's review of a sample of written evaluations for teachers at El Camino High School, Jefferson Middle School, and Mission Elementary School for fiscal years 2006-2007 and 2007-2008.⁸⁸ There is no evidence in the record that the Controller's findings are wrong, or that the Controller's offer to apply the 30 minutes to the evaluations conducted in fiscal years 1997-1998 through 2004-2005 is arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the Controller's reduction of costs to \$0 is arbitrary, capricious, or entirely lacking in evidentiary support. However, the Controller's offer to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated (which results in reimbursement of \$35,967, which includes both direct and indirect costs), is supported by the record and is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

For the reasons discussed above, the Commission partially approves this IRC and pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, requests that the Controller reinstate \$35,967, which includes both direct and indirect costs, to the claimant.

⁸⁶ California Code of Regulations, title 2, sections 1185.1 and 1187.5.

⁸⁷ See California Code of Regulations, title 2, sections 1183.7(e), 1183.10, 1183.11, 1183.12 and 1183.17(a)(3).

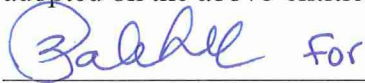
⁸⁸ Exhibit A, IRC, page 92. Exhibit B, Controller's Comments on the IRC, page 13.



RE: **Decision**

The Stull Act, 14-9825-I-01
Education Code Section 44660-44665
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4
Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002,
2002-2003, 2003-2004, and 2004-2005
Oceanside Unified School District, Claimant

On September 23, 2016, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: September 28, 2016

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On September 28, 2016, I served the:

Decision

The Stull Act, 14-9825-I-01

Education Code Section 44660-44665

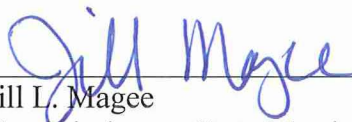
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005

Oceanside 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 September 28, 2016 at Sacramento, California.



Jill L. Magee

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Last Updated: 9/27/16

Claim Number: 14-9825-I-01

Matter: The Stull Act

Claimant: Oceanside Unified School District

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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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DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On July 13, 2020, I served the:

- **Controller's Late Comments on the IRC filed July 10, 2020**

The Stull Act, 19-9825-I-03

Education Code Sections 44660-44665;

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 2005-2006, 2006-2007, 2007-2008, 2010-2011, 2011-2012, 2012-2013

Fairfield-Suisun 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 July 13, 2020 at Sacramento, California.



Jill L. Magee

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COMMISSION ON STATE MANDATES

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Last Updated: 7/13/20

Claim Number: 19-9825-I-03

Matter: The Stull Act

Claimant: Fairfield-Suisun Unified School District

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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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