



# OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

ERIK NASARENKO  
District Attorney



April 3, 2026

Ms. Juliana F. Gmur  
Executive Director  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95814

Re: **Claimant's Rebuttal to State Controller's IRC Response**  
*Custody of Minors - Child Abduction and Recovery*, 25-4237-I-06  
Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;  
Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code  
Section 11478.5; Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162;  
Statutes 1996, Chapter 988  
Fiscal Years: 2016-2017, 2017-2018, 2018-2019, 2019-2020  
County of Ventura, Claimant

Dear Ms. Gmur:

Attached please find Claimant Ventura County's rebuttal to the response submitted by the State Controller's Office regarding the above-entitled Incorrect Reduction Claim.

If you have any questions, please contact me at (805) 477-1635. Thank you for your assistance.

Sincerely,

CHUCK HUGHES  
Special Assistant District Attorney  
Ventura County District Attorney's Office

**CLAIMANT VENTURA COUNTY’S REBUTTAL TO  
STATE CONTROLLER’S OFFICE RESPONSE**

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## **CLAIMANT VENTURA COUNTY'S REBUTTAL TO STATE CONTROLLER'S OFFICE RESPONSE**

### **I. INTRODUCTION**

Ventura County (County) submits this rebuttal to the State Controller's (Controller) response to the County's Incorrect Reduction Claim.

The County's IRC raised several grounds to dispute the Controller's near-complete disallowance of reimbursement under the Custody of Minors-Child Abduction and Recovery Program (Program 13) for fiscal years 2016-2017 through 2020-2021.

The Controller's response to the IRC fails to validate its erroneous audit results:

1. The Controller did not dispute that its fiscal year 2016-2017 audit was untimely commenced. The FY17 disallowance of \$1,032,369 must be reinstated to the County;
2. The Controller did not dispute that it improperly excluded Good Cause claims and conceded the point in the related Sacramento County IRC. The Controller's misapplication of the law constitutes an underground regulation;
3. The Controller continues to misinterpret the definition of "source documents" and uses its misinterpretation to disallow documented hours, to refuse to consider corroborating evidence, and, therefore, to apply an underground regulation;
4. The Controller changed its interpretation of Section VII of the P&G without a corresponding change in the P&G, another underground regulation;
5. Contrary to the Controller's response, the County provided contemporaneous source documentation and corroborating evidence showing the validity of most costs, when they were incurred, and their relationship to the reimbursable activities, as required by the P&G. The County's IRC conceded an attorney's time was not properly documented, justifying a disallowance of \$678,240. The Controller's response correctly identified incomplete time studies justifying a further disallowance of \$322,143 for FY18-20.
6. It was an abuse of discretion to disallow all documented hours over a four-year period, rather than disallowing only those hours that were not well-documented, especially when the Controller admittedly applied incorrect legal standards throughout the audit.

## II. THE AUDIT OF FISCAL YEAR 2016/2017 WAS UNTIMELY

The Controller did not dispute it untimely commenced the FY 17 audit under Government Code section 17558.5 and must reinstate the \$1,032,369 FY 17 claim.

## III. THE CONTROLLER IMPROPERLY EXCLUDED GOOD CAUSE CLAIMS

The Controller did not dispute it improperly excluded Good Cause claims and imposed an underground regulation. The Controller conceded the error in the related Sacramento County IRC *Child Abduction and Recovery*, 24-4237-I-04. (Attached as Exhibit 1)

## IV. THE CONTROLLER CONTINUES TO MISDEFINE SOURCE DOCUMENTS

In its Final Audit Report and its response, the Controller asserts that neither the County's monthly time studies nor its payroll records constitute source documents under the P&G. However, the P&G definition is simple and clear:

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. (Parameters and Guidelines, p. 3)

The County provided monthly time studies and bi-weekly payroll records documenting hours charged to reimbursable CAR activities and the salary and benefits paid per hour. Under the plain language of the P&G, these are source documents.

The Controller seems to contend that to qualify as a source document, the document must by itself establish every element of a reimbursable claim. This is a misinterpretation and there is no such requirement in the P&G.

The Controller also mistakenly asserts that in the *Santa Clara County* IRC decision the Commission held that payroll records are not source documents. The *Santa Clara County* decision doesn't stand for that proposition. Rather, it holds that payroll records **alone** are not enough to establish a claim, without additional contemporaneous documentation that shows the number of hours actually spent on reimbursable activities (Controller's Response, Tab 4, p. 126, PDF p. 221). In the *Santa Clara County* matter, the claimant submitted payroll records showing what each employee was paid. However, the claimant had no contemporaneous records showing the reimbursable hours worked. The claimant merely *estimated* the time spent on CAR activities by conducting a subsequent, documented-time-study well after the expenses were

incurred. The Controller found the documented-time-study was insufficient for various reasons and disallowed the claim, which the Commission upheld. (*Id.* at Tab 4, p. 126-127, PDF p. 221-222)

In contrast, Ventura County's payroll records are contemporaneous source documents showing the actual costs paid to the employees who performed CAR activities. The County's contemporaneous time studies are contemporaneous source documents showing the hours spent on specific reimbursable CAR activities on specific dates. When read together, the source documents substantiate the large majority of claims.

The Controller correctly asserts, and the County concedes, *some* of the County's timesheets do not constitute source documents because they were not created at or near the time of the activity or payment and *some* do not specify particular activities. However, the Controller incorrectly ignores the thousands of hours spent on CAR activities supported by source documents created at or near the events and specifying particular CAR activities.

By insisting none of the timesheets or payroll records are "source documents," the Controller contradicts the P&G's plain text. The Controller compounds its error by next refusing to consider the County's corroborating evidence on the ground that the timesheets and payroll records are not "source documents." The Controller's logic is flawed: the Controller first misclassifies the records, then leverages the misclassification to exclude corroboration. The Commission should reject that approach.

To avoid future misunderstandings, the County asks the Commission to clarify that to qualify as a source document under the P&G as written, a document need not stand alone to establish every element of a reimbursable claim.

## **V. THE CONTROLLER CHANGED ITS INTERPRETATION OF P&G SECTION VII'S CLAIM REQUIREMENTS WITHOUT A CORRESPONDING CHANGE IN THE P&G**

In deeming the County's time studies inadequate, the Controller changed its historical interpretation of "P&G Section VII – Claim Preparation and Submission" without notice or a corresponding change in the P&G. Since well before 2009, P&G Section VII has imposed on claimants the exact same standard for documenting claims:

### **1. Salary and Employees' Benefits**

Identify the employee(s), show the classification of the employee(s) involved, **describe the mandated functions performed and specify the actual number of hours devoted to each function**, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study. (emphasis added.)

The County has used the same time sheet language to describe the mandated functions performed for more than 20 years. (IRC, Hughes decl. ¶¶ 5, 7) The Controller acknowledged, “the County provided monthly time studies that included hours charged to the following activity titles:

- A. CC: Enforcement of Decrees – Family Code Sections 3130 & 3131
- B. CC: Court Activity – Family Code Sections 3130 & 3131
- C. Out-of-State Decrees – CC: Offender Detention –Family Code Section 3400 et seq, UCCJEA or
- D. PC: Return of Detained or Concealed Child CA Penal Code Sections 278 & 278.5 (Criminal)”  
(Audit Report, p. 7)

The Controller accepted these exact reimbursable activity descriptions in two previous audits, 2004 and 2010. (IRC, Hughes decl. ¶¶ 9) Despite accepting these exact same descriptions in prior audits, the Controller’s response now contends the County did not sufficiently “describe” the CAR activities, quoting the language of Section VII:

The county believes that referring to family and penal code sections complies with the Ps and Gs requirement for documentation to ‘**describe the mandated functions performed and specify the actual number of hours devoted to each function.**’ A reference is not a description. (Controller’s Response, Tab 2, PDF page 13, emphasis added.)

The Controller cannot unilaterally change its interpretation of the description requirements in Section VII without changing the P&G – doing so is not just unfair, it’s prohibited as an underground regulation. Govt Code section 11340; *Morning Star Co. v. State Bd. of Equalization* (2006) 38 Cal.4<sup>th</sup> 324, 333 (citations omitted);

The Controller’s response also attacks the chart presented in the IRC (below) because the County didn’t present it during the audit. It could not have been presented at that time, though, because it was developed for the IRC to graphically demonstrate the propriety of the CARU time study descriptions. The chart is merely a summary and comparison of the County’s Time Record, the P&G, and the Mandated Cost Manual language. It shows that the County’s time sheet activity categories correspond to the P&G, which is why the Controller approved the County’s activity categories in two prior audits:

\\

CARU Time Record	Parameters & Guidelines	Mandated Cost Manual Claim Form 1
A. CC: Enforcement of Decrees - Family Code Sections 3130 & 3131	1. Obtaining compliance with court orders relating to child custody or visitation proceedings and the enforcement of child custody or visitation orders, including:	1. Compliance with Court Orders
B. CC: Court Activity - Family Code Sections 3130 & 3131	1b. Utilizing any appropriate civil or criminal court action to secure compliance	3. Secure Appearance of Offender*  (*Note: Appearance can only refer to appearance at court hearings)
C. Out-of-State Decrees - CC: Offender Detention - Family Code Section 3400 et seq. UCCJEA	2. Court actions and costs in cases involving child custody or visitation orders from another jurisdiction, which may include, but are not limited to, utilization of the Uniform Child Custody Jurisdiction Act	2. Court Costs for Out-of-Jurisdiction Cases
D. PC: Return of Detained or Concealed Child - CA Penal Code Sections 278 & 278.5 (Criminal)	1b. Utilizing any appropriate civil or criminal court action to secure compliance	4. Return of Children to Custodian

**VI. THE COUNTY’S CLAIMS WERE SUPPORTED BY SOURCE DOCUMENTS SHOWING THE VALIDITY OF MOST HOURS, IN COMPLIANCE WITH THE P&G**

As set forth in the IRC Narrative Statement and above, the County submitted contemporaneous source documents showing the validity of the costs, when they were incurred, and their relationship to the reimbursable activities. Because they have already been addressed, the arguments concerning the sufficiency of the County’s reimbursable activity descriptions will not be repeated.

The Controller argues that because the County's payroll system does not show the specific hours spent on the CAR program, it does not support the claimed costs. This is an incomplete analysis.

Although the payroll system does not break down the employee's paycheck based on particular program hours, it shows the employee's total salary and benefits for the pay period. From there, the County divides the employee's total pay and benefits by the number of hours worked to get the employee's hourly cost. The County multiplies the employee's hourly cost by the reimbursable hours worked to get the actual cost of reimbursable activities.

In its IRC, the County conceded one attorney did not specify the reimbursable activities she undertook. Her unsupported time totaled \$678,240 in salary and benefits for FY 18-20 and it was appropriate to reduce the County's FY 18-20 claims by that amount.

Based on the Controller's Response, the County now agrees that some additional time records for clerical staff did not specify reimbursable activities, some other time records either were not dated or were not timely dated, and some records did not separately bill category B time from category A time. For those records, identified in the Controller's Tab 4, I went through each of the records and, using the claim forms submitted each year, compiled the applicable employee time, hourly rate, and total amount properly disallowed. In this analysis, I also disallowed all the time claimed for clerical support. Although the County disagrees with the Controller's logic on a few of the items, in the interest of brevity the County will not further argue the few thousand dollars involved in those items.

The analysis of the Controller's Response reveals the following amounts are also properly disallowed from FY 18-20:

<b>Tab 4 Page</b>	<b>FY</b>	<b>Initial</b>	<b>Classification</b>	<b>Cat. A Hours</b>	<b>Cat. B Hours</b>	<b>Hourly Rate</b>	<b>Claimed Amount to Disallow</b>
76	18	C	DAI I	1		108.57	109
80	18	H	Sr. DAI	2		137.56	275
81	18	M	DAI II	152	4	117.72	18,364
82	18	M	DAI II	162	18	117.72	21,190
83	18	M	DAI II	122		117.72	14,362
84	18	R	DAI III	155	5	129.03	20,645
85	18	R	DAI III	138	4	129.03	18,322
86	18	R	DAI III	161		129.03	20,774
87	18	R	DAI III	151		129.03	19,484
88	18	R	DAI III	144	32	129.03	22,709
89	18	R	DAI III	138		129.03	17,806
90	18	R	DAI III	171.50		129.03	22,129
			Clerical Time	539		41.47	22,352
						<b>FY 18</b>	<b>\$218,521</b>

<b>Tab 4 Page</b>	<b>FY</b>	<b>Initial</b>	<b>Classification</b>	<b>Cat. A Hours</b>	<b>Cat. B Hours</b>	<b>Hourly Rate</b>	<b>Claimed Amount to Disallow</b>
91	19	E	DAI II	155	4	125.21	19,908
			Clerical Time	529		42.72	22,599
						<b>FY 19</b>	<b>\$42,507</b>
104	20	B	IA III	12.5		44.73	559
105	20	B	IA III	91	22	44.73	5,054
106	20	E	DAI II	121		130.16	15,749
111	20	M	DAI II	2		126.90	254
112	20	R	DAI III	139		131.45	18,272
			Clerical Time	469.5		45.21	21,227
						<b>FY 20</b>	<b>\$61,115</b>
						<b>Total</b>	<b>\$322,143</b>

**VII. IT WAS ARBITRARY, CAPRICIOUS, OR COMPLETELY LACKING IN EVIDENTIARY SUPPORT FOR THE CONTROLLER TO DISALLOW THE COUNTY’S ENTIRE LABOR CLAIM FOR FOUR YEARS**

The County understands and supports that the state mandate claim system is premised upon only reimbursing actual costs. It is, however, fundamentally unfair, arbitrary, or capricious for the Controller to ignore documentary evidence that was previously accepted, or to re-characterize it as insufficient, without adequate notice of the changes in their interpretation.

The reality of this audit is that the Controller repeatedly misapplied the law and the P&G standards.

- The Controller’s audit of FY 2017 was untimely.
- Its exclusion of Good Cause cases was improper.
- The Controller misconstrued what constitutes source documentation and used that error to refuse to consider corroborating documents.
- Without amending Section VII of the P&G, the Controller re-interpreted what constitutes a sufficient “description” of activities under that section.
- In addition to disallowing undocumented costs, the Controller disallowed documented, reimbursable, actual labor costs, although in Oceanside School District the Commission ruled the practice improper and in cases like Santa Clara County 2016 and Carlsbad School District the Controller only disallowed undocumented costs.

On this record, it becomes evident the Controller acted arbitrarily, capriciously, or completely without evidentiary support in disallowing all claimed labor over a four-year period.

The County is aware of its “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,” both under the P&G and as indicated in *Carlsbad Unified School District’s* IRC for the Stull Act Program, Case number 14-9825-I-02. (Controller’s Reply, Tab 4, p. 163, PDF p. 258.) Its records have done exactly that for many of the actual costs claimed.

To the extent some of the County’s records were signed sufficiently after the events to no longer be considered contemporaneous or were not dated, it was appropriate for the Controller to disallow those costs. However, the Commission has previously held that it is arbitrary, capricious, or entirely lacking in evidentiary support to reduce reimbursement to \$0 when contemporaneous documents support a portion of a claim for mandated activities. (*In Re: Incorrect Reduction Claim on Education Code §§ 44660-44665, Oceanside School District*, Case No. 14-9825-I-01 (“The Stull Act”) (attached as Exhibit 2, p. 23-24.))

In *Oceanside School District*, the claimant sought reimbursement for 2.5 hours per mandated activity, though its records only supported 30 minutes per mandated activity. (*Id.* at p. 22.) Because the Controller reduced the entire claim to \$0, the Commission ruled the reduction was arbitrary, capricious, or entirely lacking in evidentiary support and reinstated the claim at the 30-minute level. (*Id.* at p. 24.)

In its Response to this IRC, the Controller misstates the legal ruling of another Commission decision, *Carlsbad Unified School District*, arguing it allows the Controller to disallow even actual costs supported by contemporaneous records if any other costs were not supported by such records. The Controller misinterprets the actual facts and decision in the *Carlsbad Unified* case.

In that case, the claimant had zero contemporaneous records establishing actual time spent on reimbursable activities. (*Carlsbad Unified*, Controller’s Response, Tab 4, p. 158-159, PDF p. 253-254.) Instead, the claimant merely estimated its time based on documented-time-studies conducted up to five years later and also claimed activities and personnel that were not included in the P&G. (*Id.* at Tab 4, p. 159-163, PDF p. 254-258.) In that circumstance, where there were no contemporaneous records for any of the hours, the Commission noted that the Controller “could have reduced the entire claim to zero.” (*Id.* at Tab 4, p.159, PDF p. 254.) However, the Controller did not do that. Rather, the Controller allowed some of the claims based on a fair estimate of the mandated activities performed. (*Id.*)

Ventura County’s IRC is factually and legally different from *Carlsbad Unified*. Here, the County presented contemporaneous records showing the validity of actual costs, when they were incurred, and their relationship to the reimbursable activities, as discussed

already. The Controller, however, points to some County time records as insufficiently timely and tries to use that to disallow even the timely records. Doing that is arbitrary, capricious, or without evidentiary support under *Oceanside Unified*.

The Controller also argues the County didn't properly respond to the Controller's concerns during the audit, causing it to lose confidence in the County's records. However, the Controller misapplied legal standards throughout the audit, misconstrued the definition of source documents, refused to consider corroborating documents as corroboration (not substitution), changed its interpretation of the "description" required for claims under Section VII of the P&G, and wrongly disallowed cases involving the "Good Cause" defense. In this context, the audit was fundamentally flawed, and the County should not be penalized for the Controller's erroneous demands. An audit result based on multiple legal errors is arbitrary, capricious, or entirely without support in the evidence.

The Controller repeated its flawed approach in various audits of 13 California District Attorney's Offices who collectively spent tens of thousands of hours recovering abducted children for their rightful parents, as mandated by the State of California.

The County urges the Commission to conclude the Controller acted arbitrarily, capriciously, or without evidentiary support in denying the actual costs properly supported by contemporaneous records because it misapplied the law in so many ways as to make the audit result fundamentally unfair and lacking in due process.

## **VIII. CONCLUSION**

During the audit period, the County provided services mandated by state law, returning 156 children to their custodial parents. State law requires reimbursement. Based on the IRC, the Controller's Response, and this Reply, the County revises its request and asks the Commission to grant this Incorrect Reduction Claim and find as follows:

1. The FY 17 audit was untimely and the adjustment of \$1,032,369 is reinstated to the County;
2. For FY 18, \$508,964 in salary, benefits, and indirect costs is reinstated;
3. For FY 19, \$634,909 in salary, benefits, and indirect costs is reinstated;  
and
4. For FY 20, \$645,397 in salary, benefits, and indirect costs is reinstated;

In total, \$2,821,639 should be reinstated to the County.

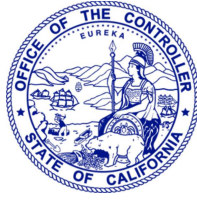
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my personal knowledge, information, or belief. Executed on April 2, 2026, at Ventura, California.

A handwritten signature in blue ink, appearing to read "Chuck Hughes", written over a horizontal line.

Chuck Hughes  
Claimant's Representative  
Special Assistant District Attorney  
Ventura County District Attorney's Office

# Exhibit 1



MALIA M. COHEN  
CALIFORNIA STATE CONTROLLER



February 19, 2026

Juliana Gmur, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

*Child Abduction and Recovery*, 24-4237-I-04

Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421; Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5; Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988

Fiscal Years: 2016-17, 2017-18, 2018-19

County of Sacramento, Claimant

Dear Ms. Halsey:

The State Controller's Office has reviewed the Commission on State Mandates' draft proposed decision dated January 30, 2026, for the above incorrect reduction claim filed by the County of Sacramento. We agree with the Commission's conclusion related to the time spent investigating "good cause" cases, and will reinstate \$32,276 (plus any related indirect costs) upon adoption of the Proposed Decision. We also agree with the Commission's conclusion that "all other reductions are correct as a matter of law."

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information, and belief.

If you have any questions, please contact me by telephone at (916) 327-3138 or by email at [lkurokawa@sco.ca.gov](mailto:lkurokawa@sco.ca.gov).

Sincerely,

*Lisa Kurokawa*

LISA KUROKAWA, Bureau Chief  
Compliance Audits Bureau  
Division of Audits

## 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 February 19, 2026, I served the:

- **Current Mailing List dated February 3, 2026**
- **Controller's Comments on the Draft Proposed Decision filed February 19, 2026**

*Child Abduction and Recovery, 24-4237-I-04*

Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;

Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5; Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988

Fiscal Years: 2016-2017, 2017-2018, 2018-2019

County of Sacramento, 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 February 19, 2026 at Sacramento, California.



\_\_\_\_\_  
Jill Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/3/26

**Claim Number:** 24-4237-I-04

**Matter:** Child Abduction and Recovery

**Claimant:** County of Sacramento

### 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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## Exhibit 2



September 28, 2016

Mr. Arthur Palkowitz  
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Ms. Karen Huddleston  
Oceanside Unified School  
District  
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Ms. Jill Kanemasu  
State Controller's Office  
Accounting and Reporting  
3301 C Street, Suite 700  
Sacramento, CA 95816

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

Re: **Decision**

*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

<p>IN RE INCORRECT REDUCTION CLAIM ON:</p> <p>Education Code Sections 44660-44665</p> <p>Statutes 1983, Chapter 498; Statutes 1999, Chapter 4</p> <p>Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005</p> <p>Oceanside Unified School District, Claimant</p>	<p>Case No.: 14-9825-I-01</p> <p><i>The Stull Act</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7</p> <p><i>(Adopted September 23, 2016)</i></p> <p><i>(Served September 28, 2016)</i></p>
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**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:

<b>Member</b>	<b>Vote</b>
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 2004-2005<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup>
- 08/20/2014 The claimant filed the IRC.<sup>3</sup>
- 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.<sup>4</sup>
- 05/04/2015 The Claimant filed late rebuttal comments on the IRC.<sup>5</sup>
- 06/17/2016 Commission staff issued the Draft Proposed Decision.<sup>6</sup>
- 06/29/2016 The Controller filed comments on the Draft Proposed Decision.<sup>7</sup>
- 07/08/2016 The claimant filed comments on the Draft Proposed Decision.<sup>8</sup>

### 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.<sup>9</sup> 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

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<sup>2</sup> Exhibit A, IRC, pages 80-98 (Final Audit Report).

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

<sup>4</sup> Exhibit B, Controller’s Comments on the IRC.

<sup>5</sup> Exhibit C, Claimant’s Late Rebuttal Comments.

<sup>6</sup> Exhibit D, Draft Proposed Decision.

<sup>7</sup> Exhibit E, Controller’s Comments on the Draft Proposed Decision.

<sup>8</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

<sup>9</sup> 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.<sup>10</sup> 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:
  - 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

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<sup>10</sup> 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:
    - 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.
- 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.*)<sup>11</sup>

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.<sup>12</sup>

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.

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<sup>11</sup> 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.

<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> The Controller states that the claiming instructions issued for subsequent claiming years during the audit period did not change.<sup>15</sup>

#### 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.<sup>16</sup>

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.<sup>17</sup> 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

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<sup>13</sup> Exhibit A, IRC, pages 57-58 (Parameters and Guidelines).

<sup>14</sup> Exhibit A, IRC, pages 61, 75.

<sup>15</sup> Exhibit B, Controller's Comments on the IRC, page 11.

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

<sup>17</sup> Exhibit A, IRC, pages 3 and 143-191.

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

<u>Reimbursable Activities Codes:</u>		<u>Evaluation Criteria:</u>			
Code 11 Preparing for the evaluation		(A) district standards and test results			
Code 12 Goals and objectives conference with instructor		(B) instructional techniques/strategies			
Code 13 Pre-observation conference with instructor		(C) adherence to curricular objectives			
Code 14 Classroom observation of instructor		(D) suitable learning environment			
Code 15 Post-observation conference with instructor					
Code 16 Final conference with instructor					
Code 17 District reporting					
CLASSROOM TEACHER TIME IS NOT REIMBURSED					
Allocate the average time spent on each criterion (A-0) for each of the following evaluation steps:	Average time in Minutes				
	A	B	C	D	
Code 11 Preparing for the evaluation	20	10	10	10	
Code 12 Goals and objectives conference with instructor	15	10	10	10	
Code 13 Pre-observation conference with instructor	5	5	5	5	
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.<sup>19</sup>

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.<sup>20</sup>

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

<sup>18</sup> Exhibit A, IRC, page 143.

<sup>19</sup> 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.

<sup>20</sup> 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.<sup>21</sup>

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.”<sup>22</sup> 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.”<sup>23</sup> 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.<sup>24</sup> 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.”<sup>25</sup>

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.”<sup>26</sup>

### 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.<sup>27</sup> The Controller was emailed the list from the claimant on December 19, 2014.<sup>28</sup> On December 24, 2014, the Controller emailed the claimant to request clarification because the provided information appeared to be incomplete.<sup>29</sup> On January 5, 2015, the claimant emailed the

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<sup>21</sup> Exhibit B, Controller’s Comments on the IRC, page 13.

<sup>22</sup> Exhibit A, IRC, page 91.

<sup>23</sup> Exhibit A, IRC, page 91.

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

<sup>25</sup> Exhibit A, IRC, pages 91 and 92 (Final Audit Report).

<sup>26</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>27</sup> Exhibit B, Controller’s Comments on the IRC, page 8.

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

<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> 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

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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.

<sup>30</sup> 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."

<sup>31</sup> 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 – 165<sup>32</sup>

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.<sup>33</sup>

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.”<sup>34</sup> 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

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<sup>32</sup> Exhibit B, Controller’s Comments on the IRC, page 108.

<sup>33</sup> Exhibit B, Controller’s Comments on the IRC, pages 15, 118.

<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

The claimant also relies on the Office of Management and Budget Circular A-87,<sup>37</sup> 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.”<sup>38</sup>

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.”<sup>39</sup> 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.<sup>40</sup>

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<sup>35</sup> Exhibit A, IRC, pages 6-7.

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

<sup>37</sup> Exhibit A, IRC, page 244.

<sup>38</sup> Exhibit A, IRC, page 7.

<sup>39</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 3.

<sup>40</sup> 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."<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup>

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<sup>41</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 7.

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

<sup>43</sup> 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."<sup>44</sup> 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 allowable . . . .<sup>45</sup>

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."<sup>46</sup>

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]."<sup>47</sup> The Controller further states that "we

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<sup>44</sup> Exhibit B, Controller's Comments on the IRC, page 14.

<sup>45</sup> Exhibit B, Controller's Comments on the IRC, page 13.

<sup>46</sup> Exhibit B, Controller's Comments on the IRC, page 14.

<sup>47</sup> 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.”<sup>48</sup>

The Controller filed comments concurring with the Draft Proposed Decision to deny the IRC.<sup>49</sup>

#### **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.<sup>50</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>51</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>52</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was

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<sup>48</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>49</sup> Exhibit E, Controller’s Comments on the Draft Proposed Decision.

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

<sup>51</sup> *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.

<sup>52</sup> *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.



unreasonable.<sup>60</sup>

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.<sup>61</sup> 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.<sup>62</sup>

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

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<sup>60</sup> Government Code section 17561(d)(2)(A)(i) and (B).

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

<sup>62</sup> Exhibit A, IRC, pages 54-56 (Parameters and Guidelines).

Controller a list of every employee evaluated during the audit years in question.<sup>63</sup> 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.<sup>64</sup> 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]."<sup>65</sup>

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.<sup>66</sup> 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

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

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

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

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

evidentiary support.<sup>67</sup> 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 instruction, pre-observation conference with instructor, classroom observation of instructor, post-observation conference with instructor, final conference with instructor, district reporting.<sup>68</sup> 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.<sup>69</sup>

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.”<sup>70</sup> 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.<sup>71</sup>

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

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<sup>67</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>68</sup> 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.

<sup>69</sup> Exhibit B, Controller’s Comments on the IRC, page 13.

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

<sup>71</sup> 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.<sup>72</sup>

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.”<sup>73</sup> However, the Controller later issued amended claiming instructions to set forth, for the first time the contemporaneous source document rule.<sup>74</sup> 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.”<sup>75</sup> 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.<sup>76</sup>

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<sup>72</sup> Exhibit A, IRC, page 53 (Parameters and Guidelines).

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

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

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

<sup>76</sup> *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.”<sup>77</sup> 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.”<sup>78</sup> 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.”<sup>79</sup> The court concluded the Controller’s use of the contemporaneous source document rule imposed an invalid and unenforceable underground regulation.<sup>80</sup> 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.<sup>81</sup>

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.”<sup>82</sup> 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.

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

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

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

<sup>80</sup> *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.

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

<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup> 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).<sup>85</sup>

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

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<sup>83</sup> 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.

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

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

basis for the Commission's findings.<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup> 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.

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<sup>86</sup> California Code of Regulations, title 2, sections 1185.1 and 1187.5.

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

<sup>88</sup> 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

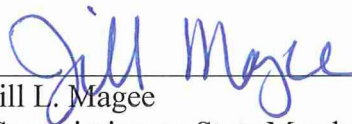
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

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 April 6, 2026, I served the:

- **Current Mailing List dated February 3, 2026**
- **Claimant's Rebuttal Comments filed April 3, 2026**

*Child Abduction and Recovery, 25-4237-I-06*

Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;

Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code Section 11478.5; Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162; Statutes 1996, Chapter 988

Fiscal Years: 2016-2017, 2017-2018, 2018-2019, 2019-2020

County of Ventura, 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 April 6, 2026 at Sacramento, California.



David Chavez

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/3/26

**Claim Number:** 25-4237-I-06

**Matter:** Child Abduction and Recovery

**Claimant:** County of Ventura

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