

ITEM 9

**PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS**

Education Code Section 51934, 51935, 51938, and 51939 (Formerly 51201.5 and 51229.8)
Statutes 1991, Chapter 818; Renumbered by Statutes 2003, Chapter 650

AIDS Instruction (CSM-4422)

and

Education Code Sections 51934, 51938, 51939, and 51933(b)(2)
(Formerly 51201.5, 51554, and 51553(b)(1)(A))
Statutes 1998, Chapter 403; Renumbered by Statutes 2003, Chapter 650

AIDS Prevention Instruction (99-TC-07, 00-TC-01)

11-PGA-05

State Controller's Office, Requestor

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JOHN CHIANG
California State Controller
Division of Accounting and Reporting

Exhibit A

September 29, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Request to Amend Consolidation of Parameters and Guidelines,
AIDS Instruction (CSM 4422)
Education Code Sections 51201.5 and 51229.8
Chapter 818, Statutes 1991 and
AIDS Prevention Instruction (99-TC-07, 00-TC-01)
Education Code Sections 51201.5, 51554 and 51553, Subdivision (b)(1)(A)
Chapter 403, Statutes 1998

Dear Mr. Bohan:

The State Controller's Office (SCO) is requesting to amend the Consolidation of Parameters and Guidelines (P's and G's) for the AIDS Instruction and AIDS Prevention Instruction programs to reflect the changes to the following Education Code sections:

1. Education Code section 51201.5 was repealed by Statutes 2003, Chapter 650, Section 5.
2. Education Code section 51229.8 was repealed by Statutes 2003, Chapter 650, Section 8.
3. Education Code sections 51553 and 51554 were repealed by Statutes 2003, Chapter 750, Section 10.
4. Education Code sections 51930-51939 were added by Statutes 2003, Chapter 650.
5. The content of Education Code section 51201.5 was moved to Education Code sections 51934, 51938, and 51939.
6. The content of Education Code section 51229.8 was moved to Section 51935.
7. The content of Education Code section 51553 was moved to Section 51933.
8. The content of Education Code section 51554 was moved to Sections 51938 and 51939.

Although Education Code sections 51201.5, 51229.8, 51553, and 51554 were repealed and Education Code sections 51930-51939 were added, the reimbursable activities remain unchanged.

Enclosed are excerpts from the P's and G's indicating our proposed amendments. Boilerplate language to bring the parameters and guidelines in sync with current parameters and guidelines are also included. Proposed additions are underlined and deletions are indicated with strikethrough.

PROPOSED AMENDMENT TO CONSOLIDATION OF PARAMETERS AND GUIDELINES

**Education Code Sections ~~51201.5 and 51229.8~~ 51934, 51938, and 51939
~~Statutes 1991, Chapter 818~~ Statutes 2003, Chapter 650
*AIDS Instruction (CSM 4422)***

and

**Education Code Sections ~~51201.5, 51554 and 51553~~, Subdivision (b)(1)(A) 51934, 51938, 51939, and 51933, subdivision (b)(2)
~~Statutes 1998, Chapter 403~~ Statutes 2003, Chapter 650
*AIDS Prevention Instruction (99-TC-07, 00-TC-01)***

I. SUMMARY OF THE MANDATE

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Statutes 2003, Chapter 650 repealed Education Code sections 51201.5, 51229.8, 51553, and 51554. It also added Education Code sections 51933, 51934, 51938, and 51939. The Statutes became operative on January 1, 2004. The reimbursable activities remain unchanged.

COMMENT: We recommend adding the above paragraph at the end of the Summary of the Mandate to indicate the changes made by Statutes 2003, chapters 650.

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, with students in grades 7 to 12, which incurs increased costs due to as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

~~Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for *AIDS Prevention Instruction* was filed on March 20, 2000. However, Statutes 1998, chapter 403 became effective January 1, 1999. Therefore, this consolidated set of parameters and guidelines is operative for costs incurred from January 1, 1999, and beyond.~~

~~Costs for *AIDS Instruction* (CSM 4422) that have been claimed for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003 as of the effective date of these parameters and guidelines pursuant to the State Controller's claiming instructions for program 123 may not be claimed and are not reimbursable under these parameters and guidelines. Reimbursement for costs for *AIDS Prevention Instruction* (99-TC-07 and 00-TC-01) for fiscal years 1998-1999 through 2002-2003 may be claimed for activities specified in section IV. Of these parameters and guidelines designated with "Beginning January 1, 1999..."~~

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions.

If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except otherwise allowed by Government Code section 17564.

Government Code section 17557 (d)(1), states a local agency, school district, or the state may file a written request with the commission to amend the parameters and guidelines. The Commission may, after public notice and hearing, amend the parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The parameters and guidelines amendment was filed on September 29, 2011; therefore, the amended parameters and guidelines apply to reimbursement claims beginning fiscal year 2010-11.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, subdivision (a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560, subdivision (b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

COMMENT: We recommend using the current boilerplate language in the "Eligible Claimant" and "Period of Reimbursement" sections.

IV. REIMBURSABLE ACTIVITIES

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A. Instructional Costs

Beginning January 1, ~~1999~~, 2004, instruction includes the following: (1) emphasis on monogamy and the avoidance of multiple sexual partners; (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities; and (4) requiring that the instruction be consistent with sex education course criteria of Education Code section ~~51553 (Ed. Code, §51201.5, subd. (b).) 51933 (Ed. Code, § 51934, subd. (b).)~~

4. Instructional materials

The salaries and benefits of the employees of the school district and of the county office of education involved in the selection process that identifies instructional materials and the cost of those materials are reimbursable.

Beginning January 1, ~~1999~~, 2004, instructional material must accurately reflect Education Code section ~~51201.5, subdivision (b) 51934, subdivision (b).~~

B. Notification

2. Parent Notification of Guest Speaker and/or Assembly on AIDS Prevention

- a. Beginning January 1, ~~1999~~, 2004, notifying parents or guardians by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, and each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) informing parents or guardians of their right to obtain a copy of Education Code sections ~~51201.5 and 51533 51933, 51934 and 51938~~ from the district. This activity is reimbursable only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction (ED. Code, § ~~51201.5, subd. (d)(3)~~ §51938, subd. (a)(2).)

COMMENT: The effective date of Statutes 2003, Chapter 650 is January 1, 2004 and we recommend updating the date in the P's & G's. Also, Parents' right to obtain a copy of Sections 51933, 51934 and 51938 is indicated in Section 51938.

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- a. Beginning January 1, ~~1999~~, 2004 notifying parents or guardians at the beginning of each school year, or for pupils that enroll thereafter, at the time of that pupil's enrollment, about instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or school district administrator personnel that is employed by the district. This activity is reimbursable only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. (Ed. Code, § ~~51554, subd. (b) §51938, subd. (a)(2).~~)

COMMENT: We recommend use of “school district personnel” instead of “district administrator” to conform to the Education Code section.

C. Education Code sections ~~51201.5 and 51553~~ 51933, 51934, and 51938

1. Beginning January 1, ~~1999~~, 2004, the one-time cost of revising the annual parent or guardian notification regarding the right to obtain a copy of Education Code sections ~~51201.5 and 51553~~ 51933, 51934, and 51938 from the school district.
2. Beginning January 1, ~~1999~~, 2004, Keeping on file copies of Education Code section ~~51201.5 and 51553~~ 51933, 51934, and 51938 to give out on request.

V. **CLAIM PREPARATION AND SUBMISSION**

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A. Direct Cost Reporting

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. ~~Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.~~

COMMENT: Please use the current boilerplate language for consistency.

4. Fixed Assets ~~and Equipment~~

Report the purchase price paid for fixed assets ~~and equipment (including computers)~~ necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset ~~or equipment~~ is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

COMMENT: The terminology, “fixed assets” includes equipment.

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B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

~~School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

School districts and County offices of education must use indirect cost rate from the Restricted Indirect Cost Rates for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year of costs.

COMMENT: The J-380 and J-580 forms previously used by school districts and county offices of education respectively have become obsolete.

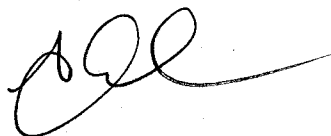
VII. OFFSETTING SAVINGS REVENUES AND OTHER REIMBURSEMENTS

Any offsetting ~~savings-revenues~~ the claimant experiences in the same program as a ~~direct~~ result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds (e.g., Instructional Materials Fund), shall be identified and deducted from this claim.

COMMENT: Please apply the current boilerplate language in the above paragraph.

If you have any questions, please contact Afsana Saida at (916) 324-7870, or email asaida@sco.ca.gov.

Sincerely,



JAY LAL, Manager
Local Reimbursements Section

Hearing Date: March 23, 2012
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ITEM _____
DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Education Code Section 51934, 51938, and 51939 (Formerly 51201.5 and 51229.8)
Statutes 1991, Chapter 818; Renumbered by Statutes 2003, Chapter 650

AIDS Instruction (CSM-4422)

and

Education Code Sections 51934, 51938, 51939, and 51933(b)(2)
(Formerly 51201.5, 51554, and 51553(b)(1)(A))
Statutes 1998, Chapter 403; Renumbered by Statutes 2003, Chapter 650

AIDS Prevention Instruction (99-TC-07, 00-TC-01)
11-PGA-05

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request to amend the parameters and guidelines for the *AIDS Instruction and AIDS Prevention Instruction* programs, filed by the State Controller's Office, to update the language of the parameters and guidelines to reflect the changes to the Education Code sections that were reorganized by Statutes 2003, chapter 650 (SB 71). In addition, the State Controller's Office requests amendments to update the boilerplate language.

Background

On February 25, 1993, for the *AIDS Instruction* program, and on October 24, 2002, for the *AIDS Prevention Instruction* program, the Commission on State Mandates (Commission) adopted statements of decision finding that Education Code sections 51201.5, 51229.8, 51553, and 51554 (as added or amended in 1991 and 1998) impose reimbursable state-mandated programs upon school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. The parameters and guidelines for these programs were consolidated on December 2, 2003, and authorize reimbursement for the following activities and costs:

- In-service training for school district employees assigned the responsibility for HIV/AIDS prevention instruction in grades 7-12.
- The salaries and benefits of non-classroom district employees, such as resource teachers, and the reasonable costs of consultants who provide the mandated instruction to students.
- The costs of planning for the instruction and in-service training.
- The costs incurred to select and pay for instructional materials.
- Providing written notification to parents or guardians about the AIDS prevention instruction and their options.

- Providing notification to parents or guardians each time a guest speaker or assembly on AIDS prevention is scheduled.
- Providing notification to parents or guardians at the beginning of each school year about instruction on sexually transmitted diseases, AIDS, human sexuality or family life.
- One-time cost of revising the annual parent notification regarding the right to obtain a copy of Education Code sections 51201.5 and 51553.
- Keeping on file copies of Education Code sections 51201.5 and 51553.

Statutes 2003, chapter 650 (SB 71) established the California Comprehensive Sexual Health and HIV/AIDS Prevention Education Act which provides districts, administrators and teachers with a clearly defined framework to follow when providing students with vital sexual health information. As part of this bill, existing provisions were reorganized by moving the requirements of Education Code sections 51201.5, 51229.8, 51553, and 51554 to Education Code sections 51933, 51934, 51938, and 51939. Nonsubstantive changes were made to the language in those sections. This language did not change the reimbursable activities.

On September 29, 2011, the State Controller's Office requested that these parameters and guidelines be amended to reflect the changes to the Education Code sections that were reorganized by Statutes 2003, chapter 650 (SB 71) and to update the boilerplate language.¹

Discussion

Staff reviewed the statutes and the State Controller's request. Non-substantive changes were made to the parameters and guidelines to renumber Education Code section 51201.5, 51229.8, 51553 and 51554 and to bring them into conformity with the other parameters and guidelines adopted by the Commission.

The State Controller's Office requested two amendments that staff is recommending be denied.

First, the State Controller deleted the test claim statute in the title section of the parameters and guidelines and replaced it with the statute that is the subject of this amendment request. The test claim statute cannot be deleted. It is the subject of the original test claim filing, and the statute that the Commission determined was a state-mandated program. It provides the Commission's jurisdiction for determining that this program is reimbursable under article XIII B, section 6 of the California Constitution. Therefore, staff retained this statute in the title and added Statutes 2003, chapter 650, the subject of this amendment, to the title.

The original parameters and guidelines state that several of the reimbursable activities commence on January 1, 1999. The Controller's Office changed that date to January 1, 2004, the date Statutes 2003, chapter 650 became effective. This is not correct. Statutes 2003, chapter 650 did not change the reimbursable activities, or the date they became effective. It merely reorganized code sections.² Therefore, staff did not make this date change.

¹ Exhibit A.

² Where there is an express repeal of a statute and a re-enactment of a portion of its provisions at the same time, the old law is continued in force without interruption. (Gov. Code, § 9605; *In re Estate of Martin* (1908) 153 Cal. 225.)

Staff modified all other sections of the parameters and guidelines as discussed below.

I. Summary of the Mandate

The State Controller's Office requested that this section be amended to reflect the changes to the Education Code sections that were reorganized by Statutes 2003, chapter 650 (SB 71). Staff revised this section to add the following language:

Statutes 2003, Chapter 650 (SB 71) reorganized Education Code sections 51201.5, 51229.8, 51553, and 51554 to sections 51933, 51934, 51938, and 51939.

III. Period of Reimbursement

The State Controller's Office requested that this section be amended to update the boilerplate language.

Effective Date of Boilerplate Language

Each set of parameters and guidelines include language that is common to all parameters and guidelines, and provides guidance to claimants on the procedures for filing reimbursement claims, the documentation required to support the reimbursement claims, records retention requirements and the legal and factual basis for the parameters and guidelines. This language is known as "boilerplate language." When the boilerplate language is amended, certain sections will have different effective dates, depending on different statutes.

Staff added the effective dates for the boilerplate language as further discussed in the analysis. As proposed, Section III, Period of Reimbursement, states the following:

The amendments made to these parameters and guidelines become effective as follows:

The amendment made to Section V(B) of these parameters and guidelines addressing the indirect cost rate, is effective beginning July 1, 2010. Pursuant to Government Code section 17557(d)(1), "A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The State Controller's Office filed this request to amend the parameters and guidelines on September 29, 2011, making the amendment to Section V(B) of these parameters and guidelines effective for the 2010-2011 fiscal year.

The remaining amendments to these parameters and guidelines are statements of existing law and do not change the reimbursement for this program.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c) between November 15 and February 15, a school district filing an

annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)

5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

V. Claim Preparation and Submission

1) *Amendments Proposed to the Indirect Cost Rate Language*

The Controller proposed revising the boilerplate language for the indirect cost rate. Currently, the language allows school districts to use the J-380 *non-restrictive* indirect cost rate approved by the Department of Education. The Controller's Office proposes that the method now be a "*restricted* indirect cost rate for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year costs." (Emphasis added.)

After this language was proposed, staff was informed that in 2003-2004, when all districts converted to SACS (Standardized Account Code Structure), the California Department of Education discontinued the software for the J-380 and J-580, and approved restricted indirect cost rates for school districts.

As a result, at the January 2012 hearing, the Commission adopted new indirect cost rate language for school districts as follows:³

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

Staff revised the *AIDS Instruction and AIDS Prevention Instruction* parameters and guidelines to include this language. This language will ensure that the parameters and guidelines are consistent with the practices of the State Controller and California Department of Education (CDE). As described below, this amendment is effective beginning July 1, 2010, pursuant to Government Code section 17557(d)(1).

The general rule for the effective date of a parameters and guidelines amendment is governed by Government Code section 17557(d)(1). That section provides that an amendment resulting from a request filed on or before February 15 following a fiscal year, "shall establish reimbursement eligibility for that fiscal year." Applying the general rule to the proposed amendments here results in an effective date of July 1, 2010.

In 2011, the Legislature enacted SB 112 (Statutes 2011, chapter 144) to revise when amendments to boilerplate language in parameters and guidelines become effective. SB 112 amended Government Code section 17557(d)(2)(H) to provide that a request for amendment of the boilerplate language in parameters and guidelines "that *does not increase or decrease reimbursable costs* shall limit the eligible filing period commencing with the fiscal year in which the amended parameters and guidelines were adopted." If section 17557(d)(2)(H) applies, then the changes to the boilerplate would be effective on July 1, 2011.

Staff finds that the amendment to the indirect cost rate affects reimbursable costs and, thus, the correct period of reimbursement for the change, if adopted, is governed by the general rule

³ Amendment to Parameters and Guidelines for the *Pupil Promotion and Retention* program, (10-PGA-03, 98-TC-19).

provided in Government Code section 17557(d)(1), and becomes effective beginning July 1, 2010.

An indirect cost rate is the percentage of an organization's indirect costs to its direct costs and is a standardized method of charging individual programs for their share of indirect costs. The United States Department of Education provides the following guidance on the differences between restricted and unrestricted indirect cost rates:

Unrestricted indirect cost rates are those calculated for use on programs without limitations on indirect costs. Certain ED grant programs have a statutory requirement prohibiting the use of federal funds to supplant non-federal funds. These programs require the use of a restricted indirect cost rate, computed in accordance with 34 CFR 76.564-76.569. Generally, adjustments to the unrestricted rate calculation are made and *result in a lower rate* to claim indirect cost reimbursement on restricted rate programs.⁴

The CDE cost rates are negotiated rates between CDE and the United States Department of Education. The United States Department of Education has approved the fixed with carry-forward restricted rate methodology for calculating indirect cost rates for California LEAs. CDE has been delegated authority to calculate and approve indirect cost rates annually for LEAs.⁵ According to the California School Accounting Manual:

Approved indirect cost rates for K–12 LEAs, including charter schools, are posted online annually at <http://www.cde.ca.gov/fg/ac/ic>, usually in early spring. The rates may be used, as appropriate, to budget, allocate, and recover indirect costs for federal programs, grants, and other assistance governed by the Office of Management and Budget (OMB) Circular A-87, the *Education Department General Administrative Regulations* (EDGAR), and the *Code of Federal Regulations* (CFR), Title 34. The rates may also be used for state programs, subject to any restrictions that may govern the individual programs.⁶

Here, the proposed change to the boilerplate language changes the indirect cost rate from a “nonrestrictive indirect cost rate” to the current restricted indirect cost rates adopted by the CDE. This change will generally decrease the reimbursable costs.⁷ Thus, the general rule for the effective date for an amendment of the parameters and guidelines applies. Therefore, staff finds that the appropriate effective date for the amendment to the indirect cost rate is July 1, 2010.

- 2) *Amendments Proposed to Clarify and Provide Notice of Existing Law Regarding Direct Cost Reporting, Offsetting Revenues, State Controller's Revised Claiming Instructions, Remedies Before the Commission, and the Legal and Factual Basis for Parameters And Guidelines.*

The following proposed amendments to the parameters and guidelines have no effective date since they are statements of existing law and do not change any requirements. The California Supreme Court has found that “a statute that merely clarifies, rather than changes, existing law

⁴ United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9 (emphasis added).

⁵ California School Accounting Manual, 2011 Edition, p 915-1.

⁶ *Id.*, p. 915-7, underlining added (italics in original).

⁷ See United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9.

does not operate retrospectively even if applied to transactions predating its enactment” “because the true meaning of the statute remains the same.”⁸ The following amendments are proposed for purpose of clarification and to provide notice of the law to the claimants:

V.A. Direct Cost Reporting

Revise this section to include updated boilerplate language that conforms to other parameters and guidelines recently adopted by the Commission.

This section provides guidance to claimants regarding how to file their reimbursement claims for the direct costs incurred to comply with the mandated program.

VII. Offsetting Savings and Reimbursements

Revise title of this section for the sake of clarity, to delete “savings” (since there are no offsetting savings for this mandate) and replace it with “revenues” (since there may be offsetting revenues for this mandate) and make changes to the text of this section to make it consistent with the changes to the title.

The proposed amendment to Section VII simply updates the language regarding offsetting revenue to conform to current boilerplate changes and to make the provision in this set consistent with section 1183.1(a)(7) of the Commission’s regulations. Section 1183.1(a)(7) requires that the parameters and guidelines contain a section on offsetting revenues and reimbursements to the extent applicable.

Staff recommends that the Commission amend these sections of the parameters and guidelines as requested by the Controller and discussed above.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines, beginning on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

⁸ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

PROPOSED AMENDMENT TO CONSOLIDATION OF PARAMETERS AND GUIDELINES

Education Code Sections 51934, 51938, and 51939 (Formerly 51201.5 and 51229.8)
Statutes 1991, Chapter 818; Renumbered by Statutes 2003, Chapter 650

AIDS Instruction (CSM 4422)
and

Education Code Sections 51934, 51938, 51939, and 51933(b)(2)
(Formerly 51201.5, 51554 and 51553(b)(1)(A))
Statutes 1998, Chapter 403; Renumbered by Statutes 2003, Chapter 650

AIDS Prevention Instruction (99-TC-07, 00-TC-01)
11-PGA-05

I. SUMMARY OF THE MANDATE

The Commission on State Mandates (Commission), on February 25, 1993, determined that the provisions of Education Code sections 51201.5 and 51229.8, as added by Statutes 1991, chapter 818, impose a new program or higher level of service in an existing program on school districts, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

The Commission determined that the provisions of Education Code sections 51201.5 and 51229.8 require school districts to cooperatively plan and conduct in-service training for all teachers and school employees who provide AIDS prevention instruction, including salaries and benefits of resource teachers who instruct employees and students; to provide appropriate written notice explaining the purpose of the AIDS prevention instruction to each pupil's parent or guardian; and to participate in the selection and purchase of AIDS instructional materials.

The Commission also determined that providing in-classroom AIDS prevention instruction to students does not impose a new program or a higher level of service in an existing program on school districts. On October 24, 2002, the Commission adopted its statement of decision finding that Education Code sections 51201.5 and 51554 as added or amended by Statutes 1998, chapter 403 impose new activities on school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Including in the AIDS prevention instruction requirements the following:
 - (1) emphasis on monogamy and the avoidance of multiple sexual partners;
 - (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) requiring that the

instruction be consistent with sex education course criteria of Education Code section 51553 (Ed. Code, § 51201.5, ~~subd.~~(b).);

- Revising the annual parent or guardian notifications regarding the right to obtain a copy of Education Code sections 51201.5 and 51553 from the school district (Ed. Code, § 51201.5, ~~subd.~~(d).);
- Keeping file copies of Education Code sections 51201.5 and 51553 and making them available to parents or guardians on request (Ed. Code, § 51201.5, ~~subd.~~(d).);
- Notifying parents or guardians by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) information to parents on their right to obtain a copy of Education Code sections 51201.5 and 51553 from the district. This activity is a new program or higher level of service only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. Assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student are not mandated and are therefore at the option of the school or school district (Ed. Code, § 51201.5, ~~subd.~~(d)(3).);
- Providing notification to parents or guardians, at the beginning of each school year or, for pupils that enroll thereafter, at the time of that pupil's enrollment, about instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or district administrator that is employed by the district only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. Assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student are not mandated and are therefore at the option of the school or school district (Ed. Code, § 51554, ~~subd.~~(b).).

Statutes 2003, Chapter 650 reorganized these provisions by moving the requirements of Education Code sections 51201.5, 51229.8, 51553, and 51554 to Education Code sections 51933, 51934, 51938, and 51939. The reimbursable activities remain unchanged.

On March 23, 2012, the Commission amended the parameters and guidelines to reflect the new code sections and to update the boilerplate language.

In addition, for costs incurred beginning July 1, 2010, the amended parameters and guidelines require school districts to use the California Department of Education approved indirect cost rate for the year that funds are expended.

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, with students in grades 7 to 12, which incurs increased costs ~~due to~~ as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

~~Pursuant to Government Code section 17557(d)(1), “A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The State Controller’s Office filed this request to amend the parameters and guidelines on September 29, 2011, making the amendments to these parameters and guidelines effective for the 2010-2011 fiscal year.~~

~~Therefore, amendments to these parameters and guidelines, including the amendment made to Section V(B) addressing the indirect cost rate, are effective beginning July 1, 2010.~~

~~The amendments made to these parameters and guidelines become effective as follows:~~

~~The amendment made to Section V(B) of these parameters and guidelines addressing the indirect cost rate, is effective beginning July 1, 2010. Pursuant to Government Code section 17557(d)(1), “A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The State Controller’s Office filed this request to amend the parameters and guidelines on September 29, 2011, making the amendment to Section V(B) of these parameters and guidelines effective for the 2010-2011 fiscal year.~~

~~The remaining amendments to these parameters and guidelines are statements of existing law and do not change the reimbursement for this program.~~

~~Reimbursement for state-mandated costs may be claimed as follows:~~

- ~~1. Actual costs for one fiscal year shall be included in each claim.~~
- ~~2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.~~
- ~~3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.~~
- ~~4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c) between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)~~
- ~~5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).~~
- ~~6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.~~
- ~~1. Government Code section 17557 requires that a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim~~

~~for AIDS Prevention Instruction was filed on March 20, 2000. However, Statutes 1998, chapter 403 became effective January 1, 1999. Therefore, this consolidated set of parameters and guidelines is operative for costs incurred from January 1, 1999, and beyond.~~

~~Costs for AIDS Instruction (CSM 4422) that have been claimed for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003 as of the effective date of these parameters and guidelines pursuant to the State Controller's claiming instructions for Program 123 may not be claimed and are not reimbursable under these parameters and guidelines. Reimbursement for costs for AIDS Prevention Instruction (99-TC-07 and 00-TC-01) for fiscal years 1998-1999 through 2002-2003 may be claimed for activities specified in section IV. of these parameters and guidelines designated with "Beginning January 1, 1999..."~~

~~Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions.~~

~~If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

IV. REIMBURSABLE ACTIVITIES

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.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

A. Instructional Costs

1. In-service training

The costs of instructors in providing HIV/AIDS prevention instruction to school district employees with assigned responsibility for providing the HIV/AIDS

prevention instruction to grades 7-12. In addition, the salaries and related benefits for the time of the school district employee with assigned responsibility for HIV/AIDS prevention instruction in grades 7-12, while in the training class is also reimbursable.

2. HIV/AIDS Prevention Instruction

The salaries and related benefits of non-classroom district employees, such as resource teachers, who provide this mandated HIV/AIDS prevention instruction to students of the district will be reimbursed.

Beginning January 1, 1999, instruction includes the following: (1) emphasis on monogamy and the avoidance of multiple sexual partners; (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) requiring that the instruction be consistent with sex education course criteria of Education Code section [51933 \(formerly Ed. Code, § 51553\)](#). (Ed. Code, § [51934\(b\)](#), ~~formerly Ed. Code, § 51201.5, subd. (b)~~);

The reasonable costs of consultants providing this instruction are also reimbursable. However, in-classroom teacher time is not a reimbursable item.

3. Planning

The costs of planning by the school district and by the county office of education for the AIDS instruction in-service program. The salaries and benefits of district employees participating in this cooperative in-service training and planning project are reimbursable.

4. Instructional Materials

The salaries and benefits of the employees of the school district and of the county office of education involved in the selection process that identifies instructional materials and the cost of those materials are reimbursable.

Beginning January 1, 1999, instructional material must accurately reflect Education Code section [51934\(b\) \(formerly Ed. Code, § 51201.5, subdivision \(b\)\)](#).⁺

B. Notification

1. Annual Parent Notification

a. Providing written notification to parents or guardians informing them of planned AIDS prevention instruction and their options.

2. Parent Notification of Guest Speaker and/or Assembly on AIDS Prevention

a. Beginning January 1, 1999, notifying parents or guardians by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, and each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and

⁺ ~~See Appendix A.~~

(c) informing parents or guardians of their right to obtain a copy of Education Code sections 51933, 51934 (formerly 51201.5, and 51938 (formerly 51533)) from the district. This activity is reimbursable only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction.² (Ed. Code, § 51938(a)(2), (formerly Ed. Code, § 51201.5(d)(3), subd. (d)(3).))

- b. Beginning January 1, 1999, notifying parents or guardians at the beginning of each school year, or for pupils that enroll thereafter, at the time of that pupil's enrollment, about instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or school district administrator personnel that is employed by the district. This activity is reimbursable only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction.³ (Ed. Code, § 51938(a)(2), formerly Ed. Code, § 51554, subd. (b).)

C. Education Code sections 51933 51934, and 51938 (formerly 51201.5 and 51553)

1. Beginning January 1, 1999, the one-time cost of revising the annual parent or guardian notification regarding the right to obtain a copy of Education Code sections 51933, 51934, and 51938 (formerly 51201.5 and 51553) from the school district.
1. Beginning January 1, 1999, keeping on file copies of Education Code sections 51933, 51934, and 51938 (formerly Ed. Code, §§ 51201.5 and 51553) to give out on request.

V. CLAIM PREPARATION AND SUBMISSION

Beginning with reimbursement claims filed for fiscal year 2003-2004 and beyond, actual costs for reimbursable activities IV. B. 1 and 2 shall be claimed based on the uniform allowance of \$0.0664 per notification adopted by the Commission pursuant to Government Code section 17557. The uniform allowance shall be adjusted each subsequent year by the Implicit Price Deflator referenced in Government Code section 17523.

The uniform allowance covers all the direct and indirect costs of performing the activities described in section IV B. 1 and 2. Direct costs are those costs incurred specifically for the reimbursable activities. Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Uniform Allowance for *AIDS Prevention Instruction* (Activities IV. B 1 and 2 of these parameters and guidelines) – The uniform allowance is comprised of a fixed cost per

² Notification for assemblies or guest speakers that occur or appear more frequently is not reimbursable.

³ Ibid.

notification distributed to parents and guardians. Reimbursement is determined by multiplying the uniform allowance for the appropriate fiscal year by the number of notifications.

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV A and C of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

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.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets ~~and Equipment~~

Report the purchase price paid for fixed assets ~~and equipment~~ (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset ~~or equipment~~ is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Beginning July 1, 2010, school districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

~~School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.~~

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, ~~subdivision~~ (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁴ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents 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.

⁴ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING ~~SAVINGS REVENUES~~ AND OTHER REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

~~Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds (e.g., Instructional Materials Fund) shall be identified and deducted from this claim.~~

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, ~~subdivision (bc)~~, the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, ~~subdivision (d)(12)~~, issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, ~~subdivision (ad)~~, and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

APPENDIX A

Education Code section 51201.5, as amended by Statutes 1998, chapter 403:

~~(a) Commencing in the 1992-93 school year, school districts shall ensure that all pupils in grades 7 to 12, inclusive, or the equivalent thereof, except as otherwise provided in subdivision (c), receive AIDS prevention instruction from adequately trained instructors in appropriate courses. Each pupil shall receive the instruction at least once in junior high or middle school and once in high school. For purposes of this subdivision, "school district" includes county boards of education, county superintendents of schools, and the State Schools for the Handicapped.~~

~~(b) The required AIDS prevention instruction shall accurately reflect the latest information and recommendations from the United States Surgeon General, federal Centers for Disease Control, and the National Academy of Sciences, and shall include the following:~~

~~(1) Information on the nature of AIDS and its effects on the human body.~~

~~(2) Information on how the human immunodeficiency virus (HIV) is and is not transmitted, including information on activities that present the highest risk of HIV infection.~~

~~3) Discussion of methods to reduce the risk of HIV infection. This instruction shall emphasize that sexual abstinence, monogamy, the avoidance of multiple sexual partners, and abstinence from intravenous drug use are the most effective means for AIDS prevention, but shall also include statistics based upon the latest medical information citing the failure and success rates of condoms and other contraceptives in preventing sexually transmitted HIV infection and information on other methods that may reduce the risk of HIV transmission from intravenous drug use. Nothing in this section shall be construed to supersede Section 51553.~~

~~(4) Discussion of the public health issues associated with AIDS.~~

~~(5) Information on local resources for HIV testing and medical care.~~

~~(6) Development of refusal skills to assist pupils in overcoming peer pressure and using effective decision-making skills to avoid high-risk activities.~~

~~(7) Discussion about societal views on AIDS, including stereotypes and myths regarding persons with AIDS. This instruction shall emphasize compassion for persons suffering from debilitating handicaps and terminal diseases, like AIDS.~~

~~(c) AIDS prevention instruction may not be conducted in a manner that advocates drug use, a particular sexual practice, or sexual activities. AIDS prevention instruction shall be consistent with Section 51553.~~

~~(d) At the beginning of each school year or, with respect to a pupil who enrolls who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, the governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall provide the parent or guardian of each pupil in grades 7 to 12, inclusive, or the equivalent thereof, with written notice explaining the purpose of the AIDS prevention instruction and information stating the parent or guardian's right to request a copy of this section and Section 51553, related to AIDS prevention instruction. The governing board of each school district, each county board of education, and each county superintendent of schools,~~

~~as applicable, shall keep on file copies of this section and Section 51553. The Superintendent of Public Instruction shall provide the parent or guardian of each pupil in grades 7 to 12, inclusive, or the equivalent thereof, in the State Schools for the Handicapped with written notice explaining the purpose of the AIDS prevention instruction.~~

~~(1) The notice shall specify that any parent or guardian may request that his or her child or ward not receive instruction in AIDS prevention. No pupil shall attend the AIDS prevention instruction if a written request that he or she not attend has been received by the school. For the governing boards of school districts, this notification shall accompany the reporting of rights and responsibilities required by Section 48980.~~

~~(2) If authorized by the school district governing board, a school district may require parental consent prior to providing instruction on AIDS prevention to any minor pupil.~~

~~(3) At any time that an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, or anytime an assembly is held to deliver AIDS prevention instruction, notification shall be sent to the pupils' parents or legal guardians through regular United States mail, or any other method that the school district, county board of education, or county superintendent of schools, as applicable, commonly uses to communicate individually in writing to all parents or guardians, at the beginning of the school year or, with respect to a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment. If arrangements for this instruction are made after these occurrences, notice shall be mailed, or provided by the alternative method of notification otherwise commonly used, no fewer than 10, and no more than 15, days before the instruction is delivered. Notification sent pursuant to this paragraph shall include the date of the instruction, the name of the organization or affiliation of each guest speaker, and information stating the parent or guardian's right to request a copy of this section and Section 51553, related to AIDS prevention instruction. The governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall keep on file copies of this section and Section 51553.~~

~~(e) All school districts shall ensure all of the following:~~

~~(1) That instructional materials related to this instruction are available.~~

~~(2) That these instructional materials are appropriate for use with pupils of various ages and learning abilities.~~

~~(3) That these instructional materials may be used effectively with pupils from a variety of ethnic, cultural, and linguistic backgrounds, and special needs.~~

~~(f) A pupil shall not be subject to disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive the instruction described in subdivision (a) and the pupil does not receive the instruction.~~

~~(g) While the instruction described in subdivision (a) is being delivered, an alternative educational activity shall be made available to pupils whose parents or guardians have requested that they not receive the instruction described in subdivision (a).~~

Commission on State Mandates

Original List Date: 10/6/2011
Last Updated: 2/15/2012
List Print Date: 02/17/2012
Claim Number: 11-PGA-05
Issue: AIDS Instruction and AIDS Prevention Instruction

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916)323-5849 Email jspano@sco.ca.gov Fax: (916)327-0832
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Ms. Donna Ferebee Department of Finance (A-15) 915 L Street, 11th Floor	Tel: (916)445-3274 Email donna.ferebee@dof.ca.gov Fax: (916)323-9584

Palchik, Heidi@CSM

From: Carney, Laurie [Laurie.Carney@dof.ca.gov]
Sent: Monday, February 27, 2012 11:04 AM
To: Palchik, Heidi@CSM
Subject: AIDS Instruction & Prevention DSA

Re: 2/22/12 Draft Staff Analysis of the proposed amendments to the Ps & Gs for AIDS Instruction and AIDS Prevention Instruction

Hi, Heidi...

I tried calling your office, but there was no answer (not even voice mail). Will you please forward my note to the appropriate staff person? Thank you in advance :)

I have reviewed the DSA cited above (to be heard March 23) as well as the SCO's 9/29/11 request for amendments. The SCO's request points out that Chapter 650, Statutes of 2003, renumbered Education Code Section 51229.8 to 51935, and I confirmed this by reviewing the Ed Code before and after this legislation passed.

Although the original Ps & Gs reference Education Code Section 51229.8, the proposed Ps & Gs amendment does not reference Education Code Section 51935. I believe this is an oversight, but if not, can someone call me to explain?

Thank you,

Laurie Carney
Finance Budget Analyst
Education Systems Unit
California Department of Finance
(916) 445-0328



Exhibit D

JOHN CHIANG
California State Controller
Division of Accounting and Reporting

March 9, 2012

Ms. Nancy Patton
Acting Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Draft Staff Analysis, Proposed Amendment to Parameters and Guidelines, Schedule for Comments, and Notice of Hearing
Request to Amend Parameters and Guidelines
AIDS Instruction and AIDS Prevention Instruction, 11-PGA-05
(CSM-4422, 99-TC-07, and 00-TC-01)
Education Code sections 51201.5, et al
California State Controller, Requestor

Dear Ms. Patton:

We have reviewed the draft analysis and proposed amendment to parameters and guidelines submitted by Commission staff. Below are our comments and recommendations. Proposed additions are underlined and deletion is indicated with strikethrough as follows:

Page 15:

VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than ~~60~~ 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed.

COMMENT: The word "Revised" should be included in the title for consistency. Chapter 144, Statutes of 2011 amended Government Code section 17558, which extended the Controller's time limit to issue claiming instructions from 60 days to 90 days after receiving adopted or amended parameters and guidelines.

Ms. Nancy Patton
March 9, 2012
Page 2

Should you have any questions regarding the above, please contact Afsana Saida at (916) 324-7870, or e-mail to asaida@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAY LAL', with a long horizontal line extending to the right.

JAY LAL, Manager
Local Reimbursements Section