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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.