

**COMMISSION ON STATE MANDATES**

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November 26, 2002

Mr. Keith Petersen  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Mr. Mike Havey  
State Controller's Office  
Division of Accounting and Reporting  
Local Reimbursement Section  
3301 C Street, Suite 501  
Sacramento, CA 95816

**RE: Draft Staff Analysis**

*Certification of Teacher Evaluator's Demonstrated Competence*, 99-4136-I-03  
Manhattan Beach Unified School District, Claimant  
Education Code Section 51225.3  
Statutes 1983, Chapter 498

Dear Mr. Petersen and Mr. Havey:

The draft staff analysis of the above-named *Certification of Teacher Evaluator's Demonstrated Competence* incorrect reduction claim (IRC) is enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis by Friday, **December 27, 2002**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This IRC is set for hearing on Thursday, **January 23, 2003**, at the State Capitol, Sacramento, California. The final staff analysis will be issued on or about Friday, January 10, 2003. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Cathy Cruz at (916) 323-8218 if you have any questions.

Sincerely,

Handwritten signature of Shirley Opie in cursive script.

SHIRLEY OPIE  
Assistant Executive Director

Enclosures

cc: Mr. Steve Smith, Mandated Cost Systems, Inc. (No attachments)

MAILED:                       
FAXED:                       
DATE: 11/26/02  
INITIAL: VS  
FILE:                       
WORKING BINDER:

**ITEM \_\_\_\_**

**INCORRECT REDUCTION CLAIM  
DRAFT STAFF ANALYSIS**

Education Code Section 3 5 160.5

Statutes 1983, Chapter 498

Manhattan Beach Unified School District, Claimant

*Certification of Teacher Evaluator's Demonstrated Competence*

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**EXECUTIVE SUMMARY**

The Executive Summary will be included with the Final Staff Analysis.

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## CLAIMANT

Manhattan Beach Unified School District

## CHRONOLOGY

### Test Claim

- 09/20/84 San Jose Unified School District filed a test claim with the Board of Control
- 09/26/85 Commission on State Mandates (Commission) determined that Statutes 1983, chapter 498 imposes reimbursable state mandated costs
- 10/24/85 Commission adopted its statement of, decision
- 04/24/86 Commission adopted original parameters and guidelines
- 01/24/91 Commission amended parameters and guidelines
- 09/95 State Controller's Office (SCO) issued claiming instructions
- 07/22/96 Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate effective with the 1996-1997 fiscal year

### Incorrect Reduction Claim (IRC)

- 11/25/97 Claimant filed reimbursement claim for fiscal year 1995-1996s
- 04/05/99 Claimant requested the SCO to reconsider its payment action
- 05/07/99 SCO issued a notice of adjustment
- 04/04/00 Claimant filed an IRC with the Commission
- 04/13/00 Commission sent a copy of the IRC to SCO
- 07/26/00 SCO filed comments on the claimant's IRC
- 01/30/01 Claimant filed a rebuttal to the SCO's comments
- 09/09/02 Claimant substituted Mr. Keith B. Petersen as its representative
- 1 1/26/02 Draft staff analysis issued

## **-COMMISSION AUTHORITY**

Government Code section 1755 1, subdivision (b), requires the Commission to determine whether the SCO has incorrectly reduced payments to a local agency or school district. That section states the following:

The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its statement of decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

### SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35 160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, \*establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education, policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
  1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
    - a. Time provided by personnel, other than the site principal, to train, assist or evaluate probationary teachers.
    - b. Training materials and clerical services for probationary teachers.
    - c. Registration fees and travel costs of probationary teachers attending training activities.

- d. Costs of substitute teachers provided for probationary teachers so that they might attend training activities including visitations to other teachers' classrooms to observe teaching techniques (limited to three such visitations per semester),
  - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.'

In September 1995, the SCO issued its claiming instructions.\* Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable. Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable; Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on November 30, 1996. The SCO adjusted the claim. The claimant submitted a reconsideration request with the SCO dated April 5, 1999.<sup>3</sup> On April 29, 1999, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.<sup>4</sup>

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<sup>1</sup> Exhibit A, page 33.

<sup>2</sup> Exhibit A, page 41.

<sup>3</sup> Exhibit A, page 71.

<sup>4</sup> Exhibit A, page 87.

Thus, on April 4, 2000, the claimant filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program? The claimant contends that the SCO incorrectly reduced its claim by \$61,152 for fiscal year 1995-1996, for the cost of training probationary teachers. Table 1, as shown below, lists the alleged incorrect reduction.

**TABLE 1**

<b>Cost Categories Disallowed</b>	<b>Alleged Incorrect Reduction</b>
1 <sup>st</sup> and 2 <sup>nd</sup> year Probationary Teacher Time	\$ 32,469
2-day Training Time for Probationary Teachers	<b>28,683</b>
<b>TOTAL</b>	<b>\$ 61,152</b>

**STATEMENT OF ISSUES**

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the staff analysis, staff concludes that the SCO did not incorrectly reduce this reimbursement claim.

**POSITIONS OF THE PARTIES**

**Claimant's Position .**

The claimant contends that the cost of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that probationary teacher training costs consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

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<sup>5</sup> Exhibit A, page 1.

The claimant states that “the [Commission] should be guided by the common rule of interpretation, which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation? Therefore, the claimant asserts that costs associated with the first category are allowed because the parameters and guidelines provide reimbursement for costs of “training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*”

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work 182 days a year, the claimant asserts that this mandate requires all first year probationary teachers to work a total of 184 work days, to include two additional 7-hour days for teacher training, occurring either after the regular workday or at the end of the regular work year, when a substitute teacher is not necessary.

#### **State Controller% Office Position**

The SCO argues that the parameters and guidelines “do not provide for reimbursement of salaries and wages for probationary teachers while they attend training.”<sup>7</sup> The SCO states that, in lieu of that, the parameters and guidelines reimburse, the cost of substitute teachers while the probationary teachers attend training<sup>8</sup>. The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training.<sup>9</sup> However, this request was withdrawn by letter dated June 23, 1995.<sup>9</sup> Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

### **STAFF ANALYSIS**

#### **Background**

The parameters and guidelines were originally adopted on April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training for a maximum of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B. 1.:

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<sup>6</sup> Exhibit A, page 5.

<sup>7</sup> Exhibit B, page 89.

<sup>8</sup> Exhibit B, page 95.

<sup>9</sup> Exhibit B, page 107.

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary-teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving' assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- ll. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
  - 1. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher's time.<sup>10</sup>

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions prior to the start of the school year required probationary teachers to work one or two days earlier than permanent teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: "The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction."

However, on June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because "after numerous discussions with Commission Staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied?"

On July 22, 1996, the Education Trailer Bill to the Budget Act of 1996 (Stats. 1996, ch. 204) repealed this mandate beginning with the 1996- 1997 fiscal year.

**Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?**

The claimant contends that the district required all its first year probationary teachers to work two additional 7-hour days for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work 182 days a year, this mandate requires all probationary teachers to work a total of 184 workdays for training occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary.

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<sup>10</sup> Exhibit B, page 102.

<sup>11</sup> Exhibit B, page 107.

Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that the parameters and guidelines “do not provide for reimbursement of salaries and wages for probationary teachers while they attend training.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training,

For the reasons provided below, staff finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests (CSM 96-365-O 1)*. Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement.<sup>12</sup> (Emphasis added.).

The claimant also cited the Commission’s decision in the parameters and guidelines for *American Government Course Document Requirements (97-TC-02)*, in which the Commission found the following to be reimbursable:

*Either* the cost of providing a *substitute teacher* for each teacher who attends a training session during the teacher’s normal classroom periods *or the additional payments* made to each teacher who attends a training session *outside the teacher’s normal classroom period* (after school or on Saturday). (Emphasis added.)<sup>13</sup>

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission’s parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular ‘school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities, However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Although a request to amend the parameters and guidelines was filed to include reimbursement for teachers salaries when training occurs outside the regular school day, that request was withdrawn. Therefore, staff finds that the Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 160.5 (Stats. 1983, ch. 498). Education Code section 35160.5,<sup>14</sup> as added by Statutes 1983,

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<sup>12</sup> Exhibit E, page 123,

<sup>13</sup> Exhibit F page 1.

<sup>14</sup> Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

chapter 498, required that the governing board of each school district, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations,
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized and met by the district.
- c) Filing of parent complaints regarding district employees.

Neither the test claim statute, the statement of decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. Since the 1959 Education Code,<sup>15</sup> the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Here, neither the school day, nor the school year, increased as a result of the test claim legislation. Accordingly, there is no showing that the state mandated an increased level of service on school districts resulting in increased costs for probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, staff finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

**Issue 2: Is the cost of salaries and benefits for probationary teacher's attending training and mentoring during the course of their *regular workday* a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?**

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers*," The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation." Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

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<sup>15</sup> Education Code sections 41420, 46113, 46141, and 46142.

<sup>16</sup> Exhibit A, page 5.

The SCO maintains that the parameters and guidelines “do not provide for reimbursement of salaries and wages for probationary teachers while they attend training.” The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, staff finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
  1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentdr Teacher Program cannot be claimed as a reimbursable cost,
    - a. Time provided by personnel, other- than the site principal, to tram, assist or evaluate probationary teachers,
    - b. Training materials and clerical services for probationary teachers.
    - c. Registration fees and travel costs of probationary teachers attending training activities.
    - d. *Costs of substitute teachers providedforprobationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
    - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.

- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers' classrooms to observe teaching techniques. The SCO's claiming instructions mirrored the Commission's parameters and guidelines. Thus, staff finds, that based on the express language contained in the parameters and guidelines, the claimant is only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

Staff also finds that the claimant's reliance on the Commission's decision in the *School Crimes Statistics Reporting and Validation IRC* is misplaced. In that case, the SCO reduced claims for training costs because training was not expressly included in the parameters and guidelines. The Commission found that training was an implicit cost of the claims and concluded that the costs to conduct training were reasonably necessary to comply with the mandate.

Here, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a result of complying with the test claim statute.<sup>17</sup> Staff finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district. This is consistent with the Commission's decision in *Physical Performance Tests (CSM 96-365-O 1)*, *Emergency Procedures, Earthquakes and Disasters (CSM-4241)*, and *Standardized Testing and Reporting (97-TC-23)*.

Accordingly, staff finds that the cost of salaries and benefits for probationary teachers to attend training sessions during that teacher's normal classroom hours is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim. However, if a substitute teacher is hired, the cost of the substitute teacher is reimbursable.

## CONCLUSION

Staff finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired. In addition, there is no evidence in the record to support the claimant's contention that the additional training provided outside the regular school year was mandated by this program.

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<sup>17</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 17514.

- School districts do not incur increased costs mandated by the state when probationary teachers attend training and mentoring during the course of their regular workday because this time is *absorbed* into the school day. Instead, the parameters and guidelines provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities.

### **STAFF RECOMMENDATION**

Staff reconxnds that the Commission adopt this staff analysis and deny the *Certification of Teacher Evaluator's Demonstrated Competence* IRC filed by the Manhattan Beach Unified School District (99-4136-I-03).



**ITEM \_\_\_\_**

**INCORRECT REDUCTION CLAIM  
DRAFT STAFF ANALYSIS**

Education Code Section 3 5 160.5

Statutes 1983, Chapter 498

Manhattan Beach Unified School District, Claimant

*Certification of Teacher Evaluator's Demonstrated Competence*

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**EXECUTIVE SUMMARY**

The Executive Summary will be included with the Final Staff Analysis.

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## CLAIMANT

Manhattan Beach Unified School District

## CHRONOLOGY

### Test Claim

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- , The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

Government Code section 17561, subdivision (d), authorizes the SCO to audit claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the SCO determines is excessive or unreasonable.

If the Commission determines that a reimbursement claim has been incorrectly reduced, California Code of Regulations, title 2, section 1185.1, requires the Commission to submit its statement of decision to the SCO and request that all costs that were incorrectly reduced be reinstated.

### SUMMARY OF THE MANDATE AND CLAIM

On October 24, 1985, the Commission adopted its decision that the *Certification of Teacher Evaluator's Demonstrated Competence* program constitutes a reimbursable state-mandated program. Education Code section 35 160.5, as added by Statutes 1983, chapter 498, requires that the governing board of each school district shall, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, #establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized by the district.
- c) Filing of parent complaints regarding district employees.

On April 24, 1986, the Commission adopted the original parameters and guidelines. These parameters and guidelines were subsequently amended on January 24, 1991, and described the following activities as eligible for reimbursement:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education, policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
  1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost.
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  - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.
- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.'

In September 1995, the SCO issued its claiming instructions.<sup>2</sup> Section 5, "Reimbursable Components," provides the following:

B. Probationary Certificated Employee Policies

(2) Training, Assisting and Evaluating Probationary Teachers

The costs of training, assisting and evaluating probationary teachers, over and above that provided to permanent teachers, are reimbursable. The salary and benefits of personnel, not including the site principal, plus training materials and clerical services used to train, assist or evaluate probationary teachers are reimbursable. The cost of consultants for the purpose of training and assisting probationary teachers, if personnel with the required skills are not available within the school district or county office of education, is reimbursable.' Registration fees, travel costs and the cost of substitute teachers provided for probationary teachers so that they can attend training activities, including visitation to observe other teacher's teaching techniques, are reimbursable. Visitations are limited to three visitations per semester.

The claimant filed its reimbursement claim for fiscal year 1995-1996 on November 30, 1996. The SCO adjusted the claim. The claimant submitted a reconsideration request with the SCO dated April 5, 1999.<sup>3</sup> On April 29, 1999, the SCO sent the claimant a notice of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. Specifically, the letter stated:

[The] Parameters and Guidelines do not provide reimbursement for probationary teachers training costs. In lieu of that, the [parameters and guidelines] reimburse the cost of substitute teachers while the probationary teachers attend training activities.<sup>4</sup>

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<sup>1</sup> Exhibit A, page 33.

<sup>2</sup> Exhibit A, page 41.

<sup>3</sup> Exhibit A, page 71.

<sup>4</sup> Exhibit A, page 87.

Thus, on April 4, 2000, the claimant filed an IRC on the *Certification of Teacher Evaluator's Demonstrated Competence* program? The claimant contends that the SCO 'incorrectly reduced its claim by \$61,152 for fiscal year 1995/1996, for the cost of training probationary teachers. Table 1, as shown below, lists the alleged incorrect reduction.

**TABLE 1**

<b>Cost Categories Disallowed</b>	<b>Alleged Incorrect Reduction</b>	
1 <sup>st</sup> and 2 <sup>nd</sup> year Probationary Teacher Time	\$	32,469
2-day Training Time for Probationary Teachers		<b>28,683</b>
<b>TOTAL</b>	<b>\$</b>	<b>61,152</b>

**STATEMENT OF ISSUES**

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THIS CLAIM?

1. Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?
2. Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?

For the reasons stated in the staff analysis, staff concludes that the SCO did not incorrectly reduce this reimbursement claim.

**POSITIONS OF THE PARTIES**

**Claimant's Position .**

The claimant contends that the cost of probationary teachers receiving mandated additional training should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program.

The claimant asserts that probationary teacher training costs consist of two categories:

- 1) probationary teachers receiving one-on-one training and mentoring (over and above that provided to permanent teachers) during the course of their regular work day; and
- 2) probationary teachers costs related to working extra hours and a longer work year due to the mandated additional training requirements.

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<sup>5</sup> Exhibit A, page 1.

The claimant states that “the [Commission] should be guided by the common rule of interpretation, which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation.”<sup>6</sup> Therefore, the claimant asserts that costs associated with the first category are allowed because the parameters and guidelines provide reimbursement for costs of “training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*”

Further, the claimant contends that the second category is reimbursable because it is consistent with allowable costs of other mandated programs, such as *Physical Performance Testing* and *American Government Course Document Requirements*. While permanent teachers work 182 days a year, the claimant asserts that this mandate requires all first year probationary teachers to work a total of 184 work days, to include two additional 7-hour days for teacher training, occurring either after the regular workday or at the end of the regular work year, when a substitute teacher is not necessary.

### **State Controller’s Office Position**

The SCO argues that the parameters and guidelines “do not provide for reimbursement of salaries and wages for probationary teachers while they attend training.”<sup>7</sup> The SCO states that, in lieu of that, the parameters and guidelines reimburse, the cost of substitute teachers while the probationary teachers attend training: The SCO also notes that on April 4, 1995, the Stockton Unified School District (SUSD) submitted a request to amend the parameters and guidelines to include salaries and wages for probationary teachers while they attend training.<sup>8</sup> However, this request was withdrawn by letter dated June 23, 1995.<sup>9</sup> Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training; ,

Therefore, the SCO disallowed the cost of salaries and benefits for training probationary teachers and associated indirect costs claimed under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator’s Demonstrated Competence* program.

## **STAFF ANALYSIS**

### Background

The parameters and guidelines were originally adopted on, April 24, 1986, and were subsequently amended on January 24, 1991, to allow reimbursement of individual administrator training for a maximum. of 10 days in any three-year period.

On April 4, 1995, the SUSD filed a request to amend the parameters and guidelines with the Commission. SUSD proposed to include the following language under Reimbursable Costs, section V.B.1.:

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<sup>6</sup> Exhibit A, page 5.

<sup>7</sup> Exhibit B, page 89.

<sup>8</sup> Exhibit B, page 95,

<sup>9</sup> Exhibit B, page 107.

- f. Probationary teacher time spent attending district or county office sponsored training sessions specific to probationary teachers after school or prior to the start of the school year.
- g. Probationary teacher time spent receiving assistance or training from district or county office employees as part of the probationary teacher training and assistance program.
- h. In-classroom probationary teacher time spent receiving training or assistance is not claimable.
- i. In cases where a substitute is provided, the claimant is only eligible to claim the substitute and not the probationary teacher's time.<sup>10</sup>

SUSD asserted that these amendments were necessary because the parameters and guidelines did not address whether probationary teacher time receiving training, assistance, and evaluation, was reimbursable. SUSD maintained that district-sponsored training sessions' prior to the start of the school year required probationary teachers to work one or two days earlier than permanent teachers, and thus, they worked a longer school year. During these training sessions, probationary teachers received orientation and training specific to their needs. Further, SUSD contended that the district-sponsored training sessions after school and the one-on-one training should be reimbursable because it took probationary teachers away from other duties.

To support its position, SUSD noted parameters and guidelines for programs that provide reimbursement for employee time spent receiving training, such as the *Emergency Procedures, Earthquakes, and Disasters* program. Specifically, the *Emergency Procedures, Earthquakes, and Disasters* Parameters and Guidelines provide reimbursement for: "The cost incurred by the district of employees attending [emergency procedures] meetings to receive instruction."

However, on June 23, 1995, SUSD withdrew its request to amend the parameters and guidelines because "after numerous discussions with Commission Staff and other interested parties, it is clear that any positive action resulting from clarifying this issue is more than offset by the possibility that re-opening this claim could result in the entire claim being denied."<sup>11</sup>

On July 22, 1996, the Education Trailer Bill to the Budget Act of 1996 (Stats, 1996, ch. 204) repealed this mandate beginning with the 1996- 1997 fiscal year.

**Issue 1: Is the cost of salaries and benefits for probationary teachers receiving additional training outside their regular workday or work year a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?**

The claimant contends that the district required all its first year probationary teachers to work two additional 'I-hour days for teacher training specifically attributable to this mandate. The claimant asserts that while permanent teachers work 182 days a year, this mandate requires all probationary teachers to work a total of 184 workdays for training occurring either after the regular workday or at the end of the regular work year when a substitute teacher is not necessary.

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<sup>10</sup> Exhibit B, page 102.

<sup>11</sup> Exhibit B, page 107.

Therefore, the claimant argues that the salary costs of probationary teachers to attend the training outside the regular workday or work year should be reimbursed because the training sessions exceed what is provided to permanent teachers.

The SCO maintains that the parameters and guidelines “do not provide for reimbursement of salaries and wages for probationary teachers while they attend training.” In lieu of that, the SCO states that the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training.

For the reasons provided below, staff finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year.

To support its arguments, the claimant cited the Commission’s decision in the parameters and guidelines for *Physical Performance Tests* (CSM 96-365-O 1). Specifically, the Commission found that:

Increased costs for *substitute teacher time* during the school day *or for teacher stipends* to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement.<sup>12</sup> (Emphasis added.)

The claimant also cited the Commission’s decision in the parameters and guidelines for *American Government Course Document Requirements* (97-TC-02), in which the Commission found the following to be reimbursable:

*Either* the cost of providing a *substitute teacher* for each teacher who attends a training session during the teacher’s normal classroom periods *or the additional payments* made to each teacher who attends a training session *outside the teacher’s normal classroom period* (after school or on Saturday). (Emphasis added.)<sup>13</sup>

It is true that the Commission previously found the cost of teachers to attend training sessions outside the regular school day to be reimbursable. However, in both of the above-mentioned programs, the Commission’s parameters and guidelines provided reimbursement for either the cost of a substitute teacher, if the training session was during the regular school day, or for teacher stipends to attend training outside the regular school day. The parameters and guidelines here clearly provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities. However, the parameters and guidelines do not explicitly provide reimbursement for teacher stipends to attend training outside the regular school day. Although a request to amend the parameters and guidelines was filed to include reimbursement for teachers’ salaries when training occurs outside the regular school day, that request was withdrawn. Therefore, staff finds that the Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired.

Moreover, the claimant states that the probationary teachers worked extra hours and a longer work year because the additional training was mandated by Education Code section 35 160.5 (Stats. 1983, ch. 498). Education Code section 35160.5,<sup>14</sup> as added by Statutes 1983,

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<sup>12</sup> Exhibit E, page 123.

<sup>13</sup> Exhibit F, page 13 1.

<sup>14</sup> Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

chapter 498, required that the governing board of each school district, as a condition for the receipt of school apportionments, adopt rules and regulations on or before December 1, 1984, establishing district policies regarding:

- a) The certification of the demonstrated competence of administrators who would be conducting teacher evaluations.
- b) Assurances that probationary teachers will have their needs for training, assistance, and evaluations recognized and met by the district.
- c) Filing of parent complaints regarding district employees.

Neither the test claim statute, the statement of decision, the parameters and guidelines, nor the evidence in the record supports the claimant's contention that the state has mandated additional training to be provided outside the regular school year. Since the 1959 Education Code,<sup>15</sup> the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 240 minutes in a day. Here, neither the school day, nor the school year, increased as a result of the test claim legislation. Accordingly, there is no showing that the state mandated an increased level of service on school districts resulting in increased costs for probationary teachers to attend additional training outside the regular workday or work year. If a school district chooses to increase the school day or the school year by requiring its probationary teachers to work additional days each fiscal year for teacher training, the district does so at its own discretion.

Therefore, staff finds that the cost of salaries and benefits for probationary teachers to attend the training outside the regular workday or work year is not reimbursable, and the SCO did not incorrectly reduce this portion of the claim.

**Issue 2: Is the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular workday a reimbursable cost under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program?**

The claimant contends that the cost of probationary teachers receiving mandated additional training during the regular workday should be reimbursed because it is authorized by the parameters and guidelines under the Probationary Certificated Employee Policies component of the *Certification of Teacher Evaluator's Demonstrated Competence* program. The claimant maintains that the parameters and guidelines provide reimbursement for costs of "training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers*?" The claimant asserts that "the [Commission] should be guided by the common rule of interpretation which provides that where express provisions of a rule are clear and unambiguous the explicit meaning of those provisions, interpreted in their ordinary and popular sense, controls the interpretation."<sup>16</sup> Therefore, the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

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<sup>15</sup> Education Code sections 41420, 46113, 46141, and 46142.

<sup>16</sup> Exhibit A, page 5.

The SCO maintains that the parameters and guidelines “do not provide for reimbursement of salaries and wages for probationary teachers while they attend training.” The SCO states that, in lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, the SCO states that a request to amend the parameters and guidelines to explicitly include salaries and wages for probationary teachers while they attend training was submitted by the SUSD on April 4, 1995. However, this request was subsequently withdrawn by letter dated June 23, 1995. Therefore, the SCO concluded that the parameters and guidelines did not intend to provide reimbursement for the salary costs of probationary teachers while attending training.

For the reasons provided below, staff finds that the SCO did not incorrectly reduce the claimant’s reimbursement claim for the cost of salaries and benefits for probationary teachers attending training and mentoring during the course of their regular work day.

Section V. of the parameters and guidelines, entitled “Reimbursable Costs,” provides that the following costs are reimbursable:

- A. Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district’s adopted policies shall be made by the governing board. [¶] . . . [¶]
- B. The establishment of district or county office of education policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district or county office of education.
  1. Training, assisting, and evaluating probationary teachers over and above that usually provided to permanent teachers by the district or county office of education. Copies of the approved previous policy must be included with claims for reimbursement. The cost of services or activities provided to probationary teachers funded by the Mentor Teacher Program cannot be claimed as a reimbursable cost,
    - a. Time provided by personnel, other-than the site principal, to train, assist or evaluate probationary teachers.
    - b. Training materials and clerical services for probationary teachers.
    - c. Registration fees and travel costs of probationary teachers attending training activities.
    - d. *Costs of substitute teachers provided for probationary teachers so that they might attend training activities* including visitations to other teachers’ classrooms to observe teaching techniques (limited to three such visitations per semester). (Emphasis added.)
    - e. Costs of consultants provided to train and assist probationary teachers if personnel with the required skills are not available within the school district or county office of education.

- C. The establishment of policies and procedures which parents or guardians of pupils enrolled in the district may use to present complaints regarding employees of the district that provide for appropriate mechanisms to respond to, and where possible resolve, the complaints.

The parameters and guidelines clearly provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities, including visitations to other teachers classrooms to observe teaching techniques. The SCO's claiming instructions mirrored the Commission's parameters and guidelines. Thus, staff finds, that based on the express language contained in the parameters and guidelines, the claimant is only entitled to reimbursement for salaries of substitute teachers while probationary teachers attend training and mentoring during the course of their regular workday.

Staff also finds that the claimant's reliance on the Commission's decision in the *School Crimes Statistics Reporting and Validation IRC* is misplaced. In that case, the SCO reduced claims for training costs because training was not expressly included in the parameters and guidelines. The Commission found that training was an implicit cost of the claims and concluded that the costs to conduct training were reasonably necessary to comply with the mandate.

Here, training is explicitly included in the parameters and guidelines. However, to be eligible for reimbursement, a school district must incur increased costs mandated by the state as a result of complying with the test claim statute.<sup>17</sup> Staff finds that school districts do not incur increased costs mandated by the state for the salaries and benefits of probationary teachers when they attend training and mentoring during the course of their regular workday. As discussed in Issue 1, neither the school day nor the school year increased as a result of the test claim legislation. Rather, training time is absorbed into the school day. Thus, there are no resultant increased costs mandated by the state to the school district. This is consistent with the Commission's decision in *Physical Performance Tests (CSM 96-365-01)*, *Emergency Procedures, Earthquakes and Disasters (CSM-4241)*, and *Standardized Testing and Reporting (97-TC-23)*.

Accordingly, staff finds that the cost of salaries and benefits for probationary teachers to attend training sessions during that teacher's normal classroom hours is not reimbursable, and therefore, the SCO did not incorrectly reduce this portion of the claim. However, if a substitute teacher is hired, the cost of the substitute teacher is reimbursable.

## CONCLUSION

Staff finds that the SCO did not incorrectly reduce the claimant's reimbursement claim on the *Certification of Teacher Evaluator's Demonstrated Competence* program based on the following findings:

- The Commission intended that probationary teacher training be provided during the regular school day when a substitute teacher could be hired. In addition, there is no evidence in the record to support the claimant's contention that the additional training provided outside the regular school year was mandated by this program.

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<sup>17</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1283-1284; Government Code section 17514.

- ⌘ School districts do not incur increased costs mandated by the state when probationary teachers attend training and mentoring during the course of their regular workday because this time is *absorbed* into the school day, Instead, the parameters and guidelines provide reimbursement for the costs of substitute teachers so that probationary teachers could attend training activities.

### **STAFF RECOMMENDATION**

Staff recommends that the Commission adopt this staff analysis and deny the *Certification of Teacher Evaluator's Demonstrated Competence IRC* filed by the Manhattan Beach Unified School District (99-4136-I-03).

