

**COMMISSION ON STATE MANDATES**

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January 8, 2003

Mr. Steve Smith  
Mandated Cost Systems, Inc.  
2275 Watt Avenue, Suite C  
Sacramento, CA 95825

Mr. Mike Havey  
State Controller's Office  
Division of Accounting and Reporting  
Local Reimbursement Section  
3301 C Street, Suite 501  
Sacramento, CA 958 16

**RE: Final Staff Analysis -January 23, 2003 Hearing**  
*Certification of Teacher Evaluator's Demonstrated Competence*  
99-4136-I-01, -02, and -04 through -39, Various Claimants  
Education Code Section 5 1225.3  
Statutes 1983, Chapter 498

Dear Mr. Smith and Mr. Havey:

The final staff analysis for the *Certification of Teacher Evaluator's Demonstrated Competence* incorrect reduction claims (IRCs) filed by Mandated Cost Systems, Inc. on behalf of various claimants is complete and enclosed for your review. Claimants' names are listed on the first page of the staff analysis.

Commission Hearing

These IRCS are set for hearing on Thursday, January 23, 2003, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. 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,

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Cathy Cruz at (916) 323-82 18 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enclosures

MAILED: 1/8/03  
DATE: 1/8/03  
INITIAL: JS  
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FILE: \_\_\_\_\_

## ITEM 6

### INCORRECT REDUCTION CLAIMS STAFF ANALYSIS

Education Code Section 35 160.5

Statutes 1983, Chapter 498

Ventura County Office of Education, Hayward Unified School District, Kings Canyon Joint Unified School District, Visalia Unified School District, Salinas City Elementary School District, Conejo Valley Unified School District, Claremont Unified School District, Oak Grove Elementary School District, Ventura Unified School District, Oceanside City Unified School District, Roseville Joint Union High School District, Folsom Cordova Unified School District, Palmdale School District, Moreland Elementary School District, Novato Unified School District, Modesto City Schools, San Benito Union High School District, Manteca Unified School District, El Monte Elementary School District, Las Virgenes Unified School District, Del Norte County Unified School District, Glendale Unified School District, Garden Grove Unified School District, San Lorenzo Unified School District, Lompoc Unified School District, Mojave Unified School District, Lodi Unified School District, San Juan Unified School District, Los Altos Elementary School District, Salinas Union High School District, Los Angeles County Office of Education, Morgan Hill Unified School District, Fairfield-Suisun Unified School District, Ojai Unified School District, Bellflower Unified School District, Berryessa Union School District, Livingston Union School District, Whittier Union High School District

#### *Certification of Teacher Evaluator 's Demonstrated Competence*

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#### EXECUTIVE SUMMARY

This analysis addresses the incorrect reduction claims (IRCs) filed by the 38 above-named county offices of education and school districts on the *Certification of Teacher Evaluator 's Demonstrated Competence* program. These IRCs were grouped for purposes of analysis because the State Controller's Office (SCO) submitted one set of comments and the primary issue regarding, increased costs incurred is identical in each IRC.<sup>1</sup> For the reasons outlined in this analysis, staff recommends that the Commission deny these IRCs.

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<sup>1</sup> The Commission's regulations permit analyses of IRCs from different local entities to be combined if the claims contain similar issues (Cal. Code Regs., tit. 2, § 1185, subd. (c)), Unless otherwise specified, "claimants" refers to the 38 above-named county offices of education and school districts.

### **Claimants' Position**

The 38 claimants contend that the SCO incorrectly reduced their claims, in an aggregate amount of over \$2.6 million for fiscal year 1995 1996, for the cost of training probationary teachers. It is their position 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.

### **State Controller's Office Position**

The SCO disallowed the cost of salaries and benefits for training probationary teachers because the parameters and guidelines "do not provide for reimbursement.. . while they attend training."

### **CONCLUSION**

Staff finds that the SCO did not incorrectly reduce the claimants' reimbursement claims 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 claimants' contention that the additional training provided outside the regular school year was mandated by this program.
- 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* IRCs filed by the 38 claimants listed at page 14.

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## **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)

11/13/96  
- 01/20/98 Claimants filed reimbursement claims for fiscal year 1995- 1996  
08/98 SCO issued remittance advices  
10/21/98  
- 04/26/99 Claimants requested the SCO to reconsider its payment action  
12/08/98  
- 05/11/99 SCO issued notices of adjustment  
04/04/00 Claimants filed incorrect reduction claims (IRCs) with the Commission  
04/13/00 Commission sent copies of the IRCs to the SCO  
07/26/00 SCO filed one set of comments for the claimants' IRCs  
01/30/01 Claimants filed one set of rebuttal comments  
11/26/02 Draft staff analysis issued  
12/27/02 Claimants' representative filed comments on the draft staff analysis  
01/08/03 Final 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 1756 1.

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 CLAIMS

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 35160.5, 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.<sup>2</sup>

In September 1995, the SCO issued its claiming instructions.<sup>3</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 claimants filed their reimbursement claims for fiscal year 1995-1996 between November 13, 1996 and January 20, 1998. Between December 8, 1998 and May 11, 1999, the SCO sent the claimants notices of adjustment denying reimbursement for the salaries and benefits of probationary teachers in training. Specifically, the letters 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>

Thus, on April 4, 2000, numerous school districts and county offices of education filed IRCs on the *Certification of Teacher Evaluator’s Demonstrated Competence* program.<sup>5</sup> The 38 claimants here contend that the SCO incorrectly reduced their claims, in an aggregate amount of over \$2.6 million for fiscal year 1995-1996, for the cost of training probationary teachers. Table 1, as shown below, lists the alleged incorrect reduction for each individual claimant:

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<sup>2</sup> Exhibit A, tab page 33.

<sup>3</sup> Exhibit A, tab page 43.

<sup>4</sup> Exhibit A, tab page 83; tab 2, page 175; tab 3, page 263; tab 4, page 367; tab page 453; tab page 541; tab 7, page 633; tab 8, page 723; tab 9, page 809; tab 10, page 897; tab 11, page 981; tab 12, page 1073; tab 13, page 1073; tab 14, page 1247; tab 15, page 1339; tab 16, page 1435; tab 17, page 1519; tab 18, page 1617; tab 19, page 1707; tab 20, page 1793; tab 21, page 1881; tab 22, page 1979; tab 23, page 2089; tab 24, page 2181; tab 25, page 2269; tab 26, page 2351; tab 27, page 2439; tab 28, page 2537; tab 29, page 2621; tab 30, page 2705; tab 31, page 2803; tab 32, page 2885; tab 33, page 2973; tab 34, page 3055; tab 35, page 3141; tab 36, page 3229; tab 37, page 3313; tab 38, page 3399.

<sup>5</sup> Exhibit A, tabs 1-38.

**TABLE 1**

Number	Claimant	Cost Categories Disallowed		Total Alleged Incorrect Reduction
		1 <sup>st</sup> & 2 <sup>nd</sup> year Probationary Teacher Time	Add'l Probationary Teachers Training Time	
99-4136-I-01	Ventura County Office of Education	\$ 7,354	\$ 11,528	\$ 18,882
99-4136-I-02	Hayward Unified School District	47,202	15,637	62,839
99-4136-I-04	Kings Canyon Joint Unified School District	58,785	0	58,785
99-4136-I-05	Visalia Unified School District	23,150	64,489	87,639
99-4136-I-06	Salinas City Elementary School District	5,439	20,997	26,436
99-4136-I-07	Conejo Valley Unified School District	19,734	8,424	28,158
99-4136-I-08	Claremont Unified School District	13,265	21,893	35,158
99-4136-I-09	Oak Grove Elementary School District	60,864	37,030	97,894
99-4136-I-10	Ventura Unified School District	4,023	15,416	19,439
99-4136-I-11	Oceanside City Unified School District	22,199	57,460	79,659
99-4136-I-12	Roseville Joint Union High School District	3,115	16,127	19,242
99-4136-I-13	Folsom Cordova Unified School District	22,483	34,907	57,390
99-4136-I-14	Palmdale School District	62,394	6,355	68,749
99-4136-I-15	Moreland Elementary School District	10,565	38,211	48,776
99-4136-I-16	Novato Unified School District	421	23,083	23,504
99-4136-I-17	Modesto City Schools	40,406	14,578	*54,985
99-4136-I-18	San Benito Union High School District	4,405	3 8,843	43,248
99-4136-I-19	Manteca Unified School District	6,049	34,682	40,73 1
99-4136-I-20	El Monte Elementary School District	43,850	58,744	*102,595
99-4136-I-21	Las Virgenes Unified School District	11,617	19,073	*30,684
99-4136-I-22	Del Norte County Unified School District	9,505	5,856	15,361
99-4136-I-23	Glendale Unified School District	110,680	85,812	196,492
99-4136-I-24	Garden Grove Unified School District	85,236	100,878	186,114
99-4136-I-25	San Lorenzo Unified School District	128,670	15,820	144,490
99-4136-I-26	Lompoc Unified School District	22,026	29,445	51,471
99-4136-I-27	Moiave Unified School District	19,509	7,658	27,167
99-4136-I-28	Lodi Unified School District	35,640	40,884	*76,523
99-4136-I-29	San Juan Unified School District	139,025	31,836	*170,864
99-4136-I-30	Los Altos Elementary School District	19,614	15,863	35,477
99-4136-I-31	Salinas Union High School District	60,382	14,869	*75,252
99-4136-I-32	Los Angeles County Office of Education	247,954	16,866	264,820
99-4136-I-33	Morgan Hill Unified School District	6,180	12,774	18,954
99-4136-I-34	Fairfield-Suisun Unified School District	66,901	12,434	79,335
99-4136-I-35	Ojai Unified School District	24,809	5,670	30,479
99-4136-I-36	Bellflower Unified School District	37,694	14,019	*51,715
99-4136-I-37	Berryessa Union School District	29,208	6,607	35,815
99-4136-I-38	Livingston Union School District	34,318	9,400	43,718
99-4136-I-39	Whittier Union High School District	78,125	54,706	*132,830
	<b>TOTALS</b>	<b>\$ 1,622,799</b>	<b>\$ 1,018,874</b>	<b>\$ 2,641,670</b>

\* These alleged incorrect reduction amounts do not exactly equal the sum of the disallowed cost categories.



## STATEMENT OF ISSUES

DID THE STATE CONTROLLER'S OFFICE INCORRECTLY REDUCE THESE CLAIMS?

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 these reimbursement claims.

## POSITIONS OF THE PARTIES

### Claimants' Position

It is their position 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 claimants assert 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.

They state 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 claimants assert 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 claimants contend 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 a fixed number of days a year, the claimants assert that this mandate requires all probationary teachers to work additional 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. For example, the Ventura County Office of Education states that its permanent teachers work 182 days a year while its probationary teachers work a total of 185 work days to accommodate three additional 8-hour days for teacher training.<sup>7</sup>

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<sup>6</sup> Exhibit A, tab 1, page 5.

<sup>7</sup> Exhibit A, tab 1, page 5. The number of additional training days for probationary teachers varies by claimant, ranging from half a day to five days. Some claimants did not specify the number of additional days.

## 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.” In lieu of that, the parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. 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.’ However, this request was withdrawn by letter dated June 23, 1995. <sup>10</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.:

- 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>11</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. 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 claims that the district-sponsored

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<sup>8</sup> Exhibit B, page 3401.

<sup>9</sup> Exhibit B, page 3406.

<sup>10</sup> Exhibit B, page 3418.

<sup>11</sup> Exhibit B, page 3413.

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>12</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 claimants contend that their districts required probationary teachers to work additional days each fiscal year for teacher training specifically attributable to this mandate. The claimants assert that while permanent teachers work a fixed number of days a year, this mandate requires all probationary teachers to work additional 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. Therefore, the claimants argue 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 claimants’ reimbursement claims 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 claimants 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>13</sup> (Emphasis added.)

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<sup>12</sup> Exhibit B, page 3418.

<sup>13</sup> Exhibit E, page 3432.

The claimants 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>14</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 claimants state 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>15</sup> as added by Statutes 1983, 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 claimants' contention that the state has mandated additional training to be provided outside the regular school year. Since the 1959 Education Code,<sup>16</sup> the state has required public schools to provide education for a minimum of 175 days in a fiscal year and 230 or 240 minutes in a day, depending on grade level. 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.

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<sup>14</sup> Exhibit F, page 3439.

<sup>15</sup> Repealed by Statutes 1996, chapter 204, effective July 22, 1996.

<sup>16</sup> Education Code sections 41420, 46112, 46113, 46141, and 46142.

In their comments on the draft staff analysis dated December 27, 2002, the claimants argued that claimants should not be penalized for poorly drafted parameters and guidelines that fail to clarify if one method is required over another. They asserted that “the test claim legislation requires training programs and provides school district discretion as to how to effectuate the mandate.” Thus, “the training provided probationary teachers as claimed is entirely consistent with the parameters and guidelines.”<sup>17</sup>

Staff notes that section 1183.1 of the Commission’s regulations require that a successful test claimant submit proposed parameters and guidelines to the Commission. Subdivision (a)(4) requires that the proposal include “[a] description of the specific costs and types of costs that are reimbursable, . . . and a description of the most *reasonable methods* of complying with the mandate.” (Emphasis added.) If claimants dispute the parameters and guidelines, they may request that the Commission amend them pursuant to section 1183.2 of the regulations.

Further, staff agrees with the claimants’ assertion that the test claim legislation “provides school district discretion as to how to effectuate the mandate.” The parameters and guidelines provide reimbursement for the cost of substitute teachers while the probationary teachers attend training. However, 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. Thus, 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 claimants contend 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 parameters and guidelines provide reimbursement for costs of “training, assisting and evaluating probationary teachers *over and above that usually provided to permanent teachers.*” The claimants assert 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 claimants conclude that the salary costs of probationary teachers receiving one-on-one training and mentoring during the course of their regular workday should be reimbursed.

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

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<sup>17</sup> Exhibit H, page 3462.

<sup>18</sup> Exhibit A, tab 1, page 5.

parameters and guidelines reimburse the cost of substitute teachers while the probationary teachers attend training. Further, 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 claimants' 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 claimants are 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 claimants' 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>19</sup> 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).

In their comments on the draft staff analysis dated December 27, 2002, the claimants maintained that the cost of salaries and benefits for probationary teachers to attend training sessions during that teacher's normal classroom hours is reimbursable. They argued that "regardless of when the activity is performed, the fact that it must be performed makes it fully reimbursable." The claimants also state that:

[T]he number of instructional days and minutes remained unchanged, but the actual school day and time for these probationary teachers was expanded to include the additional activities. School districts and county offices of education experienced increased costs to conform to the new mandate and provide the necessary training.<sup>20</sup>

As previously discussed, probationary teacher training time occurring during the course of their regular workday is *absorbed* into the school day, resulting in no increased costs mandated by the state to the school district. However, the parameters and guidelines provide reimbursement for the costs of substitute teachers so that probationary teachers can attend training activities.

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.

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<sup>19</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 175 14.

<sup>20</sup> Exhibit H, page 3464.

## CONCLUSION

Staff finds that the SCO did not incorrectly reduce the claimants' reimbursement claims 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 claimants' contention that the additional training provided outside the regular school year was mandated by this program.
- 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* IRCs filed by:

1. Ventura County Office of Education (99-4136-I-01),
2. Hayward Unified School District (99-4136-I-02),
3. Kings Canyon Joint Unified School District (99-4136-I-04),
4. Visalia Unified School District (99-4136-I-05),
5. Salinas City Elementary School District (99-4 136-I-06),
6. Conejo Valley Unified School District (99-4136-I-07),
7. Claremont Unified School District (99-4136-I-08),
8. Oak Grove Elementary School District (99-4 136-I-09),
9. Ventura Unified School District (99-4136-I- 10),
10. Oceanside City Unified School District (99-4136-I- 1 1),
11. Roseville Joint Union High School District (99-4 13 6-I- 12),
12. Folsom Cordova Unified School District (99-4 136-I- 13),
13. Palmdale School District (99-4 136-I- 14),
14. Moreland Elementary School District (99-4136-I-1 5),
15. Novato Unified School District (99-4 13 6-I- 16),
16. Modesto City Schools (99-4 136-I- 17),
17. San Benito Union High School District (99-4136-I-18),
18. Manteca Unified School District (99-4136-I" 19),
19. El Monte Elementary School District (99-4136-I-20),
20. Las Virgenes Unified School District (99-4136-I-21),
21. Del Norte County Unified School District (99-4136-I-22),
22. Glendale Unified School District (99-4136-I-23),
23. Garden Grove Unified School District (99-4136-I-24),
24. San Lorenzo Unified School District (99-4136-I-25),
25. Lompoc Unified School District (99-4 13 6-I-26),
26. Mojave Unified School District (99-4 136-I-27),
27. Lodi Unified School District (99-4136-I-28),
28. San Juan Unified School District (99-4136-I-29),
29. Los Altos Elementary School District (99-4136-I-30),



30. Salinas Union High School District (99-4136-I-3 1),
31. Los Angeles County Office of Education (99-4136-I-32),
32. Morgan Hill Unified School District (99-4136-I-33),
33. Fairfield-Suisun Unified School District (99-4136-I-34),
34. Ojai Unified School District (99-4136-I-35),
35. Bellflower Unified School District (99-4136-I-36),
36. Berryessa Union School District (99-4136-I-37),
37. Livingston Union School District (99-4136-I-38), and
38. Whittier Union High School District (99-4 13 6-I-3 9).

