



September 28, 2016

Mr. Arthur Palkowitz
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2488 Historic Decatur Road,
Suite 200
San Diego, CA 92106

Ms. Karen Huddleston
Oceanside Unified School
District
2111 Mission Avenue
Oceanside, CA 92058

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: **Decision**

The Stull Act, 14-9825-I-01

Education Code Section 44660-44665

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002,
2002-2003, 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

Dear Mr. Palkowitz, Ms. Huddleston, and Ms. Kanemasu:

On September 23, 2016, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
 ON:**

Education Code Sections 44660-44665

Statutes 1983, Chapter 498;
 Statutes 1999, Chapter 4

Fiscal Years 1997-1998, 1998-1999, 1999-
 2000, 2000-2001, 2001-2002, 2002-2003,
 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

Case No.: 14-9825-I-01

The Stull Act

DECISION PURSUANT TO
 GOVERNMENT CODE SECTION
 17500 ET SEQ.; CALIFORNIA CODE OF
 REGULATIONS, TITLE 2, DIVISION 2,
 CHAPTER 2.5, ARTICLE 7

(Adopted September 23, 2016)

(Served September 28, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 23, 2016. Arthur Palkowitz and Dr. Todd McAteer, Director of Human Resources for Oceanside Unified School District, appeared for the claimant. Jim Spano and Ken Howell appeared for the State Controller's Office.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to partially approve the IRC by a vote of 6-0 as follows:

Member	Vote
Richard Chivaro, Representative of the State Controller	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Scott Morgan, Deputy Director of Administration and State Clearinghouse Director, Governor's Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Absent
Don Saylor, County Supervisor	Yes

Summary of the Findings

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims of the Oceanside Unified School District (claimant) for fiscal years 1997-

1998 through 2004-2005¹ under *The Stull Act* program. The Controller reduced the claims filed for these fiscal years to \$0 (an audit adjustment of \$1,270,420 in direct and indirect costs) due to lack of supporting documentation.

The Commission finds that:

- 1) The reduction of costs based on the number of employees evaluated under the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant did not provide any evidence of the employees evaluated during the audit. After the audit, however, the claimant provided the Controller with documentation showing that 1,698 employees were evaluated under the mandate during the audit period. The Controller found that of the 1,698 employees listed by the claimant that received evaluations for the audit period, 1,149 evaluations fell within the scope of the mandate. The claimant agrees with this finding, except for a small number of evaluations in fiscal year 1997-1998. The claimant, however, does not provide sufficient evidence to rebut the Controller's findings for that fiscal year.

- 2) Based on this record, the Controller's reduction of costs to \$0 is arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller agrees that the claimant performed the required evaluations under the mandate and concluded that 1,149 evaluations were performed by the claimant during the audit period and, thus, a reduction of costs to \$0 is not supported by the record.

However, the parties dispute the time taken to perform the mandate. The claimant alleges that each evaluation took five to ten hours, and later asserted that each evaluation took 2.5 hours based on time studies conducted by other school districts. There is no evidence in the record to support the conclusion that it took the claimant's employees 2.5 hours, or five to ten hours, to conduct the evaluations under the mandate.

The Controller has offered to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated (which results in reimbursement of \$35,967, which includes both direct and indirect costs), based on the claimant's time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form; teacher evaluation forms provided by the claimant that disclosed 30 minutes of actual classroom observation; and the Controller's review of a sample of written evaluations for teachers for fiscal years 2006-2007 and 2007-2008. There is no evidence in the record that the Controller's findings are wrong, or that the Controller's offer to apply the 30 minutes to the evaluations conducted in fiscal years 1997-1998 through 2004-2005 is arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requests that the Controller reinstate \$35,967, which includes both direct and indirect costs, to the claimant.

¹ Fiscal years 2005-2006, 2006-2007, and 2007-2008 were also part of the audit, but were not included in this IRC.

COMMISSION FINDINGS

I. Chronology

- 08/24/2011 The Controller issued the Final Audit Report.²
- 08/20/2014 The claimant filed the IRC.³
- 11/26/2014 The Controller filed a request for extension of time to file comments on the IRC, which was granted for good cause.
- 02/02/2015 The Controller filed a second request for extension of time to file comments on the IRC, which was granted for good cause.
- 03/27/2015 The Controller filed comments on the IRC.⁴
- 05/04/2015 The Claimant filed late rebuttal comments on the IRC.⁵
- 06/17/2016 Commission staff issued the Draft Proposed Decision.⁶
- 06/29/2016 The Controller filed comments on the Draft Proposed Decision.⁷
- 07/08/2016 The claimant filed comments on the Draft Proposed Decision.⁸

II. Background

A. The Stull Act Program

The Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of “certificated personnel” (including certificated non-instructional personnel) within each school district.⁹ As originally enacted, the Stull Act required the governing board of each school district to develop and adopt specific guidelines to evaluate and assess certificated personnel, and to avail itself of the advice of certificated instructional personnel before developing and adopting the guidelines. The evaluation and assessment of the certificated personnel had to be in writing, conducted once each school year for probationary employees and every other year for permanent employees, and a copy transmitted to the employee no later than sixty days before the end of the school year. If the employee was not performing in a satisfactory manner according to the standards, the “employing authority” was required to notify the employee in writing, describe the unsatisfactory performance, and confer with the employee in making specific recommendations

² Exhibit A, IRC, pages 80-98 (Final Audit Report).

³ Exhibit A, IRC.

⁴ Exhibit B, Controller’s Comments on the IRC.

⁵ Exhibit C, Claimant’s Late Rebuttal Comments.

⁶ Exhibit D, Draft Proposed Decision.

⁷ Exhibit E, Controller’s Comments on the Draft Proposed Decision.

⁸ Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

⁹ Former Education Code sections 13485-13490.

as to areas of improvement and endeavor to assist in the improvement. The employee then had the right to initiate a written response to the evaluation, which became a permanent part of the employee's personnel file. The school district was also required to hold a meeting with the employee to discuss the evaluation.

The Stull Act was amended from 1975 through 1999, and a Test Claim was filed on these amendments. On May 27, 2004, the Commission partially approved the Test Claim and adopted the Statement of Decision, finding that Statutes 1983, chapter 498 and Statutes 1999, chapter 4, which amended Education Code sections 44660-44665, impose a reimbursable state-mandated higher level of service on school districts. The Commission also found that many activities in the Test Claim pertaining to certificated personnel were required under preexisting law and were therefore not reimbursable, such as developing and adopting specific evaluation and assessment guidelines for performance; evaluating and assessing them as it relates to the established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.¹⁰ The Parameters and Guidelines were adopted on consent on September 27, 2005, authorizing reimbursement for only the following activities:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation

¹⁰ Exhibit A, IRC, pages 28 and 35 (Statement of Decision; page number citations refer to the PDF page numbers).

rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
 - b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
 - once each year for probationary certificated employees;
 - every other year for permanent certificated employees; and
 - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.
- B. Certificated (Instructional and Non-Instructional) Employees
1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.

C. Training

1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)¹¹

The Parameters and Guidelines, as originally proposed by the test claimant and adopted by the Commission, also require claimants to submit contemporaneous source documentation, such as time records or time logs, to verify their actual costs. Evidence to corroborate the source documents, such as declarations or worksheets, may also be submitted. However, corroborating documents cannot be substituted for the contemporaneous source documentation requirement. In this regard, the introductory paragraphs in Section IV. of the Parameters and Guidelines state the following:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.¹²

Section V. of the Parameters and Guidelines authorizes reimbursement for employee salaries and benefits and directs claimants to:

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

¹¹ Exhibit A, IRC, pages 54-56 (Parameters and Guidelines); Exhibit G, Item 2, Proposed Consent Calendar and 7, Final Staff Analysis and Proposed Parameters and Guidelines, *The Stull Act*, September 27, 2005, pages 10-11.

¹² Exhibit A, IRC, page 53 (Parameters and Guidelines).

And section VI. of the Parameters and Guidelines requires claimants to retain all documentation until the ultimate resolution of any audit findings:

All documentation used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.¹³

Claiming instructions dated December 12, 2005, were issued by the Controller for the filing of the initial reimbursements claims for *The Stull Act* program for costs incurred in fiscal years 1997-1998 through 2004-2005. The claiming instructions include the adopted Parameters and Guidelines and identify the reimbursable claim components and supporting documentation requirements consistent with the Parameters and Guidelines.¹⁴ The Controller states that the claiming instructions issued for subsequent claiming years during the audit period did not change.¹⁵

B. The Controller's Audit and Summary of the Issues

The Controller audited claimant's reimbursement claims for salary and benefit costs in fiscal years 1997-1998 through 2004-2005, and 2006-2007 through 2007-2008 (no claims were filed for 2005-2006). The Controller reduced the claims filed for fiscal years 1997-1998 through 2004-2005 to \$0 (an audit adjustment of \$1,270,420 in direct and indirect costs). No reductions were made to the reimbursement claims for fiscal years 2006-2007 and 2007-2008.¹⁶

For the 1997-1998 through 2004-2005 fiscal year claims, the claimant supported the time claimed for each employee with "Employee Average Time Records for Mandated Costs" forms prepared by the mandate consultant for purposes of claiming costs. The form asks each employee to "report below the *average* amount of time spent (in minutes) by you to implement each of the reimbursable activities for the mandated program" for each fiscal year at issue (fiscal years 1997-1998 through 2004-2005). In February or March 2006, 49 school principals and assistant principals completed and signed the forms under penalty of perjury that a "good faith estimate" of the average time performing the reimbursable activities for each evaluation during the audit period was being reported.¹⁷ For example, the first form provided shows an average time to prepare for the evaluation of 50 minutes, 45 minutes for a goals and objectives conference with the instructor, 20 minutes for a pre-observation conference with the instructor, 40 minutes for the classroom observation of the instructor, 30 minutes for the post-observation conference with the instructor, 40 minutes for the final conference with the instructor, and 80

¹³ Exhibit A, IRC, pages 57-58 (Parameters and Guidelines).

¹⁴ Exhibit A, IRC, pages 61, 75.

¹⁵ Exhibit B, Controller's Comments on the IRC, page 11.

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

¹⁷ Exhibit A, IRC, pages 3 and 143-191.

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

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

Other “Employee Average Time Records for Mandated Costs” forms show estimates of five to ten hours per evaluation, for a mean time of about eight hours.¹⁹

The Controller reduced the reimbursement claims for fiscal years 1997-1998 through 2004-2005 to \$0 because the claimant did not support the time claimed with “source documents” in accordance with the Parameters and Guidelines, or provide the Controller access to the employee evaluations completed during the audit period to support the number of employees evaluated pursuant to the mandate.²⁰

The audit also included the reimbursement claims for fiscal years 2006-2007 and 2007-2008, for which there were no reductions made.

For these two years, the district provided a list of employees who evaluated teachers, their title, productive hourly rate detail, as well as contemporaneous time documentation that supported an average time of approximately 30 minutes per allowable evaluation. The district also provided a list of teachers who were

¹⁸ Exhibit A, IRC, page 143.

¹⁹ Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

²⁰ Exhibit A, IRC, pages 84 and 91 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, page 12.

evaluated, which allowed the SCO auditors to determine which evaluations were reimbursable.²¹

The Final Audit Report more specifically states that the claimant provided time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form. The time logs were not dated or signed by the employees, and “the district did not provide source documents supporting the time recorded in the annual forms.”²² So the Controller determined the allowable salaries and benefits by obtaining the district’s teacher evaluation procedures and forms, and interviewing administrators who performed the evaluation activities in these fiscal years. The district’s teacher evaluation forms disclosed 30 minutes of actual classroom observation. The claimant then requested that it be allowed to support its claims with “auditor verification of its written observations and final summary performance teacher evaluations from personnel records.”²³ The Controller also selected a ten percent random sample of 23 school sites in the claimant’s district. The claimant also provided copies of written evaluations and summative evaluations for teachers at El Camino High School, Jefferson Middle School, and Mission Elementary School for fiscal years 2006-2007 and 2007-2008. Actual pay, benefit information, and resource codes for employees claimed in these two fiscal years were also provided to the Controller.²⁴ Based on this information, the Controller determined that the costs claimed for fiscal years 2006-2007 and 2007-2008 were understated by \$4,834, and the Final Audit Report indicates that the claimant “agreed to our recommendation that it allow half an hour for each written observation and final teacher evaluation verified.”²⁵

In the response to the IRC, the Controller explained: “There is no reasonable means of applying the time allowance [from 2006-2008] to FY 1997-98 through FY 2004-05 without knowing the certificated instructional employees evaluated and the reimbursability of the evaluations.”²⁶

C. Post-IRC Negotiations

After the claimant filed the IRC, the Controller contacted the claimant and offered to adjust the audit findings if the claimant provided a list of every employee evaluated during those years.²⁷ The Controller was emailed the list from the claimant on December 19, 2014.²⁸ On December 24, 2014, the Controller emailed the claimant to request clarification because the provided information appeared to be incomplete.²⁹ On January 5, 2015, the claimant emailed the

²¹ Exhibit B, Controller’s Comments on the IRC, page 13.

²² Exhibit A, IRC, page 91.

²³ Exhibit A, IRC, page 91.

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

²⁵ Exhibit A, IRC, pages 91 and 92 (Final Audit Report).

²⁶ Exhibit B, Controller’s Comments on the IRC, page 14.

²⁷ Exhibit B, Controller’s Comments on the IRC, page 8.

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

²⁹ Exhibit B, Controller’s Comments on the IRC, pages 8, 99, 104-105, which seeks clarification as follows:

Controller to confirm that the information provided was complete.³⁰ On January 21, 2015, the Controller emailed the claimant to explain that of the 1,698 employees listed by the claimant that received evaluations during fiscal years 1997-1998 through 2004-2005, the Controller allowed 1,149 evaluations and excluded the rest because of duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations outside the audit period; and unallowable subjects or programs performed by certificated instructional employees.³¹ The email states in relevant part the following:

The district provided a listing of 1,698 employees that received evaluations for the audit period. We removed evaluations from the population for the following reasons:

- Duplicated evaluations for permanent employees performed in consecutive years, rather than every other year (51)
- Duplicated evaluations performed in the same year (10)
- Items outside the IRC period (472)
- Unallowable subjects/programs performed by certificated instructional employees (16)

The allowable population was 1,149 total evaluations for the IRC period. Here's a breakdown of allowable evaluations per year:

- FY 1997-98 – 4

Namely, does this list exclude certificated instructional and non-instructional employees that have less than 10 years tenure? If so, the list would not represent the complete listing of certificated instructional and non-instructional employees that received evaluations for FY 1997-98 through 2004-05.

Also, the list only mentions CIE (Certificated Instructional Employees) ... does this mean that certificated non-instructional employees are not included? Per the Ps and Gs, permanent certificated instructional and non-instructional employees that receive an unsatisfactory evaluation in the years in which they would not have otherwise been evaluated are considered reimbursable (along with various activities).

My overarching concern with this analysis is that [we] may be working with incomplete data, and I want to provide the district every opportunity to provide the full and complete listing for consideration.

³⁰ Exhibit B, Controller's Comments on the IRC, pages 8, 103-104, where the claimant responds as follows: "The list includes all certificated employees. The District does not [hire] employees that are certificated non-instructional employees. The list represents the complete listing of certificated instructional employees that received evaluations for FY 1997-98 through 2004-05."

³¹ Exhibit B, Controller's Comments on the IRC, pages 15, 108.

- FY 1998-99 – 55
- FY 1999-2000 – 96
- FY 2000-01 – 196
- FY 2001-02 – 249
- FY 2002-03 – 164
- FY 2003-04 – 220
- FY 2004-05 – 165³²

The Controller offered to revise the audit adjustment to reimburse 30 minutes for each of the 1,149 evaluations (the same average time allowed for the 2006-2007 and 2007-2008 claims), and to augment the audit findings for 1997-1998 to 2004-2005 by \$35,967 in allowable costs.

On January 29, 2015, the claimant’s representative sent an email refusing the Controller’s offer, arguing that five to six hours, rather than 30 minutes, is the average time to perform the mandated activities as follows:

As I initially expressed to you, we are not in agreement to the estimate of 30 minutes per evaluation. The reasonable period to conduct the informal classroom observations; formal classroom observations, writing the final evaluation reports and/or preparing the Teacher Evaluation Report is approximately five-six hours. This period of time has been accepted by the Controller in other Stull Act audits.³³

As a result of the impasse, the Controller said it “did not expand [its] audit procedures to test the validity of the FY 1997-98 through FY 2004-05 listing of evaluations the district provided.”³⁴ Therefore, the reimbursement claims at issue in this IRC all remain reduced to \$0.

III. Positions of the Parties

A. Oceanside Unified School District

The claimant argues that the Controller incorrectly reduced the costs claimed for fiscal years 1997-1998 through 2004-2005 and seeks reinstatement of \$1,270,420. The claimant argues that it provided a list of employees, title, and the employees’ hourly rates for each fiscal year that evaluations were performed. It also provided average time records, copies of its collective bargaining agreements containing evaluation requirements, and policies and procedures on evaluations, all of which confirm that the activities were performed during the audit period. The claimant states that “[t]here can be no doubt the District’s school site staff performed the reimbursable activities” and that “sufficient documentation” was provided to prove that each

³² Exhibit B, Controller’s Comments on the IRC, page 108.

³³ Exhibit B, Controller’s Comments on the IRC, pages 15, 118.

³⁴ Exhibit B, Controller’s Comments on the IRC, page 15.

school site performed the activities of assessing and evaluating certificated employees as required by the mandate.³⁵ The claimant also states:

Furthermore, the district complied fully with the requirements of the Stull Act during the claiming period and we feel that we submitted claims appropriate to the costs incurred. While we were able to supply supporting documentation, it was not accepted as sufficient by the audit team. The additional documentation requested was, and is, available but would be a significant drain on district resources, including staff and funds, to provide. Consequently, the district cannot expend any further time or resources to produce the requested records.³⁶

The claimant also relies on the Office of Management and Budget Circular A-87,³⁷ which establishes standards for state and local governments to determine administrative costs applicable to grants, contracts, and other agreements with state and local governments. According to the claimant: “Randomly sampling workers to find out what they are working on is one of the federally approved methods of identifying worker effort. Such method is reasonable and may be implemented rather than 100 percent time reporting method.”³⁸

In late rebuttal comments on the IRC submitted on May 4, 2015, the claimant states that “the time spent by District employees to conduct the reimbursable activities would average 6-7 hours per employee.”³⁹ The claimant further argues that the Controller’s audits on *The Stull Act* of other school district claims supports the average time claimed in this IRC. For example, the claimant refers to an audit finding of the average time spent for evaluations in the Poway Unified School District of 1.52 hours for permanent employees, 3.57 hours for non-permanent employees, and 12.93 hours for unsatisfactory evaluations. For the Norwalk-La Mirada Unified School District, the Controller allowed 1.89 hours for permanent employees, 3.07 hours for non-permanent employees, and 12.99 hours for unsatisfactory evaluations. And the claimant asserts that Long Beach Unified School District provided the same documentation to the Controller as the claimant, and was allowed an average of 2.14 hours for each evaluation for each fiscal year. The claimant argues that:

Documentation submitted by the claimant supports the reasonable time spent per evaluation of 6.40 hours [in] FY 1997-98 and 6.50 hours in FY 1998-99. For the claimant’s time to be limited by the Controller to 30 minutes is far below the other times accepted in School District audits and is inconsistent with the documentation submitted by the claimant. As a result [the] Controller’s decision to disallow the reimbursement claim is unreasonable, as well as arbitrary and capricious.⁴⁰

³⁵ Exhibit A, IRC, pages 6-7.

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

³⁷ Exhibit A, IRC, page 244.

³⁸ Exhibit A, IRC, page 7.

³⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 3.

⁴⁰ Exhibit C, Claimant’s Late Rebuttal Comments, page 4.

The claimant also argues that the Controller's offer to revise the audit findings for fiscal year 1997-1998 after the IRC was filed, by allowing only four evaluations instead of 67, is arbitrary and capricious. The claimant concludes by stating that the "District accepts the Controller's allowable total evaluations of 1,149 . . . adjusted for the evaluations for FY 1997-1998 for a total of 1,212. The Claimant's adjusted reimbursement claim for FY 1997-1998 to FY 2004-2005 in the amount of \$181,800.00 is based on an average hourly rate of \$60.00 per hour at 2.5 hours per evaluation."⁴¹

The claimant filed comments disagreeing with the Draft Proposed Decision, stating:

The guidelines for the Stull Act program were adopted September 27, 2005, by the Commission. The initial claim period, Fiscal Years 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, predates the date of guideline adoption. Controller's application of an overly narrow interpretation of the supporting documentation guideline language to claims prior to the fiscal year 2005/06 violates the Clovis Unified School District appellate court decision dated September 21, 2010. This decision found Controller could not apply contemporaneous source documentation requirements (CSDR) prior to the date the CSDR language was actually approved by Commission on State Mandates and added to a program's guidelines.⁴²

Claimant further argues that 2.5 hours incurred for each evaluation is supported by the Controller's audit of a comparable neighboring K-12 school district, as well as other time studies accepted by the Controller for the audits of other school districts. Claimant asserts:

Effectively the time studies included in the Controller's audits created a Reasonable Reimbursement Methodology, a uniform cost allowance, in conformity with Government Code section 17518.5(b), as it is based on cost information from a representative sample of eligible claimants, information provided by association of local agencies and school districts, or other projections of local costs. The time study of 2.5 hours per evaluation is reliable since auditing of reimbursement claims is not a prerequisite for the development and approval of a reasonable reimbursement methodology. (Cal. Code Regs., §1183.12)

Time studies have been acceptable methodologies for reimbursement in lieu of or in support of contemporaneous records. To disregard its application, especially when the time studies have been approved by the Controller is an abuse of discretion. To conclude the reimbursable activities listed above were conducted in 30 minutes, allows less than 4 minutes for each activity to be completed. An analysis of each activity easily concludes otherwise. As such the record includes evidence, as required by the Commission's regulations, to justify reimbursement at 2.5 hours per evaluation.⁴³

⁴¹ Exhibit C, Claimant's Late Rebuttal Comments, page 7.

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

⁴³ Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 2-3.

B. State Controller's Office

The Controller maintains that the reductions are correct and that the audit finding should be upheld because the district's claims do not comply with the documentation requirements in the Parameters and Guidelines. The Controller agrees that the claimant "(1) performed the required evaluations as contained in its Collective Bargaining Agreements, (2) confirmed that the activities were performed, and (3) provided the SCO auditors the district's procedure and forms."⁴⁴ However, the claimant did not provide sufficient source documentation supporting the costs claimed or identify a list of certificated instructional employees evaluated in fiscal years 1997-1998 through 2004-2005. The Controller states the following:

As noted previously, FY 2006-07 and FY 2007-08 were part of the audit period, but were not included in this IRC. For these two years, the district provided a list of employees who evaluated teachers, their title, productive hourly rate detail, as well as contemporaneous time documentation that supported an average time of approximately 30 minutes per allowable evaluation. The district also provided a list of teachers who were evaluated, which allowed the SCO auditors to determine which evaluations were reimbursable.

For FY 1997-98 through FY 2004-05, the district provided only annual certifications that estimated the time spent by evaluators on reimbursable activities. The district did not provide actual cost documentation supporting costs claimed or identify a list of certificated instructional employees evaluated during this period (Exhibit M). Such information is necessary to determine whether the evaluations are reimbursable. Therefore, none of the costs claimed for FY 1997-98 through FY 2004-05 are allowable⁴⁵

As to the claimant's reference to the Office of Management and Budget Circular A-87, the Controller notes that the "district did not provide the auditors with any reasonable sampling methodology to arrive at allowable costs."⁴⁶

The Controller states that after receiving the IRC, it agreed to reevaluate the adjustment if the claimant provided documentation supporting the number of employees evaluated in fiscal years 1997-1998 through 2004-2005. The claimant provided the information in December 2014, and the Controller recalculated allowable salary and benefit costs "based on the time allowance of approximately 30 minutes per evaluation that the district supported with contemporaneous documentation during FY 2006-07 and FY 2007-08." In response to the claimant's argument that the Controller authorized more time per evaluation in its other audits of *The Stull Act* program, the Controller states: "Time documentation supporting the reimbursable activities of the Stull Act Program for other audits is not relevant to this audit. The district's records supported approximately 30 minutes for the reimbursable activities of the Stull Act Program, not five to six hours, as requested by [the claimant]."⁴⁷ The Controller further states that "we

⁴⁴ Exhibit B, Controller's Comments on the IRC, page 14.

⁴⁵ Exhibit B, Controller's Comments on the IRC, page 13.

⁴⁶ Exhibit B, Controller's Comments on the IRC, page 14.

⁴⁷ Exhibit B, Controller's Comments on the IRC, page 14.

reached an impasse in reinstating any of the audit adjustments, and as such, we did not expand our audit procedures to test the validity of the FY 1997-98 through 2004-05 listing of evaluations the district provided.”⁴⁸

The Controller filed comments concurring with the Draft Proposed Decision to deny the IRC.⁴⁹

IV. Discussion

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁵⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵¹

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

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

⁴⁸ Exhibit B, Controller’s Comments on the IRC, page 14.

⁴⁹ Exhibit E, Controller’s Comments on the Draft Proposed Decision.

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

⁵¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁵² *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.]
When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”⁵³

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁵⁴ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.⁵⁵

The Controller’s Reduction of Costs Due to Lack of Documentation Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support. However, the Reduction to \$0 Is Not Supported by the Evidence in the Record.

After a test claim is approved, the Commission adopts parameters and guidelines to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs incurred under a state-mandated program.⁵⁶ At the time the earlier reimbursement claims in this case were filed, the Government Code also stated “[c]laims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines.”⁵⁷ The parameters and guidelines are regulatory, in that before their adoption, notice and an opportunity to comment on them are provided, and a full quasi-judicial hearing is held.⁵⁸ Once adopted, whether after judicial review or without it, the parameters and guidelines are final and binding on the parties. The parameters and guidelines may not be amended or set aside by the Commission absent a court order pursuant to Government Code section 17559, or a later request to amend the parameters and guidelines pursuant to section 17557 or request for the adoption of a new test claim decision pursuant to section 17570.⁵⁹ The Controller may audit the records of the claimant “to verify the actual amount of the mandated costs” claimed in a reimbursement claim, and reduce any claim that the Controller determines is excessive or

⁵³ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁵⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁵⁵ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

⁵⁶ Government Code section 17557; California Code of Regulations, title 2, section 1183.7(e).

⁵⁷ Government Code section 17564, as amended by Statutes 1999, chapter 643.

⁵⁸ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, 805, and 808.

⁵⁹ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

unreasonable.⁶⁰

In this case, the Controller reduced the costs claimed in fiscal years 1997-1998 through 2004-2005 for salaries and benefits for two reasons: the documentation provided by the claimant during the audit did not identify the employees evaluated in these fiscal years; and the documentation provided by the claimant did not support reimbursement claimed at 5 to 10 hours per evaluation.

1. The reduction of costs based on the number of employees evaluated under the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller's reductions were based, in part, on the fact that the documentation provided by the claimant during the audit did not identify the employees evaluated in these fiscal years, which is necessary to determine whether the costs claimed were limited to the scope of the mandate. This program was approved only as a higher level of service and thus, not all activities required by the Education Code to evaluate employees are reimbursable. The Commission determined that the following activities were required by prior law and *not* eligible for reimbursement when evaluating a certificated instructional employee who did not have prior unsatisfactory evaluations: evaluating and assessing certificated employees as it relates to established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.⁶¹ Thus, the scope of the mandate to evaluate is limited to: (1) review a certificated instructional employee's instructional techniques and strategies and adherence to curricular objectives, and include in the written evaluation the assessment of these factors only during specified years; (2) for certificated instructional employees, review the results of the Standardized Testing and Reporting (STAR) test as it reasonably relates to the performance of those certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and include the assessment of this information in the employee's written evaluation only during specified years; and (3) for those permanent certificated (instructional and non-instructional) employees who perform the requirements of educational programs mandated by state and federal law and receive an *unsatisfactory* evaluation in the years in which the employee would not have otherwise been evaluated (i.e., every other year), continue to evaluate and assess the employee as specified until the employee achieves a positive evaluation or is separated from the school district, reduce the evaluation to writing, transmit a copy of the written evaluation to the employee, attach any written response from the employee to the personnel file, and conduct a meeting with the employee to discuss the evaluation.⁶²

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

⁶⁰ Government Code section 17561(d)(2)(A)(i) and (B).

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

⁶² Exhibit A, IRC, pages 54-56 (Parameters and Guidelines).

Controller a list of every employee evaluated during the audit years in question.⁶³ As part of its offer to revise the audit findings, the Controller found that of the 1,698 employees listed by the claimant that received evaluations for the audit period, the Controller would allow 1,149 evaluations. The Controller excluded the rest because the information the claimant provided indicated there were duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations made outside of the IRC period; and unallowable subjects or programs performed by certificated instructional employees.⁶⁴ Except for the adjustment allowing four evaluations in fiscal year 1997-1998 (the claimant alleges that 67 evaluations within the mandate occurred that year), the claimant accepted the Controller's findings and stated the following: "The District *accepts* the Controller's allowable total evaluations of 1,149 . . . adjusted for the evaluations for FY 1997-1998 for a total of 1,212 [evaluations]."⁶⁵

With respect to the four evaluations allowed by the Controller for fiscal year 1997-1998, the claimant asserts that the Controller accepted 67 evaluations for fiscal year 1998-1999 and should accept the same number for fiscal year 1997-1998. The claimant also includes a chart listing the names of the employees who conducted the asserted 67 evaluations in that fiscal year and refers the reader back to the average claim declarations for reference.⁶⁶ However, the claimant's chart does not address the Controller's findings of duplicated evaluations for permanent employees performed in consecutive years, rather than every other year; duplicated evaluations performed in the same year; evaluations made outside of the IRC period; and unallowable subjects or programs performed by certificated instructional employees. The claimant's chart simply lists the total number of evaluations performed. And there is no evidence in the record to support the assertion that 67 evaluations under the mandate, rather than four evaluations, were performed in fiscal year 1997-1998.

Accordingly, a reduction of costs based on the number of employees evaluated under the mandate (1,149) is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller's reduction of costs to \$0 is not supported by evidence in the record. However, the Controller's offer to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated is supported by the record and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller's reduction of costs to \$0, when the Controller concluded that 1,149 of the evaluations were performed by the claimant and fall within the scope of the mandate, and agrees that the claimant "(1) performed the required evaluations as contained in its Collective Bargaining Agreements, (2) confirmed that the activities were performed, and (3) provided the SCO auditors the district's procedure and forms," is arbitrary and capricious and without

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

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

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

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

evidentiary support.⁶⁷ Thus, the claimant is entitled to some reimbursement for the time taken to perform the 1,149 evaluations under the mandate. The time taken by each employee to perform the mandate, however, is disputed by the parties.

The record indicates that the documentation provided to the Controller for fiscal years 1997-2005 to support the time taken on each evaluation consists of average time declarations signed by claimed staff in February or March of 2006. Each employee (evaluator) estimated the average minutes spent annually to perform evaluation activities for 1997-1998 through 2004-2005 on a single form, with estimates generally ranging from 5 to 10 hours per evaluation, and certified under penalty of perjury that a good faith estimate was reported. The “reimbursable activity codes” listed on the forms identify the following activities for which time was estimated: preparing for the evaluation, goals and objectives conference with instructor, pre-observation conference with instructor, classroom observation of instructor, post-observation conference with instructor, final conference with instructor, district reporting.⁶⁸ The claimant did not provide time logs or time sheets to verify the actual time taken to perform the mandate, or any contemporaneous documentation created at or near the same time the actual cost was incurred. The Controller disregarded these declarations, asserting that the declarations were not source documents that verified the actual time taken for each evaluation, as required by the Parameters and Guidelines.⁶⁹

The claimant contends that it has provided sufficient documentation to support the time claimed, and that the Controller’s imposition of the contemporaneous source document rule violates the *Clovis Unified School Dist. v. Chiang* decision, which “found [that the] Controller could not apply contemporaneous source documentation requirements (CSDR) prior to the date the CSDR language was actually approved by Commission on State Mandates and added to a program’s guidelines.”⁷⁰ The claimant is willing to agree to reimbursement based on 2.5 hours per evaluation, which it claims is supported by the Controller’s audit of a comparable neighboring K-12 school district, as well as other time studies accepted by the Controller for the audits of other school districts.⁷¹

The Parameters and Guidelines adopted for *The Stull Act* program authorize claimants to request reimbursement for actual costs incurred and require claimants and to keep contemporaneous source documentation (documentation created at or near the same time the actual costs was incurred) to support the actual costs incurred to implement the mandate:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and

⁶⁷ Exhibit B, Controller’s Comments on the IRC, page 14.

⁶⁸ Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

⁶⁹ Exhibit B, Controller’s Comments on the IRC, page 13.

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

⁷¹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 2-3.

their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.⁷²

The claimant alleges that the Controller's use of the contemporaneous source document requirement is invalid based on *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794. While the *Clovis Unified* case is helpful in understanding the issues presented here, the case is distinguishable and does not directly apply to the issues here.

Unlike this case, the Commission had *not* adopted parameters and guidelines that contained the contemporaneous source document rule in the parameters and guidelines for the programs at issue in *Clovis*. Instead, the Controller enforced the contemporaneous source document rule through "non-regulatory" claiming instructions issued for three separate programs, without providing notice to school districts and an opportunity for school districts to comment on the rule. Thus, for example, in the *School District of Choice* program reviewed by the court in *Clovis*, the parameters and guidelines required the claimant to report the actual number of hours devoted to each function, supported by "source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, etc.) and/or worksheets that show evidence of and the validity of such claimed costs."⁷³ However, the Controller later issued amended claiming instructions to set forth, for the first time the contemporaneous source document rule.⁷⁴ The record showed that before the use of the contemporaneous source document rule, school districts obtained state-mandated reimbursement for employee salary and benefit costs based on "(1) declarations and certifications from the employees that set forth, after the fact, the time they had spent on SDC-mandated tasks; or (2) an annual accounting of time determined by the number of mandated activities and the average time for each activity."⁷⁵ After the Controller began using the contemporaneous source document rule in its audits, the Controller deemed the declarations, certifications, and average accounting methods insufficient and reduced the claims accordingly.⁷⁶

⁷² Exhibit A, IRC, page 53 (Parameters and Guidelines).

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

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

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

⁷⁶ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 802.

In addition, the rule, which requires contemporaneous time sheets and time logs, bars the use of employee time declarations and certifications as source documents. Instead, these documents are relegated to the “second-class status of ‘corroborating documents’ that can only serve as evidence that corroborates source documents.”⁷⁷ The school districts that used employee declarations and certifications and average time accountings to document time for reimbursement claims argued that the rule was an underground regulation and “it is *now* physically impossible to comply with the CSDR’s requirement of contemporaneousness that “a source document is a document *created at or near the same time the actual cost was incurred* for the event or activity in question.”⁷⁸ An underground regulation is a rule (which applies generally and implements, interprets, or makes specific the law enforced by the agency) that is not adopted in conformity with “basic procedural requirements that include public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law.”⁷⁹ The court concluded the Controller’s use of the contemporaneous source document rule imposed an invalid and unenforceable underground regulation.⁸⁰ The court authorized the Controller to re-audit the reimbursement claims based on the documentation requirements of the parameters and guidelines and claiming instructions that were in effect when the mandated costs were incurred.⁸¹

Here, the Parameters and Guidelines for *The Stull Act* have always contained the contemporaneous source document rule, and school districts had notice and a full opportunity to comment on the requirement (which was originally proposed by the test claimant) before the Parameters and Guidelines were adopted on consent. Nevertheless, because the Parameters and Guidelines were adopted in 2005, with a period of reimbursement going back to fiscal year 1997-1998, the claimant states that the “District started using File Maker in 2005. The information prior to that time, more than ten years ago, is currently inaccessible.”⁸² The Controller seems to acknowledge the problem since it offered to reimburse salary and benefit costs at 30 minutes for each of the 1,149 evaluations performed under the mandate, based on its findings for fiscal years 2006-2007 and 2007-2008.

Although the claimant accepted the 30 minute time per evaluation beginning in fiscal year 2006-2007, its rebuttal comments conclude that each evaluation conducted in fiscal years 1997-1998 through 2004-2005 should be reimbursed at 2.5 hours. However, the claimant does not explain why the evaluations conducted before fiscal year 2006-2007 took longer than 30 minutes. And there is no evidence in the record to support reimbursement at 2.5 hours, or five to ten hours per evaluation as originally asserted.

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

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

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

⁸⁰ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 805 (where the court states that “the Commission submits regulatory P & Gs to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon”) and pages 812-813.

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

⁸² Exhibit C, Claimant’s Late Rebuttal Comments on the IRC, page 5.

The declarations of estimated time to perform the mandate that were originally provided by the claimant to support reimbursement at five to ten hours per evaluation were based on activities that go beyond the scope of the mandate. The “reimbursable activity codes” listed on the declaration forms identify the full spectrum of evaluation activities for which time was estimated as follows: preparing for the evaluation, goals and objectives conference with instructor, pre-observation conference with instructor, classroom observation of instructor, post-observation conference with instructor, final conference with instructor, district reporting.⁸³ The Commission, however, denied reimbursement for evaluating and assessing certificated employees as it relates to established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.⁸⁴ The Commission limited the scope of the mandate for these employees to (1) review a certificated instructional employee’s instructional techniques and strategies and adherence to curricular objectives, and include in the written evaluation the assessment of these factors only during specified years; (2) review the results of the Standardized Testing and Reporting (STAR) test as it reasonably relates to the performance of those certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and include the assessment of this information in the employee’s written evaluation only during specified years. Therefore, the declarations do not provide reliable evidence of the time it took to evaluate each employee under the limited scope of the mandate.

The claimant also argues that 2.5 hours for each evaluation is supported by the Controller’s audit of a comparable neighboring K-12 school district, as well as other time studies accepted by the Controller for the audits of other school districts for this program. Claimant further asserts:

Effectively the time studies included in the Controller's audits created a Reasonable Reimbursement Methodology, a uniform cost allowance, in conformity with Government Code section 17518.5(b), as it is based on cost information from a representative sample of eligible claimants, information provided by association of local agencies and school districts, or other projections of local costs. The time study of 2.5 hours per evaluation is reliable since auditing of reimbursement claims is not a prerequisite for the development and approval of a reasonable reimbursement methodology. (Cal. Code Regs., §1183.12).⁸⁵

However, the Controller’s audits of the records of other school districts are not relevant to the issue of the time it took the claimant to perform the mandated activities and, pursuant to section 1187.5(a) of the Commission’s regulations, and non-relevant evidence must be excluded as a

⁸³ Exhibit A, IRC, pages 143-191 (Employee Average Time Record for Mandated Costs forms). The mean of the first ten forms (pp. 143-153) is 8.05 hours.

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

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

basis for the Commission's findings.⁸⁶ Nor is there any evidence that a time study based on the claimant's performance of the program was conducted to support reimbursement at 2.5 hours. And, finally, the Commission has not adopted a reasonable reimbursement methodology (RRM) or uniform cost allowance for this program that could be applied to all school districts. An RRM would have to be inserted into the Parameters and Guidelines in accordance with Commission regulations in order to be recognized.⁸⁷ Since no RRM for *The Stull Act* program has been adopted, any discussion of an RRM is not relevant.

Accordingly, there is no evidence to support the claimant's contention that reimbursement is required at least 2.5 hours, or between 5 and 10 hours per evaluation.

Rather, based on the evidence in the record, the Controller's finding that 30 minutes per evaluation in 2006 reasonably represents the time taken by the claimant to perform the mandate during the earlier audit period. The mandated program was not amended or increased, but remained the same. In addition, the Controller's finding of 30 minutes per evaluation was based on the claimant's time logs for fiscal year 2006-2007 that recorded the time spent on the mandate for all months in the fiscal year on one form; teacher evaluation forms provided by the claimant that disclosed 30 minutes of actual classroom observation; and the Controller's review of a sample of written evaluations for teachers at El Camino High School, Jefferson Middle School, and Mission Elementary School for fiscal years 2006-2007 and 2007-2008.⁸⁸ There is no evidence in the record that the Controller's findings are wrong, or that the Controller's offer to apply the 30 minutes to the evaluations conducted in fiscal years 1997-1998 through 2004-2005 is arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the Controller's reduction of costs to \$0 is arbitrary, capricious, or entirely lacking in evidentiary support. However, the Controller's offer to allow reimbursement at 30 minutes for each of the 1,149 employees evaluated (which results in reimbursement of \$35,967, which includes both direct and indirect costs), is supported by the record and is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

For the reasons discussed above, the Commission partially approves this IRC and pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, requests that the Controller reinstate \$35,967, which includes both direct and indirect costs, to the claimant.

⁸⁶ California Code of Regulations, title 2, sections 1185.1 and 1187.5.

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

⁸⁸ Exhibit A, IRC, page 92. Exhibit B, Controller's Comments on the IRC, page 13.



RE: **Decision**

The Stull Act, 14-9825-I-01

Education Code Section 44660-44665

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002,
2002-2003, 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

On September 23, 2016, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: September 28, 2016

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 28, 2016, I served the:

Decision

The Stull Act, 14-9825-I-01

Education Code Section 44660-44665

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

Fiscal Years: 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, and 2004-2005

Oceanside Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 28, 2016 at Sacramento, California.



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Mailing List

Last Updated: 9/27/16

Claim Number: 14-9825-I-01

Matter: The Stull Act

Claimant: Oceanside Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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