

Edmund G. Brown Jr.  
GOVERNOR



# STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

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## REPORT TO THE LEGISLATURE: APPROVED MANDATE CLAIMS

**July 1, 2013 – December 31, 2013**

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# TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. NEW MANDATES .....</b>	<b>3</b>
<b>III. PENDING PARAMETERS AND GUIDELINES, AMENDMENTS, AND STATEWIDE COST ESTIMATE CASELOAD .....</b>	<b>4</b>
A. Pending Parameters and Guidelines .....	4
B. Pending Parameters and Guidelines with Proposed RRM's .....	4
C. Pending Requests to Amend Parameters and Guidelines.....	4
D. Pending Requests to Amend Parameters and Guidelines with Proposed RRM's .....	5
E. Pending Statewide Cost Estimates .....	5
<b>IV. PENDING JOINT REASONABLE REIMBURSEMENT METHODOLOGIES AND LEGISLATIVELY- DETERMINED MANDATES.....</b>	<b>5</b>
A. Pending Joint Reasonable Reimbursement Methodologies .....	5
B. Pending Joint Legislatively-Determined Mandates .....	6
C. Delays in the Process.....	6
<b>V. ADOPTED STATEWIDE COST ESTIMATES .....</b>	<b>7</b>
<i>Behavioral Intervention Plans (BIPs), CSM-4464 .....</i>	<i>7</i>
<i>Public Contracts (K-14), 02-TC-35 .....</i>	<i>15</i>
<i>Discrimination Complaint Procedures, 02-TC-46 .....</i>	<i>22</i>
<i>Charter Schools IV, 03-TC-03 .....</i>	<i>26</i>
<i>Local Agency Ethics (AB 1234), 07-TC-04 .....</i>	<i>32</i>
<i>Tuberculosis Control, 03-TC-14.....</i>	<i>35</i>
<i>Uniform Complaint Procedures (K-12), 03-TC-02 .....</i>	<i>39</i>

# I. INTRODUCTION

## Commission on State Mandates

### Test Claim Process

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. To implement article XIII B, section 6, the Legislature created the Commission on State Mandates (Commission) to succeed the State Board of Control in making determinations whether new statutes or executive orders are state-mandated programs.<sup>1</sup> The Commission was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Commission provides the sole and exclusive procedure for local agencies and school districts (claimants) to claim reimbursement for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. The Commission is required to hear and decide claims (test claims) filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.<sup>2</sup>

### Parameters and Guidelines

Government Code section 17557 provides that if the Commission determines that a statute or executive order imposes a mandate upon local agencies and school districts, the Commission is required to determine the amount to be subvended to local agencies and school districts for reimbursement by adopting parameters and guidelines. In adopting parameters and guidelines, the Commission may adopt a reasonable reimbursement methodology (RRM). Once parameters and guidelines are adopted, the Commission is required to adopt a statewide cost estimate of the mandated program (Gov. Code, § 17553).

### Alternative Processes

In 2007, AB 1222 (Statutes 2007, chapter 329) was enacted to provide an alternate process for determining the amount to be subvended for mandated programs. Under AB 1222, local governments and the Department of Finance may jointly develop reasonable reimbursement methodologies and statewide estimates of costs for mandated programs for approval by the Commission in lieu of parameters and guidelines and statewide cost estimates. Jointly developed reimbursement methodologies and statewide estimates of costs that are approved by the Commission are included in the Commission's Annual Reports to the Legislature.

AB 1222 also provided a process where the Department of Finance and local agencies, school districts, or statewide associations may jointly request that the Legislature determine that a statute or executive order imposes a state-mandated program, establish a reimbursement methodology, and appropriate funds for reimbursement of costs. This process is intended to bypass the Commission's test claim process, thus providing the Commission with more time to complete the caseload backlog. To date, this process has not been successfully utilized.

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<sup>1</sup> Statutes 1984, chapter 1459, Government Code section 17500, et seq.

<sup>2</sup> Government Code section 17551.

## **Report to the Legislature**

The Commission is required to report to the Legislature at least twice each calendar year on the number of mandates it has found, the estimated statewide costs of each mandate, and the reasons for recommending reimbursement.<sup>3</sup> In 2010, SB 894 (Stats. 2010, ch. 699) was enacted to require the Commission to expand its Report to the Legislature to include:

- The status of pending parameters and guidelines that include proposed reimbursement methodologies.
- The status of pending joint proposals between the Department of Finance and local governments to develop reasonable reimbursement methodologies in lieu of parameters and guidelines.
- The status of joint proposals between the Department of Finance and local governments to develop legislatively-determined mandates.
- Any delays in the completion of the above-named caseload.

This report fulfills these requirements.

## **Legislative Analyst**

After the Commission submits its report to the Legislature, the Legislative Analyst is required to submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the Commission's reports. The Legislative Analyst's report shall make recommendations as to whether each mandate should be repealed, funded, suspended, or modified.

## **The Legislature**

Upon receipt of the report submitted by the Commission pursuant to Section 17600, funding shall be provided in the subsequent Budget Act for costs incurred in prior years. No funding shall be provided for years in which a mandate is suspended.<sup>4</sup>

The Legislature may amend, modify, or supplement the parameters and guidelines, reasonable reimbursement methodologies, and adopted statewide estimates of costs for the initial claiming period and budget year for mandates contained in the annual Budget Act. If the Legislature amends, modifies, or supplements the parameters and guidelines, reasonable reimbursement methodologies, or adopted statewide estimates of costs for the initial claiming period and budget year, it shall make a declaration in separate legislation specifying the basis for the amendment, modification, or supplement.<sup>5</sup>

## **Mandate Funding Provisions**

The Government Code provides that if the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.<sup>6</sup> Under Proposition 1A, which amended article XIII B, section 6 of the California Constitution, city, county, city and county, or special district

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<sup>3</sup> Government Code section 17600.

<sup>4</sup> Government Code section 17612(a).

<sup>5</sup> Government Code section 17612(b).

<sup>6</sup> Government Code section 17612(c).

mandate claims for costs incurred prior to the 2004-2005 fiscal year that have not been paid prior to the 2005-2006 fiscal year may be paid over a term of years, as prescribed by law. However, for the 2005-2006 fiscal year and every subsequent fiscal year, the Constitution now requires the Legislature to either appropriate in the annual Budget Act the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable.

If payment for an initial reimbursement claim is being made more than 365 days after adoption of the statewide cost estimate, the State Controller’s Office (SCO) shall include accrued interest at the Pooled Money Investment Account rate.<sup>7</sup>

If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the SCO will prorate the claims.<sup>8</sup> If the funds to cover the remaining deficiency are not appropriated in the Budget Act, the SCO shall report this information to the legislative budget committees and the Commission.

## II. NEW MANDATES

The following table shows the statewide cost estimates that were adopted during the period of July 1, 2013 through December 31, 2013.

**Statewide Cost Estimates (SCE) Adopted  
During the Period of July 1, 2013 through December 31, 2013**

SCE Adopted	Test Claim and Claim No.	Initial Claiming Period	Estimated Costs for Initial Claiming Period			Estimated Future Costs
			Education	Non-Education	Totals	Approximate Cost of Future Annual Reimbursement Claims
7/26/13	<i>Behavioral Intervention Plans (BIPs)</i> , CSM-4464	7/1/93 – 6/30/12 <sup>9</sup>	\$1,008,923,805	-	\$1,008,923,805	Unknown since RRM ended 7/1/2012
7/26/13	<i>Public Contracts (K-14)</i> , 02-TC-35	7/1/01 – 6/30/12	\$362,253	-	\$362,253	\$32,932
7/26/13	<i>Discrimination Complaint Procedures</i> , 02-TC-46	7/1/01 – 6/30/12	\$8,820,764	-	\$8,820,764	\$801,888
7/26/13	<i>Charter Schools IV</i> , 03-TC-03	1/1/03 – 6/30/12	\$12,783	-	\$12,783	\$4,261
7/26/13	<i>Local Agency Ethics (AB 1234)</i> , 07-TC-04	7/1/06 – 6/30/12	-	\$0	\$0	\$0
9/27/13	<i>Tuberculosis Control</i> , 03-TC-14	7/1/02 – 6/30/12	-	\$132,855	\$132,855	\$28,356
12/6/13	<i>Uniform Complaint Procedures (K-12)</i> , 03-TC-02	7/1/02 – 6/30/12	\$209,613	-	\$209,613	\$34,751
<b>TOTAL</b>			\$1,018,119,605	\$132,855	<b>\$1,018,252,460</b>	

<sup>7</sup> Government Code section 17561.5(a).

<sup>8</sup> Government Code section 17567.

<sup>9</sup> An RRM was adopted for the initial claiming period. Beginning July 1, 2012 reimbursement claims submitted must be for actual costs incurred.

### III. PENDING PARAMETERS AND GUIDELINES, AMENDMENTS, AND STATEWIDE COST ESTIMATE CASELOAD

Following are tables showing parameters and guidelines, parameters and guidelines with proposed reasonable reimbursement methodologies (RRMs), requests to amend parameters and guidelines, requests to amend parameters and guidelines with proposed RRM, and statewide cost estimates that are pending Commission determination. A request to include an RRM in parameters and guidelines or amendments thereto is a request made by a local entity claimant, an interested party, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5. These requests are often disputed by one or more of the parties and interested parties.

#### A. Pending Parameters and Guidelines

	<b>Program</b>	<b>Status</b>
1.	<i>Sexually Violent Predators, CSM-4509*</i>	Set for hearing on March 28, 2014
2.	<i>Accounting for Local Revenue Realignments, 05-TC-01*</i>	Set for hearing on January 24, 2014
3.	<i>Discharge of Stormwater Runoff, 07-TC-09*</i>	Inactive status pending court action.
4.	<i>Medi-Cal Eligibility of Juvenile Offenders, 08-TC-04*</i>	Set for hearing on March 28, 2014

\* Local agency programs

† School district or community college district programs

#### B. Pending Parameters and Guidelines with Proposed RRM

	<b>Program</b>	<b>Status</b>
1.	N/A	N/A

\* Local agency programs

† School district or community college district programs

#### C. Pending Requests to Amend Parameters and Guidelines

	<b>Program</b>	<b>Status</b>
1.	<i>Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04, 02-TC-11, 07-TC-10)*</i>	Set for hearing on January 24, 2014
2.	<i>Notification of Truancy, 11-PGA-01 (CSM-4133)†</i>	Tentatively set for hearing on May 30, 2014
3.	<i>Filipino Employee Survey, 12-PGA-02 (CSM-2142)*</i>	Tentatively set for hearing on March 28, 2014
4.	<i>Graduation Requirements, 11-PGA-03 (CSM-4435)†</i>	Inactive status pending court action.

\* Local agency programs

† School district or community college district programs

**D. Pending Requests to Amend Parameters and Guidelines with Proposed RRM**

	<b>Program</b>	<b>Status</b>
1.	<i>Enrollment Fee Collection and Waivers, 08-PGA-02 (99-TC-13 &amp; 00-TC-15)†</i>	Tentatively set for hearing on May 30, 2014
2.	<i>Peace Officer Procedural Bill of Rights (POBOR), 11-PGA-09 (CSM-4499, 05-RL-4499-01, 06-PGA-06) *</i>	Tentatively set for hearing on May 30, 2014

\* Local agency programs

† School district or community college district programs

**E. Pending Statewide Cost Estimates**

	<b>Program</b>	<b>Status</b>
1.	<i>Interagency Child Abuse and Neglect (ICAN) Investigation Reports, 00-TC-22*</i>	Tentatively set for hearing on September 26, 2014
2.	<i>California Public Records Act, 02-TC-10 and 02-TC-51*†</i>	Tentatively set for hearing on March 28, 2014
3.	<i>Minimum Conditions for State Aid, 02-TC-25 and 02-TC-31†</i>	Set for hearing on January 24, 2014
4.	<i>Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21*</i>	Hearing date to be set pending court action.
5.	<i>Teacher Credentialing, 03-TC-09†</i>	Tentatively set for hearing on March 28, 2014
6.	<i>Parental Involvement Programs, 03-TC-16†</i>	Set for hearing on January 24, 2014
7.	<i>Peace Officers Procedural Bill of Rights II, 03-TC-18</i>	Tentatively set for hearing on September 26, 2014
8.	<i>Williams Case Implementation I, II, III, 05-TC-04, 07-TC-06, 08-TC-01†</i>	Set for hearing on January 24, 2014
9.	<i>Immunization Records – Pertussis, 11-TC-02†</i>	Tentatively set for hearing on September 26, 2014

\* Local agency programs

† School district or community college district programs

**IV. PENDING JOINT REASONABLE REIMBURSEMENT METHODOLOGIES AND LEGISLATIVELY-DETERMINED MANDATES**

**A. Pending Joint Reasonable Reimbursement Methodologies**

Following is a table showing programs where Department of Finance and test claimants are negotiating RRM.

	<b>Program</b>	<b>Date of Notice by Local Agencies or Department of Finance</b>	<b>Status</b>
	None		

## B. Pending Joint Legislatively-Determined Mandates

Following is a table showing programs for which Department of Finance and local agencies are negotiating legislatively-determined mandates (LDMs) they may jointly propose to the Legislature for adoption.

	<b>Program</b>	<b>Date of Notice</b>	<b>Status</b>
	None		

## C. Delays in the Process

Government Code section 17600 requires the Commission to report any delays in the process for joint RRM or LDMs being developed by Department of Finance and local entities and for RRM proposed by any party pursuant to Government Code section 17518.5. There are currently no pending joint RRM or LDMs. However, there are two RRM in parameters and guidelines or amendments thereto proposed by local entities pursuant to Government Code sections 17557 and 17518.5 pending for the Commission's consideration.

While the adoption of an RRM pursuant to Government Code sections 17557 and 17518.5 may reduce the auditing issues on reimbursement claims filed with the Controller, the process increases the responsibility of the Commission. For these disputed RRM, the Commission is required to make additional factual determinations, based on substantial evidence in the record, that the proposed formula or unit cost reasonably represents the costs mandated by the state for all eligible claimants in the state. Meeting this evidentiary standard also increases the responsibilities of the local entity claimants to compile evidence of costs and put it into the record, which is very time-consuming.

The proposed RRM must be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs; and shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner. If these findings are made and an RRM is adopted by the Commission in the parameters and guidelines or amendments thereto, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred. To date, the Commission has adopted five proposed RRM in parameters and guidelines and has denied two proposals based on a lack of evidence, all in the past two fiscal years

Due to the on-going fiscal crisis beginning in 2002, the Commission's position authority has decreased. In addition, for most of 2008 to the present, Commission staff, like staff from other state offices, have been subject to furloughs and other paid leave programs. This naturally has made it more difficult to complete the Commission's backlog, including the RRM proposed by local entities. However, the 2013-2014 budget contained a baseline augmentation to fund two additional Commission positions: an attorney III and a senior legal analyst. These two new positions will hasten the reduction of the Commission's backlog and facilitate timely hearing of current and future matters.

## V. ADOPTED STATEWIDE COST ESTIMATES

*Behavioral Intervention Plans (BIPs)*, CSM-4464

Adopted: July 26, 2013

### STATEWIDE COST ESTIMATE

**\$1,008,923,805**

**(Total For Fiscal Years 1993-1994 through 2011-2012 Only<sup>10</sup>)**

California Code of Regulations, Title 5, Sections 3001 and 3052

Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

*Behavioral Intervention Plans*

CSM-4464

Butte County Office of Education, San Diego Unified School District,  
San Joaquin County Office of Education, Claimants

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### STAFF ANALYSIS

#### Background and Summary of the Mandate

The *Behavioral Intervention Plans (BIPs)* program provides special education services for children with disabilities. On September 28, 2000, the Commission on State Mandates (Commission) adopted its test claim statement of decision<sup>11</sup> finding that regulations in Title 5, California Code of Regulations, sections 3001 and 3052, which implement Education Code section 56523, impose a reimbursable state-mandated new program on school districts and special education local plan areas (SELPA) within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following categories of reimbursable activities:

- SELPA plan requirements. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (j).)
- Development and implementation of behavioral intervention plans (BIPs). (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subds. (a), (c), (d), (e), and (f).)
- Functional analysis assessments. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subds. (b), (c), and (f).)
- Modifications and contingent BIPs. (Cal. Code of Regs., tit. 5, § 3052, subds. (g) and (h).)
- Development and implementation of emergency interventions. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (i).)
- Prohibited behavioral interventions. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (l).)
- Due process hearings. (Cal. Code of Regs., tit. 5, § 3052, subd. (m).)

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<sup>10</sup> This statewide cost estimate is for fiscal years 1993-1994 through 2011-2012 only. Because there is not yet any claiming data for 2012-2013 and Commission staff has no evidence on which to base an estimate for 2012-2013 and forward, it is premature to estimate those future costs.

<sup>11</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

The Commission adopted parameters and guidelines, including a reasonable reimbursement methodology (RRM), on April 19, 2013 and corrected the parameters and guidelines on April 29, 2013.<sup>12</sup>

Eligible claimants are required to file initial reimbursement claims for costs incurred for fiscal years 1993-1994 through 2011-2012 with the State Controller's Office (SCO) by November 21, 2013. Late initial claims may be filed until November 21, 2014, subject to a 10 percent penalty for late filing. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

#### Eligible Claimants and Period of Reimbursement

School districts and county offices of education (COEs), as defined in Government Code section 17519, are eligible to claim reimbursement where specified below. SELPAs, whose sole constituents are school districts and COEs, are also eligible as specified below. Community colleges and charter schools are not eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on September 28, 1994, establishing eligibility for reimbursement for the 1993-1994 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 1993.

#### **Reimbursable Activities**

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

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

##### A. One-Time Activities - SELPA Only.

The direct and indirect costs of labor, materials and supplies, contracted services, equipment and other capital assets, travel, and training incurred for the following mandate components are eligible for reimbursement on a one-time basis:

##### 1. Preparing and Providing SELPA Procedures and Initial Training.

Preparing procedures for the SELPA local plan regarding the systematic use of behavioral intervention, for the training of behavioral intervention case managers and personnel involved with implementing behavioral intervention plans, for special training for emergency interventions, and for identification of approved behavioral emergency procedures.

##### B. On-Going Activities - SELPA Only.

The direct and indirect costs of labor, materials and supplies, contracted services, equipment and other capital assets, travel, and training incurred for the following mandate components are eligible for reimbursement on an on-going basis:

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<sup>12</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

1. Training.

Providing and obtaining training in behavior analysis, positive behavioral interventions, and behavioral emergency interventions. Time spent by personnel who design and conduct the training and time spent by personnel who receive the training is reimbursable. Such personnel include behavioral intervention case managers and personnel involved with implementing behavioral intervention plans, conducting functional analysis assessments, or implementing emergency interventions.

2. Emergency Interventions.

Preparing reports on the number of Behavioral Emergency Reports to the California Department of Education (CDE) and Advisory committee on Special Education.

3. Due Process Hearings.

Preparing for, attending, and documenting and informing appropriate staff concerning the results of any mediation or due process hearing related to functional analysis assessments or the development or implementation of behavioral intervention plans.

C. On-going Activities - School Districts and COEs Only.

The direct and indirect costs of labor, materials and supplies, contracted services, equipment and other capital assets, travel, and training incurred for the following mandate components are eligible for reimbursement on an on-going basis:

1. Conducting Functional Analysis Assessments.

Providing notice to and obtaining written consent from parents to conduct functional analysis assessments; conducting functional analysis assessments; preparing written reports of assessment results; providing copies of assessment reports to parents and the IEP Team; conducting IEP Team meetings to review assessment results.<sup>13</sup>

2. Developing and Evaluating BIPs.

Participating in IEP Team meetings in which BIPs are developed, evaluated, or modified, or in which functional analysis assessment results are reviewed; preparing BIPs; and developing contingency plans for altering the procedures or the frequency or duration of the procedures. Providing copies of SELPA procedures on behavioral interventions and behavioral emergency interventions to parents and staff.

3. Implementing BIPs.

Implementing and supervising the implementation of BIPs; measuring and documenting the frequency, duration, and intensity of targeted behavior and effectiveness of the BIP. Costs of employing personnel with documented training in behavioral analysis including positive behavioral interventions (whether such personnel are new staff or existing staff) to serve as behavioral intervention case managers is reimbursable under this component.

4. Modifications to BIPs.

Providing notice to parents or parent representatives of the need to make minor modifications to the BIPs, meeting with parents to review existing program evaluation data; and developing minor modifications to BIPs with parents or parent representatives.

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<sup>13</sup> An IEP is an Individualized Education Program (Ed. Code § 56023 (Stats. 1993, ch. 1296 § 13.1 (AB 369))).

## 5. Emergency Interventions.

Employing emergency interventions; notifying parents and residential care providers after an emergency intervention is used; preparing and maintaining a Behavioral Emergency Report following the use of an emergency intervention; administrative review of Behavioral Emergency Reports; scheduling and conducting an IEP Team meeting to review a Behavioral Emergency Report and the need for a functional analysis assessment, interim BIP, or modification to an existing BIP.

## 6. Prohibited Interventions.

Training appropriate staff regarding the types of interventions that are prohibited under Title 5, California Code of Regulations section 3052(l).

## 7. Due Process Hearings.

Preparing for, attending, and documenting and informing appropriate staff concerning the results of any mediation or due process hearing related to functional analysis assessments or the development or implementation of BIPs.

## **Statewide Cost Estimate**

### Methodology

In lieu of filing detailed documentation of actual costs, the Commission adopted a reasonable reimbursement methodology (RRM) to reimburse claimants for all *direct* and *indirect* costs of the reimbursable activities as authorized by Government Code sections 17557(b) and 17518.5 for the initial claiming period, from July 1, 1993 to June 30, 2012 only. Beginning July 1, 2012, eligible claimants will be reimbursed based on actual costs.

### **RRM for Initial Claiming Period for Fiscal Years 1993-1994 through 2011-2012**

The statewide cost estimate for fiscal years 1993-1994 through 2011-2012 was developed by multiplying the average daily attendance (ADA) for a fiscal year by the relevant unit cost rate for that fiscal year as specified below.

The RRM for the mandated activities of the three uniform cost allowances is as follows:

#### A. RRM for One-time Activities - SELPA Only. See Table A.

The RRM for the one-time activities was calculated by multiplying the total number of SELPA ADA<sup>14</sup> for the fiscal year during which the one-time activities were performed<sup>15</sup> by the relevant unit cost rate for one-time SELPA activities for that fiscal year. The unit cost rate for one-time SELPA activities is \$.32818 for FY 2006-2007. This unit cost rate was adjusted by the Implicit Price Deflator<sup>16</sup>.

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<sup>14</sup> Exhibit D. The California Department of Education provided the AB 602 ADA figures for fiscal years 2000-2001 through 2011-2012 on April 15, 2013. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

<sup>15</sup> This could be as early as fiscal year 1993-1994, presumably the year implementation began.

<sup>16</sup> Exhibit E. The State Controller's Office provided the implicit price deflator figures on May 10, 2013. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

B. RRM for On-going Activities - SELPA Only. Training. See Table B.

The RRM for the on-going activities was calculated by multiplying the total number of SELPA ADA<sup>17</sup> for each fiscal year by the relevant unit cost rate for on-going SELPA activities for that fiscal year. The unit cost rate for on-going SELPA activities is \$1.18702 for FY 2006-2007. This unit cost rate was adjusted for each prior and subsequent year by the Implicit Price Deflator<sup>18</sup>.

C. RRM for On-going Activities - School Districts and COEs. See Table C.

The RRM for the on-going activities was calculated by multiplying the total number of ADA<sup>19</sup> per fiscal year by the relevant unit cost rate for on-going school district and COE activities for the fiscal year. The unit cost rate for ongoing school district and COE activities is \$9.45701 for FY 2006-2007. This unit cost rate was adjusted for each prior and subsequent year by the Implicit Price Deflator<sup>20</sup>.

**Table A.**

<b>Fiscal Year</b>	<b>SELPA ADA</b>	<b>Unit Cost Rate</b>	<b>Total</b>
1993-1994 <sup>21</sup>	4,996,826.28	\$.21043	\$1,051,482.15
2006-2007	5,946,121.83	\$.32818	\$1,951,398.26
			<b>\$3,002,880.42<sup>22</sup></b>

**Table B.**

<b>Fiscal Year</b>	<b>SELPA ADA</b>	<b>Unit Cost Rate</b>	<b>Total</b>
1993-1994	4,996,826.28	\$.76111	\$3,803,134.45
1994-1995	5,066,787.65	\$.78428	\$3,973,780.22
1995-1996	5,186,506.91	\$.80229	\$4,161,082.63
1996-1997	5,324,764.77	\$.81844	\$4,358,000.48
1997-1998	5,433,232.03	\$.83140	\$4,517,189.11

<sup>17</sup> Exhibit D. The California Department of Education provided the AB 602 ADA figures for fiscal years 2000-2001 through 2011-2012 on April 15, 2013.

<sup>18</sup> Exhibit E. The State Controller's Office provided the implicit price deflator figures on May 10, 2013.

<sup>19</sup> Exhibit D. The California Department of Education provided the AB 602 ADA figures for fiscal years 2000-2001 through 2011-2012 on April 15, 2013.

<sup>20</sup> Exhibit E. The State Controller's Office provided the implicit price deflator figures on May 10, 2013.

<sup>21</sup> Fiscal year 1993-1994 SELPA ADA was used in calculating the one-time approved activities of preparing and providing SELPA procedures and initial training, since it is the earliest fiscal year approved, presumably the year implementation began.

<sup>22</sup> Exhibit F. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>) After discussion with SCO staff on July 1, 2013, Commission staff corrected the calculations in the draft staff analysis by multiplying the ADA by the unit cost rate only because the unit cost rate is already adjusted by the implicit price deflator as provided by the SCO. Therefore, the correct total estimated cost of this program is \$1,008,923,805.

1998-1999	5,544,042.47	\$.85051	\$4,715,263.56
1999-2000	5,646,023.79	\$.88730	\$5,009,716.91
2000-2001	5,692,781.37	\$.92299	\$5,254,380.28
2001-2002	5,810,582.57	\$.94035	\$5,463,981.32
2002-2003	5,905,086.14	\$.97505	\$5,757,754.24
2003-2004	5,958,790.88	\$1.00767	\$6,004,494.81
2004-2005	5,980,225.39	\$1.06434	\$6,364,993.09
2005-2006	5,957,997.13	\$1.13024	\$6,733,966.68
2006-2007	5,946,121.83	\$1.18702	\$7,058,165.53
2007-2008	5,941,511.88	\$1.25863	\$7,478,165.10
2008-2009	5,953,104.10	\$1.29048	\$7,682,361.78
2009-2010	5,929,190.37	\$1.29597	\$7,684,052.84
2010-2011	5,942,644.82	\$1.33748	\$7,948,168.59
2011-2012	5,961,297.40	\$1.37746	\$8,211,448.72
			<b>\$112,180,100.33<sup>23</sup></b>

**Table C.**

<b>Fiscal Year</b>	<b>School District and COE ADA</b>	<b>Unit Cost Rate</b>	<b>Total</b>
1993-1994	4,996,826.28	\$6.06376	\$30,299,555.32
1994-1995	5,066,787.65	\$6.24838	\$31,659,214.62
1995-1996	5,186,506.91	\$6.39188	\$33,151,529.79
1996-1997	5,324,764.77	\$6.52051	\$34,720,181.93
1997-1998	5,433,232.03	\$6.62376	\$35,988,424.99
1998-1999	5,544,042.47	\$6.77601	\$37,566,487.22
1999-2000	5,646,023.79	\$7.06913	\$39,912,476.15
2000-2001	5,692,781.37	\$7.35351	\$41,861,924.73
2001-2002	5,810,582.57	\$7.49176	\$43,531,490.07
2002-2003	5,905,086.14	\$7.76826	\$45,872,244.46
2003-2004	5,958,790.88	\$8.02813	\$47,837,947.83
2004-2005	5,980,225.39	\$8.47963	\$50,710,098.62
2005-2006	5,957,997.13	\$9.00463	\$53,649,559.70
2006-2007	5,946,121.83	\$9.45701	\$56,232,533.61
2007-2008	5,941,511.88	\$10.02751	\$59,578,569.79
2008-2009	5,953,104.10	\$10.28126	\$61,205,411.06
2009-2010	5,929,190.37	\$10.32501	\$61,218,949.86
2010-2011	5,942,644.82	\$10.65576	\$63,323,396.97
2011-2012	5,961,297.40	\$10.97426	\$65,420,827.60
			<b>\$893,740,824.33<sup>24</sup></b>

<sup>23</sup> Exhibit F. After discussion with SCO staff on July 1, 2013, Commission staff corrected the calculations in the draft staff analysis by multiplying the ADA by the unit cost rate only because the unit cost rate is already adjusted by the implicit price deflator as provided by the SCO. Therefore, the correct total estimated cost of this program is \$1,008,923,805.

<sup>24</sup> Exhibit F. After discussion with SCO staff on July 1, 2013, Commission staff corrected the calculations in the draft staff analysis by multiplying the ADA by the unit cost rate only because

## Assumptions

- *The initial reimbursement claims may differ from the statewide cost estimate.*
  - This estimate assumes that every eligible district will submit a reimbursement claim for each eligible year. However, if a district chooses not to submit a reimbursement claim for any given year, the amount claimed will be less than estimated.
  - Fiscal years 2000-2001 through 2011-2012 ADA numbers are actual figures as provided by the Department of Education. Fiscal years 1993-1994 through 1999-2000 ADA numbers were not available. Commission staff estimated these figures based on a 94.87 percent average ADA of actual enrollment over the twelve-year period (2000-2001 through 2011-2012) that ADA figures were available. Therefore, if actual ADA numbers for fiscal years 1993-1994 through 1999-2000 differ from those estimated; the amount claimed will also differ.

### **Actual Cost Claiming Applicable to Annual Claiming Period Beginning July 1, 2012**

Beginning July 1, 2012, eligible claimants will be reimbursed based on actual costs. Commission staff has no way of predicting how many eligible claimants will submit actual claims for the future or what the cost of those claims will be. Even the number of eligible claimants that submit actual costs has historically varied. For example, over the past two years, the number of school districts submitting actual claims, as discussed in previous SCEs, has ranged from 0.10-29.05 percent. However, Commission staff has made the following assumptions:

- *There may be several reasons that the amount claimed for fiscal year 2012-2013 and forward will likely vary significantly from initial claims including but not limited to:*
  - Beginning with fiscal year 2012-2013, eligible claimants will be reimbursed based on actual cost claims, which are more difficult and time-consuming for claimants to prepare, rather than the formulas included in the RRM. Therefore eligible claimants may not have supporting documentation to file a reimbursement claim. As a result, fewer claims may be filed when the claiming methodology is based on actual costs.
  - Eligible claimants could submit claims for actual costs that are higher than the annual estimates based on the RRM calculation. In the January 25, 2013 Commission hearing transcript, claimant witness stated that the number of students with BIPs has dramatically increased over the last few years.<sup>25</sup> While the RRM calculations use ADA as a multiplier of the unit cost rate, which has fairly consistent growth, it does not account for the significant increase of BIPs students within the ADA. Therefore, the increase in BIPs students will likely correlate to an increase cost of actual claims beginning with fiscal year 2012-2013.
  - The SCO may conduct audits on actual cost claims and may reduce any claims it deems to be excessive or unreasonable.

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the unit cost rate is already adjusted by the implicit price deflator as provided by the SCO. Therefore, the correct total estimated cost of this program is \$1,008,923,805.

<sup>25</sup> Available on the Commission's website at <http://www.csm.ca.gov/hearing.shtml>, pages 60-62.

### **Draft Staff Analysis and Proposed Statewide Cost Estimate**

The draft staff analysis and proposed statewide cost estimate were issued on June 25, 2013.<sup>26</sup> No written comments were received. However, following a telephone conversation with SCO staff on July 1, 2013, Commission staff corrected the calculations in the draft staff analysis by multiplying the ADA by the unit cost rate only, because the unit cost rate is already adjusted by the implicit price deflator as provided by the SCO. Therefore, the correct total estimated cost of this program is \$1,008,923,805.

### **Conclusion**

On July 26, 2013, the Commission adopted the statewide cost estimate of \$1,008,923,805 for fiscal years 1993-1994 through 2011-2012 for costs incurred in complying with the *Behavioral Intervention Plans (BIPs)* program on consent.

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<sup>26</sup> Exhibit C. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## STATEWIDE COST ESTIMATE

**\$362,253**

**(Approximately \$32,932 Annually)**

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2, 20104.50, and 22300

Statutes 1985, Chapter 1073; Statutes 1988, Chapter 1408; Statutes 1989, Chapter 330;  
Statutes 1990, Chapter 1414; Statutes 1992, Chapter 799; and Statutes 1994, Chapter 726.

Business and Professions Code Section 7028.15

Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506, and 59509

Register 1994, Number 6

*Public Contracts (K-14)*

02-TC-35

Clovis Unified School District and Santa Monica Community College District, Claimants

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## STAFF ANALYSIS

### Background and Summary of the Mandate

This test claim, filed on June 24, 2003, addresses public contract requirements imposed on school districts, county offices of education, and community college districts when they contract for goods, services, and public works projects. On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision<sup>27</sup> finding that some of the test claim statutes and regulations impose a reimbursable state-mandated program upon school districts and community college districts, in specified circumstances, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Parameters and guidelines were adopted on September 28, 2012.<sup>28</sup>

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2001, and June 30, 2012) with the State Controller's Office (SCO) by May 3, 2013. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

### Eligible Claimants and Period of Reimbursement

Any "school district" as defined in Government Code section 17519, *excluding* county offices of education, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 24, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore,

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<sup>27</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

<sup>28</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2001.

### **Reimbursable Activities**

For each eligible claimant that incurs increased costs, the following activities are reimbursable, but only when those activities are triggered by repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593, and 81601, and when the repair and maintenance must be let to contract under the following circumstances:

1. For *K-12 school districts*, when repairs and maintenance do not constitute a public project as defined by Public Contract Code section 22002(c), and the repairs and maintenance are not an emergency as set forth in Public Contract Code section 20113 or made to a project previously funded by the School Facilities Program (Ed. Code, § 17070.10 et seq.);<sup>29</sup>
  - a. for repairs, and maintenance as defined by Public Contract Code section 20115, that exceed \$50,000; unless
    1. the district has an average daily attendance of less than 35,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has an average daily attendance of 35,000 or greater, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
2. For *K-12 school districts*, when repairs and maintenance constitute a public project as defined by Public Contract Code section 22002(c), and the project is not an emergency as set forth in Public Contract Code section 20113 or repair and maintenance made to a project previously funded by the School Facilities Program (Ed. Code, § 17070.10 et seq.);<sup>30</sup>
  - a. for repair and maintenance public projects that exceed \$15,000; unless
    1. the district has an average daily attendance of less than 35,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has an average daily attendance of 35,000 or greater, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
3. For *community college districts*, when repairs and maintenance do not constitute a public project as defined by Public Contract Code section 22002(c), and the repairs and maintenance are not an emergency as set forth in Public Contract Code section 20654;
  - a. for repairs, and maintenance as defined by Public Contract Code section 20656, that exceed \$50,000; unless
    1. the district has full-time equivalent students of fewer than 15,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has full-time equivalent students of 15,000 or more, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.

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<sup>29</sup> “Project” as used in relation to the School Facilities Program includes the acquisition of school sites, construction of new facilities, and modernization of existing school facilities.

<sup>30</sup> *Ibid.*

4. For *community college districts*, when repairs and maintenance constitute a public project as defined by Public Contract Code section 22002(c), and the project is not an emergency as set forth in Public Contract Code section 20654;
  - a. for repair and maintenance public projects that exceed \$15,000; unless
    1. the district has full-time equivalent students of fewer than 15,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has full-time equivalent students of 15,000 or more, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
  
5. For any K-12 school district or community college district that is subject to the Uniform Public Construction Cost Accounting Act (Pub. Contract Code, § 22000 et seq.), when a project is not an emergency as set forth in Public Contract Code section 22035 or repair and maintenance made to a *K-12 school district* project previously funded by the School Facilities Program (Ed. Code, § 17070.10 et seq.);<sup>31</sup>
  - a. for contracts entered into between July 1, 2001 and January 1, 2007, the project cost will exceed \$25,000;
  - b. for contracts entered into between January 1, 2007 and January 1, 2012, the project cost will exceed \$30,000; or
  - c. for contracts entered into after January 1, 2012, the project cost will exceed \$45,000.

Under the circumstances specified above, the following activities are reimbursable:

For K-12 School Districts and Community College Districts

1. Specify the classification of the contractor's license, which a contractor shall possess at the time a contract for repair or maintenance is awarded, in any plans prepared for a repair or maintenance public project and in any notice inviting bids required pursuant to the Public Contract Code. (Pub. Contract Code, § 3300(a) (Stats. 1985, ch. 1073).)
  
2. Include in any public works contract for repair and maintenance, which involves digging trenches or other excavations that extend deeper than four feet below the surface, a clause that provides the following:
  - (a) That the contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:
    - (1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
    - (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
    - (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and

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<sup>31</sup> *Ibid.*

generally recognized as inherent in work of the character provided for in the contract.

- (b) That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
  - (c) That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. (Pub. Contract Code, § 7104 (Stats. 1989, ch. 330).)
3. Set forth the provisions of Article 1.5 of Chapter 1 of Part 3 of the Public Contract Code (commencing with Pub. Contract Code, § 20104), or a summary thereof, in the plans or specifications for any public work for repair and maintenance which may give rise to a claim of \$375,000 or less which arise between a contractor and a K-12 school district or community college district, excluding those districts that elect to resolve claims pursuant to Article 7.1 (commencing with section 10240) of Chapter 1 of Part 2 of the Public Contract Code. (Pub. Contract Code, § 20104(c) (Stats. 1994, ch. 726).)<sup>32</sup>
  4. For claims of less than \$50,000 resulting from a public works contract for repair or maintenance, respond in writing to any written claim within 45 days of receipt of the claim. (Pub. Contract Code, § 20104.2(b)(1) (Stats. 1994, ch. 726).)
  5. For claims of more than \$50,000 and less than or equal to \$375,000 resulting from a public works contract for repair or maintenance, respond in writing to any written claim within 60 days of receipt of the claim. (Pub. Contract Code, § 20104.2(c)(1) (Stats. 1994, ch. 726).)
  6. Upon demand by a contractor disputing a K-12 school district's or community college district's response to a claim, schedule and engage in a meet and confer conference within 30 days for settlement of the dispute. (Pub. Contract Code, § 20104.2(d) (Stats. 1994, ch. 726).)
  7. Review each payment request from a contractor for repair and maintenance as soon as practicable after the receipt of the request to determine if the payment request is a proper payment request. "As soon as practicable" is limited by the seven day period in the

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<sup>32</sup> "Claim," as used in activities "3. – 6.," is defined by Public Contract Code section 20104(b)(2) is defined as:

[A] separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

activity mandated by Public Contract Code section 20104.50(c)(2). (Pub. Contract Code, § 20104.50(c)(1) (Stats. 1992, ch. 799).)

8. Return to the contractor for repair and maintenance any payment request determined not to be a proper payment request suitable for payment as soon as practicable, but no later than seven days after receipt of the request.  
  
A returned request shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. (Pub. Contract Code, § 20104.50(c)(2) (Stats. 1992, ch. 799).)
9. Require the provisions of Article 1.7, Chapter 1, Part 3, Division 2 of the Public Contract Code (Pub. Contract Code, § 20104.50), or a summary thereof, to be set forth in the terms of any repair and maintenance contract. (Pub. Contract Code, § 20104.50(f) (Stats. 1992, ch. 799).)
10. In any invitation for bid and in any repair and maintenance contract documents, include provisions to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. This excludes invitations for bid and contract documents for projects where there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. (Pub. Contract Code, § 22300(a) (Stats. 1988, ch. 1408).)
11. Before awarding a repair and maintenance contract to a contractor for a project that *is not* governed by Public Contract Code section 20103.5 (which addresses projects that involve federal funds), verify with the Contractors' State Licensing Board that the contractor was properly licensed when the contractor submitted the bid. (Bus. & Prof. Code, § 7028.15(e) (Stats. 1990, ch. 321).)
12. Before making the first payment for work or material to a contractor under any repair and maintenance contract for a project where federal funds are involved, verify with the Contractors' State Licensing Board that the contract was properly licensed at the time that the contract was awarded to the contractor. (Pub. Contract Code, § 20103.5 (Stats. 1990, ch. 1414).)

#### For Community College Districts Only

1. Undertake appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts for repair and maintenance. Appropriate efforts may include: (1) vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of California Code of Regulations, title 5, section 59500 et seq.; (2) developing a listing of minority, women, and disabled veteran business enterprises potentially available as contractors or suppliers; or (3) such other activities that may assist interested parties in being considered for participation in district contracts.  
  
Appropriate activity does not include the application of the system wide goals established in California Code of Regulations, title 5, section 59500 to district contracts. (Cal. Code Regs., tit. 5, § 59504 (Register 94, No. 6).)
2. Assess the status of each of its contractors regarding whether a contractor is a certified or self-certified minority, women, and disabled veteran business enterprise subcontractor and/or supplier. (Cal. Code Regs., tit. 5, §§ 59505(d) and 59509 (Register 94, No. 6), beginning July 1, 2001 through April 13, 2006.)

3. Establish a process to collect and retain certification information by a business enterprise claiming minority, women, and disabled veteran business enterprise status. (Cal. Code Regs., tit. 5, §§ 59506(a) and 59509 (Register 94, No. 6), beginning July 1, 2001 through April 13, 2006.)
4. Each October 15, report to the Chancellor the level of participation by minority, women, and disabled veteran business enterprises in community college district contracts for repair and maintenance for the previously completed fiscal year. (Cal. Code Regs., tit. 5, § 59509 (Register 94, No. 6), beginning July 1, 2001 through March 31, 2005.)

## **Statewide Cost Estimate**

### Assumptions

Staff reviewed the reimbursement claims data submitted by 10 school districts and compiled by the SCO. The actual claims data showed that 60 initial claims were filed for fiscal years 2001-2002 through 2011-2012 for a total of \$362,253.<sup>33</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are approximately 985 K-12 school districts and 72 community college districts in California. Of those, only 10 K-12 school districts filed initial reimbursement claims totaling \$362,253 for this program for fiscal years 2001-2002 through 2011-2012. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2001-2002 through 2011-2012 may be filed until May 3, 2014.

- *It is possible that there will be few claims filed on this program.*

Reimbursement is required only when school districts and community college districts are required to contract for non-emergency repairs or maintenance to school facilities and property which has not received prior funding under the School Facilities Program. Even then, reimbursement is only required in limited situations based on the cost of the repair and maintenance and the hours needed to complete the repair and maintenance.

- *If school districts choose to participate in K-12 Mandated Programs Block Grant funding the number of claims filed for actual costs could be lower.*
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. Because the mandate is very limited (in terms of both the triggering events for the mandate and the scope of the reimbursable activities) it is likely that some claims will be reduced through the audit process.

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<sup>33</sup> Claims data reported as of May 17, 2013.

## Methodology

### *Fiscal Years 2001-2002 through 2011-2012*

The statewide cost estimate for fiscal years 2001-2002 through 2011-2012 was developed by totaling the 69 reimbursement claims filed with the SCO for these years, for a total of \$362,253. This averages to \$32,932 annually in costs for the state over this eleven-year period. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2001-2002	5	\$19,123
2002-2003	5	\$35,450
2003-2004	5	\$25,928
2004-2005	6	\$34,552
2005-2006	6	\$43,853
2006-2007	7	\$51,925
2007-2008	8	\$52,155
2008-2009	8	\$33,394
2009-2010	6	\$17,399
2010-2011	4	\$17,779
2011-2012	9	\$30,695
<i>TOTAL</i>	<b>69</b>	<b>\$362,253</b>

### **Comments on Draft Staff Analysis and Proposed Statewide Cost Estimate**

On June 10, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate<sup>34</sup> for comments. The SCO contacted Commission staff via telephone to point out that the claiming period in the draft staff analysis incorrectly stated that the initial reimbursement claims were for costs incurred between July 1, 2001 and June 30, 2011. The initial claims were actually for costs incurred between July 1, 2001 and June 30, 2012. Commission staff made this correction. No other comments were received on the draft.

### **Conclusion**

On July 26, 2013 the Commission adopted the statewide cost estimate of **\$362,253** for the first 11 years of costs incurred in complying with the *Public Contracts (K-14)* program and an on-going cost estimate of approximately \$32,932 in annual costs on consent.

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<sup>34</sup> Exhibit C. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

Adopted: July 26, 2013

## **STATEWIDE COST ESTIMATE**

**\$8,820,764**

(Approximately \$801,888 Annually)

Education Code Sections 66010.2, 66010.7, and 87102, as amended by Statutes 1988, Chapter 973 and Statutes 1991, Chapter 1198

California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as added or amended by Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35

(Consolidated With)

Government Code Section 11135, as added or amended by Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; Statutes 2001, Chapter 708; Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342, as added or amended by Register 81, Number 16; Register 92, Number 17; Register 96, Number 23; Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35

### *Discrimination Complaint Procedures*

02-TC-46

(And a Portion of 02-TC-25 and 02-TC-31)

Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District, Claimants

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## **STAFF ANALYSIS**

### **Background and Summary of the Mandate**

The *Discrimination Complaint Procedures* (02-TC-46) test claim addresses state antidiscrimination laws as they apply to community college districts. On March 24, 2011, the Commission adopted a statement of decision<sup>35</sup> finding that the test claim statutes and regulations impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission separated the activities found to be reimbursable into the following three program areas: (1) student equity; (2) equal employment opportunity; and (3) discrimination complaint procedures, which includes the state's requirement to comply with section 202 of the federal Americans with Disabilities Act (ADA) for employment programs and the accessibility requirements of section 508 of the Rehabilitation Act for information technology.

Based on the number of activities approved in the test claim and the varying subjects that the reimbursable activities addressed, the Commission chose to adopt separate parameters and

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<sup>35</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

guidelines based on subject matter and on the period of reimbursement in order to reduce confusion in the claiming process. The Commission adopted seven sets of parameters and guidelines for the *Discrimination Complaint Procedures* program and separated them as follows: (1) equal employment opportunity program (3 sets); (2) federal rights for individuals with disabilities (2 sets); and (3) discrimination complaint procedures (2 sets). All seven sets of parameters and guidelines were adopted on September 28, 2012.<sup>36</sup>

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2001, and June 30, 2012) with the State Controller's Office (SCO) by May 3, 2013. Late initial reimbursement claims may be filed until May 2, 2014, subject to a 10% penalty for late filing. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014, but may be filed until February 17, 2015, subject to a 10% penalty for late filing.

#### Eligible Claimants and Period of Reimbursement

Any community college district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 27, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2001.

#### **Reimbursable Activities**

Reimbursement is authorized for the activities listed in the parameters and guidelines.<sup>37</sup>

#### **Statewide Cost Estimate**

##### Assumptions

Staff reviewed the reimbursement claims data submitted by two community college districts (Long Beach and Los Rios) and compiled by the SCO. The *Discrimination Complaint Procedures* program has seven sets of parameters and guidelines. Three of the sets of parameters and guidelines cover multiple fiscal years. Each set of parameters and guidelines includes specific reimbursable activities over specific fiscal years that may be claimed by eligible claimants. The actual claims data showed that Los Rios Community College District filed 22 claims under 6 of the 7 sets of parameters and guidelines for this program. Long Beach Community college filed 11 claims under 3 of the 7 sets of parameters and guidelines for this program. There were a total of 33 claims filed for fiscal years 2001-2002 through 2011-2012 for a total of \$8,820,764.<sup>38</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 72 community college districts in California. Of those, only two districts filed initial reimbursement claims totaling \$8,820,764 for this program for fiscal years 2001-2002 through 2011-2012. If other eligible claimants file late or

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<sup>36</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

<sup>37</sup> See Exhibit B.

<sup>38</sup> Claims data reported as of May 17, 2013.

amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2001-2002 through 2011-2012 may be filed until May 3, 2014.

- *The number of claims filed will vary from year to year based on the number of community college districts that are required to update their policies and procedures regarding discrimination complaint procedures during that fiscal year.*

Community college districts are required to review the equal employment opportunity plan, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. Since this is not an annual activity for each district, there will be some variation in the amount of claims filed from year to year.

- *The number of claims filed may increase as community college districts update and expand their use of information technology systems and equipment.*

The test claim statutes require community college districts to comply with the accessibility requirements of section 508 of the Rehabilitation Act, and its implementing regulations in developing, procuring, maintaining, or using electronic or information technology (IT), which are otherwise only applicable to federal agencies. It is reasonable to assume that the integration of IT in community college programs will increase as new technology becomes available and as community colleges provide services such as online courses and other distance learning tools, as well as new classroom technologies, to a growing student population. As a result, the activities required to comply with the accessibility requirements of section 508 of the Rehabilitation Act and its implementing regulations, and the costs incurred as a result, are expected to increase as well.

- *The number of reimbursement claims filed will vary from year to year depending on the number of discrimination complaints filed with the community college districts.*

Community college districts are required to investigate complaints of unlawful discrimination (i.e., discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and to seek to resolve those complaints. This activity is driven by the complaints filed rather than by scheduled program requirements. The number of complaints may increase as enrollment does but may also decrease as a result of ongoing policy and program implementation aimed at curbing incidences of discrimination.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may audit and reduce reimbursement claims.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

## Methodology

### *Fiscal Years 2001-2002 through 2011-2012*

The statewide cost estimate for fiscal years 2001-2002 through 2011-2012 was developed by totaling the 33 reimbursement claims filed with the SCO for these years, for a total of \$8,820,764. This averages to \$801,888 annually in costs for the state over this eleven-year period. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2001-2002	3	\$397,260
2002-2003	3	\$490,407
2003-2004	3	\$490,536
2004-2005	3	\$605,753
2005-2006	3	\$672,353
2006-2007	3	\$756,708
2007-2008	3	\$1,002,349
2008-2009	3	\$952,585
2009-2010	3	\$934,866
2010-2011	3	\$1,065,667
2011-2012	3	\$1,452,280
<i>TOTAL</i>	<b>33</b>	<b>\$8,820,764</b>

### **Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate**

On June 25, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate<sup>39</sup> for comments. No comments were received.

### **Conclusion**

On July 26, 2013 the Commission adopted the statewide cost estimate of \$8,820,764 for costs incurred in complying with the *Discrimination Complaint Procedures* program on consent.

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<sup>39</sup> Exhibit C. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## STATEWIDE COST ESTIMATE

**\$12,783**

**(\$4,261 annually)**

Education Code Sections 1628, 42100(a), 47605, 47605.6

Statutes 2002, Chapter 1058

*Charter Schools IV*

03-TC-03

San Diego Unified School District, Claimant

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### STAFF ANALYSIS

#### Background and Summary of the Mandate

The *Charter Schools IV* program implements a comprehensive process for school districts or county boards of education to review a petition for the proposed operation of a charter school.

On January 27, 2012, the Commission on State Mandates (Commission) adopted a statement of decision<sup>40</sup> finding that the test claim statutes impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim for the activities listed in the Reimbursable Activities section below. The Commission adopted parameters and guidelines on September 28, 2012.<sup>41</sup>

Eligible claimants were required to file initial reimbursement claims for costs incurred between January 1, 2003 through June 30, 2003 and fiscal years 2003-2004 through 2011-2012 with the State Controller's Office (SCO) by May 3, 2013. Annual reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

#### Eligible Claimants and Period of Reimbursement

Any "school district" as defined in Government Code section 17519, including county boards of education, and excluding community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on August 29, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. The test claim statute (Statutes 2002, chapter 1058) became effective on January 1, 2003. Therefore, costs incurred for this mandate are eligible for reimbursement on January 1, 2003.

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<sup>40</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

<sup>41</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## **Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

- A. When a K-12 school district receives a petition for the establishment of a charter school pursuant to Education Code section 47605(a), and when a county board of education receives a petition for the establishment of a charter school on appeal pursuant to Education Code section 47605(j), K-12 school districts and county boards of education are eligible to receive reimbursement for the following activities mandated by Education Code section 47605:
  1. Review, and consider at a public hearing the following additional information in the charter school petition:
    - a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.
    - b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.
    - c) A description of where the charter school intends to locate in its description of facilities.
    - d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
      - 1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
      - 2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
      - 3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.
  2. If, after review, the school district or county board of education denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.
  3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.
- B. When county boards of education receives a petition for the establishment of a countywide charter school pursuant to Education Code section 47605.6, county boards of education are eligible to receive reimbursement for the following activities:
  1. Hold a public hearing not later than 60 days after receiving a petition to consider the level of support for the petition by teachers, parents or guardians, and the school

districts where the charter school petitioner proposes to place school facilities. As part of its consideration, the county board of education shall do the following:<sup>42</sup>

- a) Require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education.
  - b) Require the petitioner or petitioners to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.
  - c) Determine whether the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services, and that cannot be served as well by a charter school that operates in only one school district in the county.
  - d) Determine whether granting the charter is consistent with a sound educational practice, and whether the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Education Code section 47605.
  - e) Give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Education Code section 54032.
2. The county board of education shall also consider the information listed below and deny a petition for the establishment of a charter school if the board finds one or more of the following:
- a) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
  - b) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
  - c) The petition does not contain the number of signatures required.
  - d) The petition does not contain an affirmation of each of the following conditions listed in subdivision (d):
    - 1) That the charter school will meet all statewide standards and conduct the pupil assessments required pursuant to Education Code section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in non-charter public schools.
    - 2) That the charter school will consult with their parents and teachers regarding the school's educational programs.
  - e) The petition does not contain reasonably comprehensive descriptions of all of the following:

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<sup>42</sup> Education Code section 47605.6(a)(1), (h), (i).

- 1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an “educated person” in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.
  - 2) The measurable pupil outcomes identified for use by the charter school.
  - 3) The method by which pupil progress in meeting those pupil outcomes is to be measured.
  - 4) The location of each charter school facility that the petitioner proposes to operate.
  - 5) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.
  - 6) The qualifications to be met by individuals to be employed by the school.
  - 7) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.
  - 8) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.
  - 9) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.
  - 10) The procedures by which pupils can be suspended or expelled.
  - 11) The manner by which staff members of the charter schools will be covered by the State Teachers’ Retirement System, the Public Employees’ Retirement System, or federal social security.
  - 12) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.
  - 13) A declaration whether or not the charter school shall be deemed the exclusive public school employer for the employees of the charter school for the purposes of the EERA.
3. The county board of education shall also consider whether to approve additional locations subsequently proposed by a charter school following the initial approval of the charter petition as a material revision of the charter at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located.
- C. K-12 school districts and county superintendents of schools are eligible for reimbursement for the following activities pursuant to Education Code sections 1628 and 42100(a):
1. For school districts, following the approval of a charter petition and as the charter authority, to include the charter school’s annual statement of receipts and

expenditures with its own annual statement, and file the charter school's statement with the county superintendent of schools.

2. For county superintendents of schools to receive from a school district (when the school district is the chartering authority) or receive directly from a charter school (when the county board of education is the chartering authority) the charter schools' annual statement of receipts and expenditures.
3. For county superintendents of schools to verify the mathematical accuracy of the charter schools' annual statements of receipts and expenditures, and transmit the charter schools' statements to the State Superintendent of Schools.

## **Statewide Cost Estimate**

### Assumptions

Staff reviewed the reimbursement claims data submitted by three school districts and compiled by the SCO.<sup>43</sup> The actual claims data showed that one initial claim was filed for fiscal year 2009-2010, one initial claim for fiscal year 2010-2011, and three initial claims for fiscal year 2011-2012 for a total of \$12,783. No claims were filed for the reimbursement period of January 1, 2003 through June 30, 2003 or for fiscal years 2003-2004 through 2008-2009. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program:

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are approximately 1050 school districts in California; of those, only three districts filed initial reimbursement claims totaling \$12,783 for this program. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for January 1, 2003 through June 30, 2003 and fiscal years 2003-2004 through 2011-2012 may be filed until May 3, 2014.

- *The number of reimbursement claims filed will vary from year to year.*

Some of the reimbursable activities for this program are based on a K-12 school district or county board of education receiving a petition for the establishment of a charter school or a K-12 school district or county superintendent of schools approving a charter petition. Therefore, eligible claimants will only be able to claim reimbursement in the years they perform the related activities. There may be years in which no petitions are received or approved.

- *The Commission found limited fee authority and offsetting revenue for some of the reimbursable activities and also approved only a portion of the Charter Schools IV program as a mandate.*

Education Code section 47613 authorizes a chartering authority to charge fees for the actual costs of supervisorial oversight. Certain revenue received for the supervisorial oversight fee authority is identified as offsetting and will be deducted from the costs claimed for the reimbursable activities. Therefore, it is possible, with the offsets and limited approved activities, that a claimant may not be able to reach the \$1,000 threshold required for filing reimbursement claims.

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<sup>43</sup> Claims data reported as of May 17, 2013.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program it deems to be excessive or unreasonable.*
- *If eligible claimants choose to participate in K–12 Mandated Programs Block Grant funding, the number of claims filed for actual costs could be lower.*

Methodology

*January 1, 2003 through June 30, 2003 and fiscal years 2003-2004 through 2011-2012*

The statewide cost estimate for the period January 1, 2003 through June 30, 2003 and fiscal years 2003-2004 through 2011-2012 was developed by totaling the five reimbursement claims filed with the SCO, for a total of \$12,783. This averages to \$4,261 annually in costs for the state over the three-year<sup>44</sup> period in which claims were filed. Following is a breakdown of estimated total costs per fiscal year:

<b>Reimbursement Period or Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
January 1, 2003 through June 30, 2003	0	\$0
2003-2004	0	\$0
2004-2005	0	\$0
2005-2006	0	\$0
2006-2007	0	\$0
2007-2008	0	\$0
2008-2009	0	\$0
2009-2010	1	\$1,440
2010-2011	1	\$2,820
2011-2012	3	\$8,523
<i>TOTAL</i>	<b>5</b>	<b>\$12,783</b>

**Draft Staff Analysis and Proposed Statewide Cost Estimate**

On June 27, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate for comment.<sup>45</sup> No comments were received.

**Conclusion**

On July 26, 2013, the Commission adopted the statewide cost estimate of \$12,783 for costs incurred in complying with the *Charter Schools IV* program on consent.

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<sup>44</sup> No claims were filed for the reimbursement period of January 1, 2003 through June 30, 2003 or for fiscal years 2003-2004 through 2008-2009.

<sup>45</sup> Exhibit C. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## STATEWIDE COST ESTIMATE

**\$0**

Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f) and 53235.2(a)

Statutes 2005, Chapter 700

*Local Agency Ethics (AB 1234)*

07-TC-04

City of Newport Beach, Claimant

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### STAFF ANALYSIS

#### **Background and Summary of the Mandate**

This test claim statute addresses activities of local agencies related to transparency and ethics training for members of the legislative bodies of local agencies. Specifically, it addresses the policymaking, reporting, recordkeeping, and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision<sup>46</sup> finding that the test claim statutes impose a partially reimbursable state-mandated program on general law counties and those special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, that are required by their enabling act to provide compensation or reimbursement of expenses to perform the reimbursable activities to their members, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Parameters and guidelines were adopted on September 28, 2012.<sup>47</sup>

Eligible claimants were required to file initial reimbursement claims, for costs incurred between July 1, 2006, and June 30, 2012, with the State Controller's Office (SCO) by May 3, 2013. Late initial reimbursement claims may be filed until May 3, 2014. Annual reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

#### Eligible Claimants and Period of Reimbursement

General law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, that are required by their enabling act to provide reimbursement of expenses to perform the reimbursable activities, are eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on

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<sup>46</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

<sup>47</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

October 23, 2007, establishing eligibility for reimbursement for the 2006-2007 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2006.

### **Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

1. Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging, and other actual and necessary expenses;<sup>48</sup>
2. Provide expense report forms to the members of the legislative body;<sup>49</sup>
3. Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;<sup>50</sup>
4. Maintain training records indicating the dates that local officials satisfied the ethics training and the entity that provided the training for five years.<sup>51</sup>

In the test claim decision, the Commission found that ethics training was *not* a reimbursable activity.

### **Statewide Cost Estimate**

#### Assumptions

Staff reviewed the one reimbursement claim submitted by one special district, Idyllwild Water District, to the SCO. The claim was filed for fiscal year 2011-2012 for a total of \$21,195.<sup>52</sup> However, because Idyllwild Water District is not subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution, it is not an eligible claimant.<sup>53</sup>

Therefore, no claims subject to reimbursement have been filed on this program. Based on this information, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

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<sup>48</sup> Government Code section 53232.2(b).

<sup>49</sup> Government Code section 53232.3(a).

<sup>50</sup> Government Code section 53235(f).

<sup>51</sup> Government Code section 53235.2(a).

<sup>52</sup> Claims data reported as of May 17, 2013.

<sup>53</sup> The SCO issues an annual report that identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. On October 30, 2012, the SCO issued its *Special Districts Annual Report* for fiscal year 2010-2011. The report shows that Idyllwild Water District is not subject to the appropriations limit of article XIII B, thus making it an ineligible claimant for mandates purposes. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463, which provide the information on which the SCO's annual report is based.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 44 general law counties and approximately 610 eligible special districts in California. However, not a single eligible claimant has filed a reimbursement claim. If eligible claimants file late or amended initial claims, the reimbursement claims would exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2006-2007 through 2011-2012 may be filed until May 3, 2014.
- *There may be several reasons that non-claiming general law counties and eligible special districts did not file for reimbursement, including but not limited to:*
  - The Commission approved only a few minor administrative activities for this program and found that the test claim statute does not impose a state-mandated program on most local agencies and that the most costly activities claimed, the compensation and reimbursement of members of local agency legislative bodies, ethics training and travel are not required by the test claim statute. Therefore, eligible claimants may not be able to reach the \$1,000 threshold for filing annual reimbursement claims.
  - Eligible claimants did not have supporting documentation to file a reimbursement claim.
- *Because of the dearth of data available to prepare this statewide cost estimate, it may not be very accurate in predicting future costs of the program.*

#### Methodology

##### *Fiscal Years 2006-2007 through 2011-2012*

The statewide cost estimate for fiscal years 2006-2007 through 2011-2012 was developed by reviewing the one reimbursement claim filed with the SCO for fiscal year 2011-2012, which was filed by a special district that is not an eligible claimant.

#### **Draft Staff Analysis and Proposed Statewide Cost Estimate**

On June 18, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate for comment.<sup>54</sup> No comments were received.

#### **Conclusion**

On July 26, 2013, the Commission adopted the statewide cost estimate of \$0 for costs incurred in complying with the *Local Agency Ethics (AB 1234)* program on consent.

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<sup>54</sup> Exhibit C. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## STATEWIDE COST ESTIMATE

**\$132,855**

**(Approximate Prospective Cost of \$28,356 Annually)**

Health and Safety Code sections 121361, 121362 and 121366

Statutes 1993, Chapter 676; Statutes 1994, Chapter 685;

Statutes 1997, Chapter 116; and Statutes 2002, Chapter 763

*Tuberculosis Control*

03-TC-14

County of Santa Clara, Claimant

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### STAFF ANALYSIS

#### Background and Summary of the Mandate

On October 27, 2011, the Commission on State Mandates (Commission) adopted a statement of decision for the Tuberculosis Control (TB) test claim finding that the test claim statutes impose a partially reimbursable state-mandated program upon counties and cities within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.<sup>55</sup>

The Commission approved this test claim for the following reimbursable activities:

- For local detention facilities to:
  - Submit notification and a written treatment plan that includes the information required by Health and Safety Code section 121362 to the LHO when a person with active TB or reasonably believed to have active TB is discharged or released from the detention facility; and
  - Submit notification and a written treatment plan that includes the information required by Health and Safety Code section 121362 to the LHO and the medical officer of the local detention facility receiving the person when a person with active TB or reasonably believed to have active TB is transferred to a local detention facility in another jurisdiction.
- For LHOs to:
  - Review for approval within 24 hours of receipt only those treatment plans submitted by a health facility; and
  - Notify the medical officer of a parole region or a physician or surgeon designated by the Department of Corrections when there are reasonable grounds to believe that a parolee has active TB and ceases treatment for TB.
- For counties or specified cities to provide counsel to non-indigent TB patients who are subject to an order of detention.

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<sup>55</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

Parameters and guidelines were adopted on December 7, 2012.<sup>56</sup>

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2002, and June 30, 2012) with the State Controller's Office (SCO) by July 11, 2013. Late initial reimbursement claims may be filed until July 11, 2014. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

#### Eligible Claimants and Period of Reimbursement

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on September 26, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2002.

#### **Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

A. The following activities mandated by Health and Safety Code sections 121361 and 121362 are eligible for reimbursement:

1. For local detention facilities:

When a person with active TB or reasonably believed to have active TB is discharged or released from a detention facility:

- i. Draft and submit notification to the Local Health Officer; and
- ii. Submit the written treatment plan that includes the information required by Health and Safety Code section 121362 to the Local Health Officer.

Drafting the written treatment plan is *not* eligible for reimbursement.

b. When a person with active TB or reasonably believed to have active TB is transferred to a local detention facility in another jurisdiction:

- i. Draft and submit notification to the Local Health Officer and the medical officer of the local detention facility receiving the person; and
- ii. Submit the written treatment plan that includes the information required by Health and Safety Code section 121362 to the Local Health Officer and the medical officer of the local detention facility receiving the person.

Drafting the written treatment plan is *not* eligible for reimbursement.

2. For Local Health Officers or others acting at the direction of the Local Health Officer:

- a. Receive and review for approval within 24 hours of receipt only those treatment plans submitted by a health facility. This activity includes the following:
  - Receive health facility's treatment plan.

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<sup>56</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

- Send request to health facility for medical records and information on TB medications, dosages and diagnostic work-up. Review records and information.
  - Coordinate with health facility on any adjustments to the treatment plan.
  - Send approval to health facility.
- b. Draft and send a notice to the medical officer of a parole region, or a physician or surgeon designated by the Department of Corrections, when there are reasonable grounds to believe that a parolee has active TB and ceases treatment for TB.
- B. The following activity mandated by Health and Safety Code section 121366 is eligible for reimbursement:
1. For cities, counties, and cities and counties to provide counsel to *non-indigent* TB patients who are subject to a civil order of detention issued by a Local Health Officer pursuant to Health and Safety Code section 121365 upon request of the patient. Services provided by counsel include representation of the TB patient at any court review of the order of detention required by Health and Safety Code section 121366.

## Statewide Cost Estimate

### Assumptions

Staff reviewed the reimbursement claims data submitted by 1 city and county, 2 counties and compiled by the SCO. The actual claims data showed that 22 initial claims were filed for fiscal years 2002-2003 through 2011-2012 for a total of \$132,855. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 58 counties and 482 cities in California. Of those, only 2 counties (San Bernardino and Orange) and 1 city and county (San Francisco) filed initial reimbursement claims totaling \$132,855 for this program for fiscal years 2002-2003 through 2011-2012. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2002-2003 through 2011-2012 may be filed until July 11, 2014.
  - Additionally, the total costs claimed in the most recent three years of the initial claiming period are trending upward. San Bernardino County filed claims for these three years, whereas previous years consisted only of claims from the other two claimants. It is likely that future annual claims will increase as more claimants file.
- *The number of reimbursement claims filed will vary from year to year.*

This program requires a detention facility to submit notification and a written treatment plan to the LHO when a person with active TB or reasonably believed to have active TB is discharged or released from the detention facility. It also requires a detention facility to submit notification and a written treatment plan to the LHO and the medical officer of the local detention facility receiving the person when a person with active TB or reasonably believed to have active TB is transferred to a local detention facility in another jurisdiction. Claims will be case load driven and, thus, will vary annually

depending on the incidence of tuberculosis within detention facilities. It is likely that claims will follow broader statewide health trends.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. The reimbursable activities in this program are only a small part of a larger process. Claimants may file claims for activities that, while part of the larger process, are not reimbursable and those claims may therefore be reduced by the SCO.

### Methodology

#### *Fiscal Years 2002-2003 through 2011-2012*

The statewide cost estimate for fiscal years 2002-2003 through 2011-2012 was developed by totaling the 22 reimbursement claims filed with the SCO for these years, for a total of \$132,855. For the reasons discussed above, staff finds that the averages for the most recent three-year period are most indicative of potential costs. For the most recent three-year period, costs averaged \$28,356 annually. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2002-2003	1	\$1,474
2003-2004	2	\$6,188
2004-2005	2	\$6,834
2005-2006	2	\$7,168
2006-2007	2	\$7,701
2007-2008	2	\$9,090
2008-2009	2	\$9,332
2009-2010	3	\$28,290
2010-2011	3	\$26,446
2011-2012	3	\$30,332
<i>TOTAL</i>	<b>22</b>	<b>\$132,855</b>

### **Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate**

On August 7, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate<sup>57</sup> for comments. No comments were received.

### **Conclusion**

On September 27, 2013, the Commission adopted the statewide cost estimate of **\$132,855** for costs incurred in complying with the *Tuberculosis Control* program.

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<sup>57</sup> Exhibit C. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## **STATEWIDE COST ESTIMATE**

**\$209, 613**

**(Approximate Prospective Cost of \$34,751 Annually)**

Education Code Sections 250, 251, and 262.3

Statutes 1982, Chapter 1117; Statutes 1988,  
Chapter 1514; Statutes 1998, Chapter 914

California Code of Regulations, Title 5, Sections 4611, 4621, 4622, 4631, and 4632

Register 92, Number 3; Register 93, Number 51

*Uniform Complaint Procedures (K-12)*

03-TC-02

Solana Beach School District, Claimant

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### **STAFF ANALYSIS**

#### **Background and Summary of the Mandate**

This program address activities associated with the procedures involved for filing, investigating, and resolving the following two types of complaints arising in a school district: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. It also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

On September 28, 2012, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Education Code sections 250, 251, and 262.3, and sections 4611, 4621, 4622, 4631, and 4632 of the Title 5 regulations impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.<sup>58</sup>

Parameters and Guidelines were adopted on January 25, 2013 approving the reimbursable activities described below under the *Reimbursable Activities* section.<sup>59</sup>

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2002, and June 30, 2012) with the State Controller's Office (SCO) by August 29, 2013. Late initial reimbursement claims may be filed until August 29, 2014. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

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<sup>58</sup> Exhibit A. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

<sup>59</sup> Exhibit B. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

## Eligible Claimants and Period of Reimbursement

Any "school district" as defined in Government Code section 17519, including county boards of education, and excluding community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on July 23, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2002.

## **Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

1. Assurance of Compliance with Antidiscrimination Laws in Excess of Federal Law, and Notices Regarding Civil Remedies (Ed. Code, §§ 250, 251, and 262.3)
  - a. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation.<sup>60</sup> (Ed. Code, § 250 (Stats. 1998, ch. 914).)
  - b. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)
  - c. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
  - d. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
2. Uniform Complaint Procedures
  - a. Referral of Complaints to Appropriate Entities (Cal. Code Regs., Tit. 5, § 4611)
    - (1) Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue.<sup>61</sup> (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)

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<sup>60</sup> Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

<sup>61</sup> The limitation's reference to "state discrimination law or regulation at issue" refers to *any* state discrimination laws or regulations.

- (2) Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)<sup>62</sup>
  - (3) Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)
  - (4) Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)
- b. Adoption of Policies and Procedures for the Investigation of Complaints (Cal. Code Regs., Tit. 5, § 4621) (One-Time Activity)

Only school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year are mandated to engage in the below activity, but *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847):<sup>63</sup>

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<sup>62</sup> California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

<sup>63</sup> This activity *is not reimbursable* for complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

- (1) Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.

The policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

c. Notification of Complaint Procedures, and Investigation and Disposition of Complaints (Cal. Code Regs., Tit. 5, §§ 4622 and 4631)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):<sup>64</sup>

- (1) Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

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<sup>64</sup> These activities *are not reimbursable* for complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56000-56885 and 59000-59300.

(2) Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)

(3) Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

(4) The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

d. Forwarding of Information to the Superintendent of Public Instruction Regarding Appealed District Decisions (Cal. Code Regs., Tit. 5, § 4632)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550).<sup>65</sup>

(1) Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

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<sup>65</sup> "Unlawful discrimination" as used in this activity is not limited and applies to complaints alleging unlawful discrimination on all grounds. This activity, however, is not reimbursable with respect to complaints regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550)); and (7) Special Education programs established pursuant to Education Code sections 56390-56392, 56400-56414, 56472-56474, 56475-56476, 56846-56847, and 59000-59300.

## Statewide Cost Estimate

### Assumptions

Staff reviewed the reimbursement claims data submitted by 12 school districts and compiled by the SCO. The actual claims data showed that 37 initial claims were filed for fiscal years 2002-2003 through 2011-2012 for a total of \$209,613. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 1050 school districts in California. Of those, only 12 school districts filed initial reimbursement claims totaling \$209,613 for this program for fiscal years 2002-2003 through 2011-2012. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2002-2003 through 2011-2012 may be filed until August 29, 2014.
  - Additionally, the total costs claimed in the most recent three years of the initial claiming period are trending upward. It is likely that the costs of the activities will continue to increase with the costs of living moving forward.
- *The number of reimbursement claims filed will vary from year to year.*

This program requires school districts to follow specific procedures for filing, investigating, and resolving the following two types of complaints arising in a school district: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. Claims will be case load driven and, thus, will vary annually depending on the number of discrimination complaints filed or investigated within the school districts.

- *There is a wide variation in costs claimed for this program based on: (a) the hourly rate of the employee performing the reimbursable activities; and (b) the total number of hours worked to perform the reimbursable activities.*

Staff reviewed the claims data and found a wide variation in costs among claimants. The program generally allows for school districts to file, investigate, and resolve specific types of discrimination complaints. The variation in costs is evident in the hourly rate of the employee performing the reimbursable activities.

For example, for fiscal year 2002-2003<sup>66</sup>, Etiwanda Elementary School District claimed an hourly rate that ranged from \$160 to \$175 for an attorney. In comparison, Grossmont Union High School District claimed an hourly rate that ranged from \$133 to \$159 for their attorney; and Rowland Unified claimed \$52.16 an hour for their Director of Special Projects to handle their claims.

The variation in costs is also evident in the total number of hours worked to perform the reimbursable activities. For example, for fiscal year 2002-2003, Etiwanda Unified School District claimed 105.9 total hours to investigate and dispose of claims. In

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<sup>66</sup> Exhibit C. Actual claims filed by three districts for fiscal year 2002-2003. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)

comparison, Grossmont Union High School District claimed 9.25 total hours; and Rowland Unified claimed 34 total hours.

These factors, coupled with the variable number of complaints, are likely the reason for the wide variation in claims for costs during 2002-03 as shown below:

- Etiwanda Elementary School District - \$30,991
- Grossmont Union High School District - \$1,291
- Rowland Unified School District - \$1,896
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. The reimbursable activities in this program are only a small part of a larger process. Claimants may file claims for activities that, while part of the larger process, are not reimbursable and those claims may therefore be reduced by the SCO. Additionally, the SCO may find the amounts claimed for approved activities are excessive and may reduce claims for that reason.

Methodology

*Fiscal Years 2002-2003 through 2011-2012*

The statewide cost estimate for fiscal years 2002-2003 through 2011-2012 was developed by totaling the 37 reimbursement claims filed with the SCO for these years, for a total of \$209,613. For the reasons discussed above, staff finds that the averages for the most recent three-year period are most indicative of potential costs. For the most recent three-year period, costs averaged \$34,751 annually. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2002-2003	3	\$34,178
2003-2004	2	\$4,508
2004-2005	1	\$1,921
2005-2006	2	\$4,027
2006-2007	1	\$1,834
2007-2008	2	\$8,596
2008-2009	5	\$50,296
2009-2010	9	\$46,931
2010-2011	6	\$30,070
2011-2012	6	\$27,252
<i><b>TOTAL</b></i>	<b>37</b>	<b>\$209,613</b>

**Comments on Draft Staff Analysis and Proposed Statewide Cost Estimate**

Staff issued a draft staff analysis on October 10, 2013.<sup>67</sup> No comments were received.

**Conclusion**

On December 6, 2013, the Commission adopted the proposed statewide cost estimate of \$209,613 (Approximate Prospective Cost of \$34,751 Annually) for costs incurred in complying with the *Uniform Complaint Procedures (K-12)* program.

<sup>67</sup> Exhibit D. (Attached to SCE at <http://www.csm.ca.gov/decisions.shtml>)