

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:

California Code of Regulations, Title 5,
Sections 3001 and 3052, as added or amended
by Register 93, No. 17; Register 96, No. 8;
Register 96, No. 32

Period of reimbursement begins July 1, 1993

Case No.: CSM 4464

Behavioral Intervention Plans

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

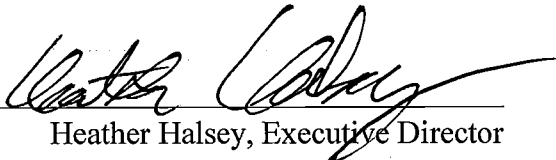
(Adopted April 19, 2013)

(Served April 25, 2013)

(Corrected April 29, 2013)

PARAMETERS AND GUIDELINES

On April 29, 2013, the Commission on State Mandates (Commission) adopted parameters and guidelines. Pursuant to California Code of Regulations, title 2, section 1188.2(b), the attached corrected parameters and guidelines are hereby issued to address a clerical error on page 6 to accurately reflect that actual cost claiming applicable to ongoing claims begins July 1, 2012 instead of July 1, 2013 and clerical errors on page 2 to accurately reflect that actual cost claiming is "beginning" on July 1, 2012, rather than "after" July 1, 2012.


Heather Halsey, Executive Director

PARAMETERS AND GUIDELINES

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

Period of reimbursement begins July 1, 1993

I. Summary of the Mandate

On September 28, 2000, the Commission on State Mandates (Commission) adopted its statement of decision 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).)

II. Eligible Claimants

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.

III. Period of 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 claimants filed the test claim on September 28, 1994, establishing eligibility for reimbursement on or after July 1, 1993. Therefore, costs incurred pursuant to Code of Regulations, Title 5, sections 3001 and 3052, on or after July 1, 1993, are eligible for reimbursement under these parameters and guidelines.

Reimbursement for state-mandated costs may be claimed as follows:

- Reimbursement based on the unit cost reasonable reimbursement methodologies (RRMs) provided for in these parameters and guidelines applies to costs incurred beginning on July 1, 1993, and ending June 30, 2012.
- Actual costs for one fiscal year shall be included in each claim submitted beginning July 1, 2012.
- Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
- Pursuant to Government Code section 17560(a), a claimant may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim for that fiscal year based on the RRM.
- If revised claiming instructions are issued by the State Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a claimant filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
- If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
- There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement beginning July 1, 2012, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

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

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:

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.¹

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.

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.

V. Claim Preparation and Submission

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 identified in Section IV. Reimbursable Activities of this document as authorized by Government Code sections 17557(b) and 17518.5. The RRM is the method of

¹ An IEP is an Individualized Education Program (Ed. Code § 56023 (Stats. 1993, ch. 1296 § 13.1 (AB 369))).

claiming from July 1, 1993 to June 30, 2012 only. Beginning July 1, 2012, eligible claimants will be reimbursed based on actual costs. Additionally, each reimbursement claim must be filed in a timely manner.

A. Reasonable Reimbursement Methodology For Costs Incurred from July 1, 1993 to June 30, 2012

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

1. RRM for One-time Activities - SELPA Only.

The RRM for the one-time activities shall be calculated as follows: Multiply the total number of SELPA ADA for the one fiscal year during which the one-time activities were performed, likely the 1993-94 fiscal year, 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 2006-07. This unit cost rate shall be adjusted by the Implicit Price Deflator to the appropriate fiscal year during which the one-time activities were performed.

SELPA ADA figures shall be those found on the CDE website for AB 602, P2 ADA or a comparable source.

The State Controller's Office shall provide the correct unit cost rate for each fiscal year with each year's claiming instructions.

2. RRM for On-going Activities - SELPA Only - Training.

The RRM for the on-going activities shall be calculated as follows: Multiply the total number of SELPA ADA for the fiscal year by the relevant unit cost rate for on-going SELPA activities for the fiscal year. The unit cost rate for on-going SELPA activities is \$1.18702 for FY 2006-07. This unit cost rate shall be adjusted for each prior and subsequent year by the Implicit Price Deflator.

ADA figures shall be those found on the CDE website for AB 602, P2 ADA or a comparable source.

The State Controller's Office shall provide the correct unit cost rate for each fiscal year with each year's claiming instructions.

3. RRM for On-going Activities - School Districts and COEs.

The RRM for the on-going activities shall be calculated as follows: Multiply the total number of ADA 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 2006-07. This unit cost rate shall be adjusted for each prior and subsequent year by the Implicit Price Deflator.

ADA figures shall be those found on the CDE website for AB 602, P2 ADA or a comparable source.

The State Controller's Office shall provide the correct unit cost rate for each fiscal year with each year's claiming instructions.

B. Actual Cost Claiming Applicable to Ongoing Claims Beginning July 1, 2012

The following shall apply to all claims filed on or after July 1, 2012.

Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

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

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV. of this document. Report the name and job classification of each

employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Claimants must use the CDE approved indirect cost rate for the year that funds are expended.

VI. Record Retention

Pursuant to Government Code section 17558.5(a), a reimbursement claim for costs filed by a claimant pursuant to this chapter is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the State Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. Pursuant to Government code section 17561(d)(2), the State Controller has the authority to audit the application of a reasonable reimbursement methodology. If an audit has been initiated by the State Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. Claimants must retain documentation that supports the application of the RRM, including ADA documentation.

VII. Offsetting Revenues and Other Reimbursements

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

The following offsetting revenues are identified, for purposes of the reimbursable activities approved in the test claim:

- Except as provided by Statutes 2001, chapter 203 (SB 982)², Item 6110-161-0001 of Section 2.00 of the annual Budget Act provides state funding for special education that is potentially offsetting from July 1, 1993 (the beginning of the period of reimbursement) until June 30, 2010. To the extent an eligible claimant applies these potentially offsetting revenues to the approved mandated activities during this time period, those funds shall be identified and deducted from the reimbursement claims filed on the basis of the RRM.
- Commencing with the 2010-11 fiscal year, and except as provided by Statutes 2001, chapter 203 (SB 982), and Statutes 2011, chapter 43, section 54 (AB 114) for fiscal years 2011-2012 and 2012-2013,³ state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs in this program. Except as provided in Statutes 2001, chapter 203 and Statutes 2011, chapter 43, funds received by an eligible claimant from this appropriation shall be identified and deducted from the reimbursement claims filed on the basis of the RRM, beginning in the 2010-2011 fiscal year.
- Except as provided by Statutes 2011, chapter 43, section 54 (AB 114) for fiscal years 2011-2012 and 2012-2013, Item 6110-161-0890 of Section 2.00 of the annual Budget Act, which provides for state pass-through allocation of federal funding for special education, constitutes potentially offsetting revenue beginning July 1, 1993 (the beginning of the period of reimbursement). To the extent an eligible claimant applies this potentially offsetting revenue to the approved mandated activities, those funds shall be identified and deducted from the reimbursement claims filed on the basis of the RRM.

VIII. State Controller's Claiming Instructions

Pursuant to Government Code section 17558(b), the State Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies

² SB 982 provided for \$100 million in augmentation of Line Item 6110-161-0001, beginning in 2001, and continuing in the annual budget acts, to provide for the *Special Education Mandated Costs* test claim (CSM 3986). That funding is intended exclusively, and by express priority, to fund the costs of the specified mandated programs identified in Education Code 56836.156, and therefore cannot be identified as potentially offsetting revenue for this mandate.

³ AB 114 earmarked a portion of funds appropriated in Item 6110-161-0001 and Item 6110-161-0890 for educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to be exclusively available for these mental health services only for the 2011-2012 and 2012-2013 fiscal years. Thus, the funds identified in AB 114 cannot be used for purposes of the *BIPs* mandate in fiscal years 2011-2012 and 2012-2013.

and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. Remedies before the Commission

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the State Controller to modify the claiming instructions and the State Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. Legal and Factual Basis for the Parameters and Guidelines

The statements of decision for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record is on file with the Commission.