

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Education Code Sections 250, 251, 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

I. SUMMARY OF THE MANDATE

This test claim addresses 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. This test claim 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. The Commission approved the test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

II. ELIGIBLE CLAIMANTS

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.

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 Solana Beach School District filed the test claim on July 23, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, costs incurred for the activities in these parameters and guidelines are reimbursable on or after July 1, 2002.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. 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.

3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district 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).)
5. 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)
6. 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 for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable 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, 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:

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.¹ (Ed. Code, § 250 (Stats. 1998, ch. 914).)

¹ Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

- 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.² (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)
- (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).)³
- (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).)

² The limitation’s reference to “state discrimination law or regulation at issue” refers to *any* state discrimination laws or regulations.

³ 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).

b. Adoption of Policies and Procedures for the Investigation of Complaints (Cal. Code Regs., Tit. 5, § 4621)

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).⁴

- (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

⁴ 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.

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):⁵

- (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).)

- (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).)

⁵ 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.

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):⁶

- (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).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

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

⁶ “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.

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. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of 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.

B. 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.

School districts must use the California Department of Education 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 actual costs filed by a local agency or school district pursuant to this chapter⁷ is subject to the initiation of an audit by the 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 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. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND 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.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the 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 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 Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

⁷ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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. The administrative record is on file with the Commission.