

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:**

Education Code Sections 46601, 46601.5, and 48204(f);

Statutes 1986, Chapter 172; Statutes 1986, Chapter 742; Statutes 1989, Chapter 853; Statutes 1990, Chapter 10; Statutes 1992, Chapter 120.

Requestor: State Controller's Office

Period of Reimbursement: See Analysis.

Case No.: 10-PGA-01 (CSM-4442)

Interdistrict Attendance Permits

STATEMENT OF DECISION

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

(Adopted September 28, 2012)

(Served October 5, 2012)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines amendment on consent during a regularly scheduled hearing on September 28, 2012.

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

COMMISSION FINDINGS

Chronology

- | | |
|------------|---|
| 05/24/1995 | The Commission on State Mandates (Commission) adopted the test claim statement of decision |
| 10/26/1995 | The Commission adopted the parameters and guidelines ¹ |
| 02/09/2011 | The State Controller's Office filed a request to amend the parameters and guidelines ² |
| 02/17/2011 | The request to amend the parameters and guidelines was issued for comment |
| 08/16/2012 | The draft proposed amendment to parameters and guidelines and statement of decision was issued for comment ³ |
| 09/06/2012 | The State Controller's Office filed comments ⁴ |

¹ Exhibit B.

² Exhibit A.

³ Exhibit C.

⁴ Exhibit D.

09/11/2012 The proposed statement of decision and parameters and guidelines amendment was issued

I. Summary of the Mandate

Statement of Decisions on the Test Claim and Parameters and Guidelines

The test claim statutes authorize the inter-district attendance of a pupil who resides in one school district, but wishes to attend public school in another school district, when both the district of residence and the district of proposed attendance agree. This process allows the parent or guardian of a pupil requesting inter-district attendance to appeal to the county board of education in the event that either district refuses the requested transfer.

The statutes also required that child care needs be taken into account in the school districts' consideration whether to grant an inter-district attendance agreement and required the continued attendance of pupils in the district of choice whose agreement is based on child care needs, subject to specified conditions. In this respect, former Education Code section 46601.5, as added and amended by the test claim statutes, stated the following:

- (a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian to enter into an agreement for interdistrict attendance pursuant to Section 46600 shall, in considering that request, give consideration to the child care needs of the pupil.
- (b) The governing board of any school district that has entered into an agreement for the interdistrict attendance of a pupil based on that pupil's child care needs shall allow that pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204.
- (c) The governing board of any high school district whose feeder elementary school has entered into an agreement with another school district for the interdistrict attendance of a pupil based on that pupil's child care needs shall allow that pupil to continue to attend school through the 12th grade in the same district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204.
- (d) This section shall remain in effect only until July 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2003, deletes or extends that date.

Education Code section 48204(f)(1-6), which is incorporated by reference in section 46601.5, identifies the information required to be considered by the district for an inter-district transfer based on child care needs, and requires schools to record the minutes of the school district's meeting to consider the request based on child care needs and to prepare a written determination when the transfer request is prohibited. That section stated the following:

- (1) Nothing in this subdivision requires the school district within which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.
- (2) The school district in which the residency of either the pupil's parents or guardians is established, or the school district to which the pupil is to be transferred under this

subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the district's court-ordered or voluntary desegregation plan.

- (3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.
- (4) Any district governing board prohibiting a transfer pursuant to paragraph (1), (2), or (3) shall identify, and communicate in writing to the pupil's parent or guardian, the specific reasons for that determination and shall ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.
- (5) The average daily attendance for pupils admitted pursuant to this subdivision shall be calculated pursuant to Section 46607.
- (6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:
 - (A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.
 - (B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever is greater.
 - (C) For any district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever is greater.

On May 24, 1995, the Commission adopted the test claim statement of decision finding that the test claim statutes imposed a partially reimbursable state-mandated program upon school districts and county boards of education 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 reimbursable activities:

1. Require the school district to:
 - Notify the permit applicant of the right to appeal to the county board of education if the application for an inter-district attendance permit is denied by the district; and
 - Advise the permit applicant of the right to appeal to the county board of education if the district refuses to enter into an agreement or issue a permit. (Ed. Code, § 46601; Stats 1986, ch. 742 and Stats. 1989, ch. 853.)
2. Require the county board of education or its designee to verify that local remedies have been exhausted before accepting an appeal, and while investigating the adequacy of local appeals, require the designee to provide any additional information deemed useful to the county board in reaching a decision. (Ed. Code, § 46601(a), (b), and (c), Stats. 1986, ch. 742, and Stats 1989, ch. 853.)

3. Require the school district to:
 - Respond to information requests from the county board during the board's investigatory process;
 - When requested by the county board of education, to reconsider an appeal for an unsuccessful permit. (Ed. Code, § 46601(a), (b), and (c), Stats. 1986, ch. 742, and Stats 1989, ch. 853.)
4. Require the county board of education to provide an appeal process for inter-district attendance requests between counties, as specified. (Education Code, § 46601(d), Stats. 1986, ch. 742 and Stats 1989, ch. 853.)
5. Require the school districts to do the following pursuant to Education Code section 46601.5(a), (b), and (c), and subject to 48204(f), when considering a child care transfer request (Stats. 1986, ch. 172, Stats. 1990, ch. 10, and Stats. 1992, ch. 120):
 - a) Districts shall, in considering an inter-district transfer request, give consideration to the child care needs of the pupil, ensuring that an application for a continuing child care transfer is not denied or revoked for arbitrary or impermissible reasons;
 - b) Districts subject to court-ordered desegregation plans must evaluate the impact of proposed continuing child care transfers on such plans;
 - c) District staff must prepare and present information to the governing board in a cost-effective manner, facilitating that board's responsibility to decide whether a proposed continuing child care transfer should be prohibited, and the reasons therefore;
 - d) In the case of a denied or revoked continuing child care transfer, the governing board must communicate in writing to the pupil's parent or guardian the specific reasons for that determination;
 - e) The governing board must ensure that the determination to prohibit a continuing child care transfer, including the specific reasons therefore, is accurately recorded in the minutes of the board meeting in which the determination was made; and
 - f) Districts must annually determine whether continuing child care transfers, when considered with parent employment transfers, fall within the statutory limits as specified therein.

On October 26, 1995, the Commission adopted the parameters and guidelines for this program.⁵

Subsequent Legislative Changes to the Program

After the Commission adopted the parameters and guidelines, Education Code section 46601.5 was repealed by its own terms on July 1, 2003, and then added back into the Education Code and made optional by a subsequent statute.⁶ Education Code section 46601.5, as added by the 2003 statute, stated the following:

- (a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian to enter into an agreement for interdistrict attendance pursuant to

⁵ Exhibit B.

⁶ Statutes 2003, chapter 529 (SB 140, eff. Mar. 5, 2004). Section 6 of the bill stated that "This act shall become operative only if Assembly Bill 97 is enacted and takes effect." AB 97 became effective on March 5, 2004.

Section 46600 *are encouraged to*, in considering that request, give consideration to the child care needs of the pupil.

- (b) The governing board of any school district that has entered into an agreement for the interdistrict attendance of a pupil based on that pupil's child care needs may not require those pupils in kindergarten or any of grades 1 to 6, inclusive, to reapply for an interdistrict transfer originally granted pursuant to an agreement executed on or after the effective date of this section unless the pupil ceases to receive child care in the district and *is encouraged to* allow any pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of Section 48204.
- (c) The governing board of any high school district whose feeder elementary school has entered into an agreement with another school district for the interdistrict attendance of a pupil based on that pupil's child care needs *is encouraged to* allow that pupil to continue to attend school through the 12th grade in the same district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (b) of Section 48204.
- (d) This section shall remain in effect only until July 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2007, deletes or extends that date.

Education Code section 48204, which is incorporated by reference in section 46601.5, was also amended by the 2003 statute to "encourage" school districts to identify, and communicate in writing to the parents or guardians of the pupil, the specific reasons denying the transfer request, and to "encourage" the districts to record the determination in the minutes of the board meeting.

Legislative history of the 2003 statute states that "this bill extends authorization for, and makes discretionary, recently sunset mandates for specified forms of interdistrict transfer for pupils."⁷

On July 1, 2007, Education Code section 46601.5 was repealed by its own terms.⁸

II. Positions of the Parties

State Controller's Request to Amend the Parameters and Guidelines

On February 9, 2011, the SCO filed a request to amend the parameters and guidelines to end reimbursement of the activities related to former Education Code sections 46601.5 and 48204. The SCO further requests that the Commission update the boilerplate language. Based on the filing date of the request, the SCO identifies July 1, 2010, as the period of reimbursement for its proposed amendments. No comments have been received on this request.

On September 6, 2012, the SCO filed comments on the draft proposed parameters and guidelines, correcting a citation and proposing a couple of non-substantive clarifying changes. These changes have been made to the proposed parameters and guidelines. No other comments were received.

⁷ Analysis of Senate Bill 140, Senate Rules Committee, August 29, 2003.

⁸ Education Code section 48204 remains in effect for a school district's consideration of interdistrict transfer request based on the location of the parent's or guardian's place of employment. In test claim *Interdistrict Transfer Requests: Parent's Employment* (CSM 4445), the Commission found section 48204 constituted a state-mandated program for school districts to receive and consider parental employment transfer applications, but not to approve such transfers.

III. Commission Findings

The Commission reviewed the statutes and the SCO's request. Non-substantive changes were made to the parameters and guidelines to bring them into conformity with the other parameters and guidelines adopted by the Commission. All other modifications of the parameters and guidelines are discussed below.

A. Reimbursable Activities

As indicated in the Background, former Education Code section 46601.5, as added and amended by the test claim statutes, required school districts to take the child care needs of the pupil into account when considering whether to grant an inter-district attendance agreement.

Section 46601.5 further required the continued attendance of pupils whose agreement is based on child care needs, subject to specified conditions in former Education Code 48204(f). The parameters and guidelines authorize reimbursement for these activities as follows:

1. Application Evaluation

In considering an interdistrict transfer request application, give consideration to the child care needs of the pupil, and ensure than a continuing interdistrict transfer request application for child care needs is not denied or revoked for arbitrary or impermissible reasons. For districts subject to court-ordered integration plans, determine the effect the potential transfer would have on the district's plan.

2. Presentation to the Governing Board

Prepare and present information regarding the transfer application for child care purposes to the governing board in a cost-effective manner; and in the case of a rejected application, the specific reasons must be accurately recorded in the minutes of the governing board meeting.

3. Notice of Denied Applications

In the case of a rejected application for an interdistrict transfer for child care purposes, provide a written explanation of the reasons to the parent or guardian.

4. Transfer Statistics

Determine on an annual basis whether net child care-related resident pupil transfers, when considered with parent employment transfers, fall within the statutory limits.

Pursuant to Education Code section 46601.5(d), as added and amended by the test claim statutes, section 46601.5 was repealed on July 1, 2003.

Although section 46601.5 was added back into the Education Code, effective March 5, 2004, by Statutes 2003, chapter 529, and its requirements were made optional, the 2003 statute has not been the subject of a test claim.

Accordingly, by operation of law, the activities formerly required by Education Code sections 46601.5 and 48204(f) for interdistrict attendance based on the child care needs of a pupil are no longer mandated by the state or eligible for reimbursement as of July 1, 2003. Thus, the proposed parameters and guidelines include language that states the following:

The following activities, required by former Education Code sections 46601.5 and subject to the provisions of 48204(f), are eligible for reimbursement until June 30, 2002, and are no longer reimbursable beginning July 1, 2003:

1. Application Evaluation

In considering an interdistrict transfer request application, give consideration to the child care needs of the pupil, and ensure than a continuing interdistrict transfer request

application for child care needs is not denied or revoked for arbitrary or impermissible reasons. For districts subject to court-ordered integration plans, determine the effect the potential transfer would have on the district's plan.

2. Presentation to the Governing Board

Prepare and present information regarding the transfer application for child care purposes to the governing board in a cost-effective manner; and in the case of a rejected application, the specific reasons must be accurately recorded in the minutes of the governing board meeting.

3. Notice of Denied Applications

In the case of a rejected application for an interdistrict transfer for child care purposes, provide a written explanation of the reasons to the parent or guardian.

4. Transfer Statistics

Determine on an annual basis whether net child care-related resident pupil transfers, when considered with parent employment transfers, fall within the statutory limits.

The remaining activities approved by the Commission are now listed under Section IV.B, and continue to be eligible for reimbursement.

B. Boilerplate Language

Each set of parameters and guidelines includes language that is common to all parameters and guidelines, and provides guidance to claimants on the procedures for filing reimbursement claims, the documentation required to support the reimbursement claims, general offsetting revenue requirements, record retention requirements, and the legal and factual basis for the parameters and guidelines. This language is known as the "boilerplate language." The State Controller's Office requests that the parameters and guidelines be updated to reflect the most recent boilerplate language adopted by the Commission.

When the boilerplate language is amended, different periods of reimbursement are triggered. The general rule for the effective date of an amendment to the parameters and guidelines is governed by Government Code section 17557(d)(1), which provides that an amendment resulting from a request filed on or before February 15 following a fiscal year, "shall establish reimbursement eligibility for that fiscal year." The request filed by the Controller's Office in this case was filed on February 9, 2011. Thus, applying the general rule to the proposed amendments results in an effective date of July 1, 2010.

In 2011, the Legislature enacted SB 112 (Statutes 2011, chapter 144) to revise when amendments to boilerplate language in parameters and guidelines become effective. SB 112 amended Government Code section 17557(d)(2)(H) to provide that a request for amendment of the boilerplate language in parameters and guidelines "that *does not increase or decrease reimbursable costs* shall limit the eligible filing period commencing with the fiscal year in which the amended parameters and guidelines were adopted." If section 17557(d)(2)(H) applies, then the amendments to boilerplate for this program would take effect on July 1, 2012.

The effective dates of the proposed amendments to boilerplate language are analyzed and described below. In addition, proposed language in the parameters and guidelines has been provided for clarification of these issues, under Section III., Period of Reimbursement.

1) Amendments to clarify and provide notice of existing law

The following proposed amendments to the parameters and guidelines have no effective date since they are statements of existing law and do not change any requirements. The California Supreme Court has found that "a statute that merely clarifies, rather than changes, existing law

does not operate retrospectively even if applied to transactions predating its enactment” “because the true meaning of the statute remains the same.”⁹ The following amendments have been requested and are proposed for purposes of clarification and to provide notice of the law to the claimants:

a) V.A. Direct Cost Reporting

Revise this section to include updated boilerplate language that conforms to other parameters and guidelines recently adopted by the Commission.

This section provides guidance to claimants regarding how to file their reimbursement claims for the direct costs incurred to comply with the mandated program.

b) VI. Records Retention

Add a new section VI that states the following:

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 chapter¹⁰ 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 the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

This section notifies the claimant that its reimbursement claims are subject to audit by the State Controller, clarifies the audit period, and that supporting documentation must be retained during the period subject to audit.

c) VII. Offsetting Savings and Reimbursements

Revise the title of this section for the sake of clarity, to delete “savings” (since there are no offsetting savings for this mandate) and replace it with “revenues” (since there may be offsetting revenues for this mandate) and make changes to the text of this section to make it consistent with the changes to the title.

The proposed amendment to Section VII simply updates the language regarding offsetting revenue to conform to current boilerplate changes and to make the provision in this set consistent with section 1183.1(a)(7) of the Commission’s regulations. Section 1183.1(a)(7) requires that the parameters and guidelines contain a section on offsetting revenues and reimbursements to the extent applicable.

d) VIII. State Controller’s Revised Claiming Instructions

Add a new section VIII, which states the following:

Pursuant to Government Code section 17558(c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later

⁹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

¹⁰ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

than 90 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

This section provides the claimants with notice of when the State Controller's Office is required to issue revised instructions, and notice of the right of local governments to file reimbursement claims once the claiming instructions are issued.

e) IX. Remedies Before the Commission

Add a new section IX, which states the following:

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.

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.

This section notifies the claimants of the process for reviewing and revising claiming instructions if they do not conform to the parameters and guidelines. It also notifies parties that requests may be made to amend parameters and guidelines.

f) X. Legal and Factual Basis for the Parameters and Guidelines

Add a new section X, which states the following:

The statements of decision adopted 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.

The proposed addition of Section X to the parameters and guidelines updates the document consistent with existing law. Section 1183.1(a)(11) of the Commission's regulations requires that the parameters and guidelines contain "...notice that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the commission." Therefore, these changes are merely statements of existing law that clarify the parameters and guidelines and have no effect on the costs claimed.

2) Amendment requiring that claims be supported by contemporaneous source documentation is effective July 1, 2012

The State Controller's Office requests that the standard boilerplate language requiring claimants to support their reimbursement claims with contemporaneous source documentation (documents

created at or near the same time the actual cost was incurred for an activity or event) be included in the parameters and guidelines. The Commission adopts the proposed contemporaneous source documentation language in Section IV of the parameters and guidelines.

The Commission further finds that the contemporaneous source documentation requirements do not increase or decrease reimbursable costs for the state mandated program and only imposes procedural requirements for claiming those costs. Thus, pursuant to Government Code section 17557(d)(2)(H), the amendment requiring claimants to support reimbursement claims with contemporaneous source documentation is effective beginning July 1, 2012, and will apply to the reimbursement claims filed for the 2012-2013 fiscal year.

3) Amendment Proposed to Indirect Cost Rate Language is effective July 1, 2010

The Controller proposed revising the boilerplate language for the indirect cost rate. Currently, the language allows school districts to use the J-380 *non-restrictive* indirect cost rate approved by the Department of Education. The Controller's Office proposes that the method now be a "*restricted* indirect cost rate for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year costs." (Emphasis added.)

After this language was proposed, the Commission was informed that in 2003-2004, when all districts converted to SACS (Standardized Account Code Structure), the California Department of Education discontinued the software for the J-380 and J-580, and approved restricted indirect cost rates for school districts.

As a result, at the January 2012 hearing, the Commission adopted new indirect cost rate language for school districts parameters and guidelines as follows:¹¹

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

The parameters and guidelines are amended to include this language. This will ensure that the parameters and guidelines are consistent with the practices of the State Controller and California Department of Education (CDE).

The Commission further finds that the amendment to the indirect cost rate, and the change to the restricted rate currently approved by the CDE, affects reimbursable costs and, thus, the correct period of reimbursement for the change, if adopted, is governed by the general rule provided in Government Code section 17557(d)(1), and becomes effective beginning July 1, 2010.

An indirect cost rate is the percentage of an organization's indirect costs to its direct costs and is a standardized method of charging individual programs for their share of indirect costs. The United States Department of Education provides the following guidance on the differences between restricted and unrestricted indirect cost rates:

Unrestricted indirect cost rates are those calculated for use on programs without limitations on indirect costs. Certain ED grant programs have a statutory requirement prohibiting the use of federal funds to supplant non-federal funds. These programs require the use of a restricted indirect cost rate, computed in accordance with 34 CFR 76.564-76.569. Generally, adjustments to the

¹¹ Amendment to Parameters and Guidelines for the *Pupil Promotion and Retention* program, (10-PGA-03, 98-TC-19).

unrestricted rate calculation are made and *result in a lower rate* to claim indirect cost reimbursement on restricted rate programs.¹²

The CDE cost rates are negotiated rates between CDE and the United States Department of Education. The United States Department of Education has approved the fixed with carry-forward restricted rate methodology for calculating indirect cost rates for California LEAs. CDE has been delegated authority to calculate and approve indirect cost rates annually for LEAs.¹³ According to the California School Accounting Manual:

Approved indirect cost rates for K–12 LEAs, including charter schools, are posted online annually at <http://www.cde.ca.gov/fg/ac/ic>, usually in early spring. The rates may be used, as appropriate, to budget, allocate, and recover indirect costs for federal programs, grants, and other assistance governed by the Office of Management and Budget (OMB) Circular A-87, the *Education Department General Administrative Regulations* (EDGAR), and the *Code of Federal Regulations* (CFR), Title 34. The rates may also be used for state programs, subject to any restrictions that may govern the individual programs.¹⁴

Here, the proposed change to the boilerplate language changes the indirect cost rate from a “nonrestrictive indirect cost rate” to the current restricted indirect cost rates adopted by the CDE. This change will generally decrease the reimbursable costs.¹⁵ Thus, the general rule for the effective date for an amendment of the parameters and guidelines applies. Therefore, the appropriate effective date for the amendment to the indirect cost rate is July 1, 2010.

IV. Conclusion

The Commission adopts the amendment to the parameters and guidelines, discussed above, and this statement of decision for the *Interdistrict Attendance Permits* program.

¹² United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9 (emphasis added).

¹³ California School Accounting Manual, 2011 Edition, p 915-1.

¹⁴ *Id.*, p. 915-7, underlining added (italics in original).

¹⁵ See United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9.

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Requestor: State Controller's Office

Period of Reimbursement: See Section III.

Case No.: 10-PGA-01 (CSM-4442)

Interdistrict Attendance Permits

STATEMENT OF DECISION

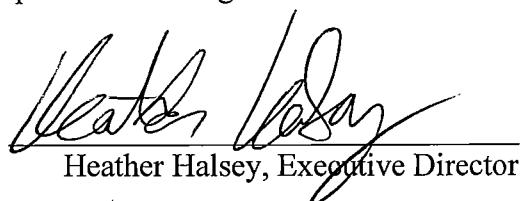
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(Adopted September 28, 2012)

(Served October 5, 2012)

PARAMETERS AND GUIDELINES AMENDMENT

The Commission on State Mandates adopted the attached parameters and guidelines amendment
on September 28, 2012



Heather Halsey

Heather Halsey, Executive Director

Amended: September 28, 2012
Adopted: October 26, 1995

AMENDMENT TO PARAMETERS AND GUIDELINES

Education Code Section 46601
Former Education Code Section 46601.5
Former Education Code Section 48204 (f)
Chapter 172, Statutes of 1986
Chapter 742, Statutes of 1986
Chapter 853, Statutes of 1989
Chapter 10, Statutes of 1990
Chapter 120, Statutes of 1992

Interdistrict Attendance Permits
10-PGA-01(CSM 4442)

I. SUMMARY OF THE MANDATE

On May 24, 1995, the Commission on State Mandates (Commission) adopted a statement of decision 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 this test claim for the following reimbursable activities:

1. Require the school district to:
 - Notify the permit applicant of the right to appeal to the county board of education if the application for an inter-district attendance permit is denied by the district; and
 - Advise the permit applicant of the right to appeal to the county board of education if the district refuses to enter into an agreement or issue a permit. (Ed. Code, § 46601; Stats 1986, ch. 742 and Stats. 1989, ch. 853.)
2. Require the county board of education or its designee to verify that local remedies have been exhausted before accepting an appeal, and while investigating the adequacy of local appeals, require the designee to provide any additional information deemed useful to the county board in reaching a decision. (Ed. Code, § 46601(a), (b), and (c), Stats. 1986, ch. 742, and Stats 1989, ch. 853.)
3. Require the school district to:
 - Respond to information requests from the county board during the board's investigatory process;
 - When requested by the county board of education, reconsider an appeal for an unsuccessful permit. (Ed. Code, § 46601(a), (b), and (c), Stats. 1986, ch. 742, and Stats 1989, ch. 853.)
4. Require the county board of education to provide an appeal process for inter-district attendance requests between counties, as specified. (Education Code, § 46601(d), Stats. 1986, ch. 742 and Stats 1989, ch. 853.)

5. Require the school districts to do the following pursuant to Education Code section 46601.5(a), (b), and (c), and subject to 48204(f), when considering a child care transfer request (Stats. 1986, ch. 172, Stats. 1990, ch. 10, and Stats. 1992, ch. 120):
 - a) Districts shall, in considering an inter-district transfer request, give consideration to the child care needs of the pupil, ensuring that an application for a continuing child care transfer is not denied or revoked for arbitrary or impermissible reasons;
 - b) Districts subject to court-ordered desegregation plans must evaluate the impact of proposed continuing child care transfers on such plans;
 - c) District staff must prepare and present information to the governing board in a cost-effective manner, facilitating that board's responsibility to decide whether a proposed continuing child care transfer should be prohibited, and the reasons therefore;
 - d) In the case of a denied or revoked continuing child care transfer, the governing board must communicate in writing to the pupil's parent or guardian the specific reasons for that determination;
 - e) The governing board must ensure that the determination to prohibit a continuing child care transfer, including the specific reasons therefore, is accurately recorded in the minutes of the board meeting in which the determination was made; and
 - f) Districts must annually determine whether continuing child care transfers, when considered with parent employment transfers, fall within the statutory limits as specified therein.

On July 1, 2003, Education Code section 46601.5 was repealed by the plain language of the statute. Thus, the activities listed above in #5 are no longer mandated or reimbursable effective July 1, 2003.

On September 28, 2012, these parameters and guidelines were amended to clarify that the following activities listed in the parameters and guidelines, which were formerly required by Education Code sections 46601.5 and 48204(f), have been repealed by operation of law and are not reimbursable beginning July 1, 2003:

1. Application Evaluation

In considering an interdistrict transfer request application, give consideration to the child care needs of the pupil, and ensure than a continuing interdistrict transfer request application for child care needs is not denied or revoked for arbitrary or impermissible reasons. For districts subject to court-ordered integration plans, determine the effect the potential transfer would have on the district's plan.

2. Presentation to the Governing Board

Prepare and present information regarding the transfer application for child care purposes to the governing board in a cost-effective manner; and in the case of a rejected application, the specific reasons must be accurately recorded in the minutes of the governing board meeting.

3. Notice of Denied Applications

In the case of a rejected application for an interdistrict transfer for child care purposes, provide a written explanation of the reasons to the parent or guardian.

4. Transfer Statistics

Determine on an annual basis whether net child care-related resident pupil transfers, when considered with parent employment transfers, fall within the statutory limits.

With respect to the remaining activities that continue to be eligible for reimbursement, the parameters and guidelines were amended to require school districts and county offices of education, for costs incurred beginning July 1, 2010, to use the California Department of Education approved indirect cost rate for the year that funds are expended. Finally, the parameters and guidelines were amended to require claimants, beginning in fiscal year 2012-2013, to support the claims for reimbursement with contemporaneous source documentation created at or near the same time the actual cost for the activity or event was incurred.

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

The amendments made to these parameters and guidelines become effective as follows:

1. The activities required by Section IV.A. of these parameters and guidelines, which were formerly required by Education Code sections 46601.5 and 48204(f), are reimbursable only until June 30, 2003, and not reimbursable beginning July 1, 2003.
2. The amendment made to Section IV, adding language requiring that claims be supported with contemporaneous source documents, is effective beginning July 1, 2012. Government Code section 17557(d)(2)(H) provides that "any amendment to the boilerplate language that does not increase or decrease reimbursable costs shall limit the eligible filing period commencing with the fiscal year in which the amended parameters and guidelines were adopted." The Commission amended the boilerplate language requiring contemporaneous source documentation in fiscal year 2012-2013.
3. The amendment made to Section V.B. of these parameters and guidelines addressing the indirect cost rate, is effective beginning July 1, 2010. Pursuant to Government Code section 17557(d)(1), "A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The State Controller's Office filed this request to amend the parameters and guidelines on February 9, 2011, making the amendments to Section V(B) of these parameters and guidelines effective for the 2010-2011 fiscal year.

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. (Gov. Code §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 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, the following activities are eligible for reimbursement:

- A. For each eligible school district, the following activities, required by former Education Code section 46601.5 and subject to the provisions of 48204(f), are eligible for reimbursement until June 30, 2002, and no longer reimbursable beginning July 1, 2003:

1. Application Evaluation

In considering an interdistrict transfer request application, give consideration to the child care needs of the pupil, and ensure than a continuing interdistrict transfer request application for child care needs is not denied or revoked for arbitrary or impermissible reasons. For districts subject to court-ordered integration plans, determine the effect the potential transfer would have on the district's plan.

2. Presentation to the Governing Board

Prepare and present information regarding the transfer application for child care purposes to the governing board in a cost-effective manner; and in the case of a rejected application, the specific reasons must be accurately recorded in the minutes of the governing board meeting.

3. Notice of Denied Applications

In the case of a rejected application for an interdistrict transfer for child care purposes, provide a written explanation of the reasons to the parent or guardian.

4. Transfer Statistics

Determine on an annual basis whether net child care-related resident pupil transfers, when considered with parent employment transfers, fall within the statutory limits.

- B. The following activities, required by Education Code section 46601, are eligible for reimbursement:

1. County Appeals Process

For each eligible school district, notify pupil transfer applicants of the right of appeal to the county office of education when a request is denied for interdistrict attendance for any reason, respond to any information requests from the county office of education pursuant to the appeal, and upon the request of the county office of education, reconsider the pupil's interdistrict attendance request.

2. Intra-County Appeals Process

For each eligible county office of education, verify that school district remedies have been exhausted before accepting a pupil's appeal, investigate the adequacy of the local appeals, and report to the county board of education any additional information useful in reaching a decision.

3. Inter-County Appeals Process

For each eligible county office of education, provide the necessary appeal process (notice, investigation hearing, and decision) or participate in the appeal process of the other county if the other county has jurisdiction.

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.

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.

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.

Beginning July 1, 2010, school districts and county offices of education 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 chapter¹ 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

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 OTHER REIMBURSEMENTS

Any offsetting revenues 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 REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the amended parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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.

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 adopted 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.