

Hearing Date: March 23, 2012
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ITEM 8

**PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS**

Education Code Section 51210.1 (formerly 51223.1)
Statutes 1997, Chapter 640
Statutes 2002, Chapter 943

Physical Education Reports
11-PGA-04 (05-PGA-60, 98-TC-08)
State Controller's Office, Requestor

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JOHN CHIANG
California State Controller
Division of Accounting and Reporting

Exhibit A

September 29, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Request to Amend Parameters and Guidelines,
Physical Education Reports
05-PGA-60 (98-TC-08)
Education Code section 51223.1; Chapter 640, Statutes 1997
Education Code section 51210.1; Chapter 943, Statutes 2002

Dear Mr. Bohan:

The State Controller's Office (SCO) is requesting to amend the Parameters and Guidelines (P's and G's) for the Physical Education Reports program to reflect the change in the Education Code section 51223.1, Statutes 2002, Chapter 943, Section 4, renumbered Education Code section 51223.1 to 51210.1 effective September 27, 2002.

Section 51210.1 specifically indicates that the reporting requirement for school districts in regards to the Coordinated Compliance Review is applicable for Grades 1 through 6 only. The existing P's and G's is referring to grades 1 through 8 for the same.

Enclosed are excerpts from the P's and G's indicating our proposed amendments. Proposed additions are underlined and deletions are indicated with strikethrough.

AMENDMENT TO PARAMETERS AND GUIDELINES
Education Code Section ~~section 51223.1~~ 51210.1
~~Statutes 1997, Chapter 640~~ Statutes 2002, Chapter 943
Physical Education Reports
05-PGA-60 (98-TC-08)

I. SUMMARY OF THE MANDATE

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Statutes 2002, Chapter 943, Section 4, renumbered Education Code section 51223.1 to Section 51210.1 effective September 27, 2002.

COMMENT: We recommend adding a sentence at the end of the summary to indicate the change in the Education Code.

II. ELIGIBLE CLAIMANTS

Any "school district", as defined in Government Code section 17519, with students in grades 1 through ~~8-6~~ that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

COMMENT: Grades "1 through 6" is to be added instead of "1 through 8", to reflect the new grade level requirement stated by Education Code section 51210.1, subdivision (b)(1).

III. PERIOD OF REIMBURSEMENT

~~This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.~~

~~Government ... by Government Code section 17564.~~ Government Code section 17557 (d)(1), states a local agency, school district, or the state may file a written request with the commission to amend the parameters and guidelines. The Commission may, after public notice and hearing, amend the parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. 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 parameters and guidelines amendment was filed on September 29, 2011; therefore, the amended parameters and guidelines apply to reimbursement claims beginning fiscal year 2010-11.

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, subdivision (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, subdivision (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. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (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, subdivision (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.

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

COMMENT: We recommend adding the above paragraph to the period of reimbursement section.

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IV. REIMBURSEABLE REIMBURSABLE ACTIVITIES

COMPONENT 2 – STAFF TRAINING

- a. Developing and implementing training for school district staff on the requirements of Education Code section ~~51223.1~~ 51210.1.

COMMENT: We request to correct the spelling error in the above title and refer to the renumbered code section.

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COMPONENT 3 – RECORD KEEPING

- a. Developing and implementing record keeping procedures necessary to comply with the implementation of Education Code section ~~51223.1~~ 51210.1 (to the extent that these are not already standard school district record keeping procedures).
- b. Developing and implementing audit procedures necessary to comply with the implementation of Education Code section ~~51223.1~~ 51210.1 (to the extent that these are not already standard school district record keeping procedures).

COMMENT: We recommend referring to the renumbered code section in the above paragraphs.

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V. CLAIM PREPARATION AND SUBMISSION

~~Each claim for reimbursement must be timely filed and identify each cost for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.~~

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 COSTS Direct Cost Reporting

~~Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities, or functions and shall be supported by the following cost element information:~~

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

1. Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and the related fringe benefits.

Reimbursement for personnel services includes compensation for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

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

Only the expenditures that can be identified as direct costs of this mandate can be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based upon a recognized method of costing, consistently applied.

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

Provide the name(s) of the contractor(s) who performed the service(s), including any fixed contracts for services. Describe the reimbursable activities performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach a copy of the contract to the claim.

Report the name of the contractor and services performed to implement the reimbursable activities. 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 services that were performed during the period covered by the reimbursement claim. If the contract services were 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.

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4. Fixed Assets

List Report the purchase price paid for equipment and other fixed assets acquired for this mandate necessary to implement the reimbursable activities. The Purchase price includes taxes, delivery costs, and installation costs. If the fixed asset equipment or other capital asset is also used for purposes other than this mandate, the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

B. Indirect Costs Cost Rates

Indirect costs ... allocation plan.

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the CDE.
2. County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the CDE.

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 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 and County offices of education must use indirect cost rate from the Restricted Indirect Cost Rates 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 of costs.

COMMENT: Please insert the current boilerplate titles and contents in the "Direct Cost Reporting" and "Indirect Cost Rates" sections. The J-380 and J-580 forms previously used by school districts and county offices of education respectively have become obsolete.

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VII. OFFSETTING SAVINGS REVENUES AND OTHER REIMBURSEMENTS

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

COMMENT: We recommend adding the current boilerplate language in the above paragraph.

~~VIII. REQUIRED CERTIFICATION~~

~~An authorized representative of the claimant shall be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those cost mandated by the state contained herein.~~

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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, subdivision (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.

COMMENT: Please add the above content in section VIII to match the most current boilerplate.

~~IX. PARAMETERS AND GUIDELINE AMENDMENTS~~

~~Pursuant to ... fiscal year.~~

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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

COMMENT: Please add the above content in section IX to match the most current boilerplate.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides 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, including the Statement of Decision, is on file with the Commission.

COMMENT: We request to add the above paragraph to be consistent with most recently adopted P's and G's.

If you have any questions, please contact Afsana Saida at (916) 324-7870, or email asaida@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'JAY LAL', with a long horizontal flourish extending to the right.

JAY LAL, Manager
Local Reimbursements Section

Hearing Date: March 23, 2012
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ITEM _____
DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Education Code Section 51210.1 (formerly 51223.1)
 Statutes 1997, Chapter 640
 Statutes 2002, Chapter 943

Physical Education Reports
 11-PGA-04 (05-PGA-60, 98-TC-08)
 State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request to amend the parameters and guidelines for the *Physical Education Reports* program filed by the State Controller's Office to update the language of the parameters and guidelines to reflect the new grade level requirement imposed by Statutes 2002, chapter 943 (AB 1793), and to renumber Education Code section 51223.1 to section 51210.1, effective January 1, 2003. In addition, the State Controller's Office requests amendments to update the boilerplate language.

Background

Under existing law, school districts are required to provide a minimum number of physical education instruction minutes to pupils in grades 1 through 8. The 1997 test claim statute added Education Code section 51223.1¹ to impose a new reporting and compliance requirement to determine whether districts selected by the Superintendent of Public Instruction (SPI) are actually providing their students in grades 1 to 8 with the statutory minimum minutes of physical education. The requirements of Education Code section 51223.1 do not apply to high schools.²

On September 28, 2000, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statute imposes a reimbursable state-mandated program upon school districts, excluding high schools, within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. On February 22, 2001, the Commission adopted the parameters and guidelines, and on March 26, 2010, upon the request of the State Controller's Office, the Commission amended the parameters and guidelines to update the boilerplate language.

Statutes 2002, chapter 943 (AB 1793) renumbered Education Code section 51223.1 to section 51210.1 and revised this program to require each school district selected by the SPI to report on its compliance with the minimum number of physical education instruction minutes required for pupils in grades 1 through 6, instead of grades 1 through 8. Thus, beginning January 1, 2003,

¹ Education Code section 51223.1 was renumbered as Education Code section 51210.1 by Statutes 2002, chapter 943.

² Education Code section 51223.1(e) (now 51210.1).

school districts were no longer mandated by the state to comply with this program with respect to students in grades 7 and 8.

On September 29, 2011, the State Controller's Office requested that these parameters and guidelines be amended to reflect elimination of these physical education requirements for pupils in grades 7 and 8, to renumber Education Code section 51223.1 to 51210.1, and to provide further updates to the boilerplate language.³

Discussion

Staff reviewed the statutes and the State Controller's request. Non-substantive changes were made to the parameters and guidelines to renumber Education Code section 51223.1 to 51210.1, and to bring them into conformity with the other parameters and guidelines adopted by the Commission. Staff modified all other sections of the parameters and guidelines as discussed below.

I. Summary of the Mandate

The State Controller's Office requested that this section be amended to reflect the elimination of the physical education compliance reporting requirements for grades 7 and 8, effective for the 2010-2011 fiscal year. Staff revised this section to add the following language:

Statutes 2002, chapter 943(AB 1783) renumbered Education Code section 51223.1 to section 51210.1 and revised this program to require each school district selected by the SPI to report on its compliance with the minimum number of physical education instruction minutes required for pupils in grades 1 through 6, instead of grades 1 through 8. Thus, beginning January 1, 2003, school districts were no longer mandated by the state to comply with this program with respect to students in grades 7 and 8.

On March 23, 2012, the Commission amended these parameters and guidelines to clarify that school districts are no longer eligible to receive reimbursement to comply with this program for students in grades 7 and 8, beginning January 1, 2003.

In addition, for costs incurred beginning July 1, 2010, the amended parameters and guidelines require school districts to use the California Department of Education approved indirect cost rate for the year that funds are expended.

II. Eligible Claimants

The State Controller also requested that this section be amended to reflect the elimination of the physical education reporting requirements for grades 7 and 8, and staff made that revision. As amended, this section states the following:

Any "school district", as defined in Government Code section 17519, with students in grades 1 through 6, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. Period of Reimbursement

The State Controller's Office requested that this section clarify that the amendments to the parameters and guidelines are effective beginning with the 2010-2011 fiscal year.

³ Exhibit A.

Amendments Limiting Reimbursement for the Mandate to Grades 1 through 6

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On September 29, 2011, the State Controller requested that these parameters and guidelines be amended. This filing date would make the proposed budget changes to activities in the parameters and guidelines effective July 1 2010.

However, Statutes 2002, chapter 943 eliminated the mandate to comply with this program for students in grades 7 and 8 effective January 1, 2003. Therefore, staff revised this section accordingly.

Effective Date of Boilerplate Language

Each set of parameters and guidelines include 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, records retention requirements and the legal and factual basis for the parameters and guidelines. This language is known as “boilerplate language.” When the boilerplate language is amended, certain sections will have different effective dates, depending on different statutes.

Staff added the effective dates for the boilerplate language as further discussed in the analysis. As proposed, Section III, Period of Reimbursement, states the following:

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

1. Beginning January 1, 2003, school districts are not eligible to claim reimbursement for this program with respect to students in grades 7 and 8. (Statutes 2002, chapter 943).
2. 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 September 29, 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. (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

Staff added language to this section clarifying that the reporting requirement was limited to grades 1 to 6, and further added the following sentence to this section:

Beginning January 1, 2003, school districts are not eligible for reimbursement for costs incurred to comply with these activities for grades 7 and 8.

V. Claim Preparation and Submission

1) *Amendments Proposed to the Indirect Cost Rate Language*

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, staff 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 as follows:⁴

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

Staff revised the *Physical Education Reports* parameters and guidelines to include this language. This language will ensure that the parameters and guidelines are consistent with the practices of the State Controller and California Department of Education (CDE). As described below, this amendment is effective beginning July 1, 2010, pursuant to Government Code section 17557(d)(1).

The general rule for the effective date of a parameters and guidelines amendment is governed by Government Code section 17557(d)(1). That section 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." Applying the general rule to the proposed amendments here 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

⁴ Amendment to Parameters and Guidelines for the *Pupil Promotion and Retention* program, (10-PGA-03, 98-TC-19).

the amended parameters and guidelines were adopted.” If section 17557(d)(2)(H) applies, then the changes to the boilerplate would be effective on July 1, 2011.

Staff finds that the amendment to the indirect cost rate 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 unrestricted rate calculation are made and *result in a lower rate* to claim indirect cost reimbursement on restricted rate programs.⁵

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.⁶ 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.⁷

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.⁸ Thus, the general rule for the effective date for an amendment of the parameters and guidelines applies. Therefore, staff finds that the appropriate effective date for the amendment to the indirect cost rate is July 1, 2010.

⁵ United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9 (emphasis added).

⁶ California School Accounting Manual, 2011 Edition, p 915-1.

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

⁸ See United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9.

2) *Amendments Proposed to Clarify and Provide Notice of Existing Law Regarding Direct Cost Reporting, Offsetting Revenues, State Controller’s Revised Claiming Instructions, Remedies Before the Commission, and the Legal and Factual Basis for Parameters And Guidelines.*

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 are proposed for purpose of clarification and to provide notice of the law to the claimants:

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.

VII. Offsetting Savings and Reimbursements

Revise 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.

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 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.

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

IX. Remedies Before the Commission

Add a new section IV, 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 with the parameters and guidelines. It also notifies parties that requests may be made to amend parameters and guidelines.

X. Legal and Factual Basis for the Parameters and Guidelines

Add a new section X, which states the following:

The statement of decision is legally binding on all parties and provides 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, including the statement of decision, 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 no effect on the costs claimed.

Staff recommends that the Commission amend these sections of the parameters and guidelines as requested by the Controller and discussed above.

Staff Recommendation

Staff recommends the Commission adopt staff's proposed amendments to the parameters and guidelines, beginning on page 8.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Proposed for Amendment: March 23, 2012
Amended: March 26, 2010
Adopted: February 22, 2001~~2/22/01~~
Amended: 3/26/10

Proposed Amendment to Parameters and Guidelines

Education Code Section 51210.1 (formerly 51223.1)
Statutes 1997, Chapter 640; Statutes 2002, Chapter 943

Physical Education Reports 11-PGA-04 (05-PGA-60, ~~98-TC-08~~)

~~This amendment is effective beginning with claims filed for the
July 1, 2005 through June 30, 2006 period of reimbursement~~

I. SUMMARY OF THE MANDATE

~~At the time the 1997 test claim statute was enacted, sSchool districts were required to provide a minimum number of physical education instruction minutes to pupils in grades 1 through 8. The subject-1997 test claim statute added, Education Code section 51223.1¹ adds to impose a new reporting and compliance requirement to determine whether districts are actually providing their students with the statutory minimum minutes of physical education. Specifically, school districts selected by the Superintendent of Public Instruction (SPI) must now include in their periodic Coordinated Compliance Review (CCR) reporting to the California Department of Education (CDE), reports on their compliance with Education Code section 51222, subdivision (a) and section 51223, which specify how many minutes of scheduled physical education are required for each 10 school days. The requirements of Education Code section 51223.1 do not apply to high schools.²~~

~~On September 28, 2000, the Commission on State Mandates (Commission) adopted its sStatement of dDecision finding that the 1997 test claim statute legislation imposes a new program or higher level of service within an existing program upon school districts, excluding high schools, within the meaning of ~~section 6~~, article XIII B, section 6 of the California Constitution and ~~eosts mandated by the state pursuant to~~ Government Code section 17514.~~

~~Statutes 2002, chapter 943 (AB 1793-) renumbered Education Code section 51223.1 to section 51210.1 and revised this program to require each school district selected by the SPI to report on its compliance with the a minimum number of physical education instruction minutes required for pupils in grades 1 through 6, instead of grades 1 through 8. Thus, beginning January 1, 2003, school districts were no longer mandated by the state to comply with this program with respect to students in grades 7 and 8.~~

¹ Education Code section 51223.1 was renumbered as Education Code section 51210.1 by Statutes 2002, chapter 943.

² Education Code section 51223.1(e) (now 51210.1), ~~subdivision (e).~~

On March 23, 2012, the Commission amended these parameters and guidelines to clarify that school districts are no longer eligible to receive reimbursement to comply with this program for students in grades 7 and 8, beginning January 1, 2003

In addition, for costs incurred beginning July 1, 2010, the amended parameters and guidelines require school districts to use the California Department of Education approved indirect cost rate for the year that funds are expended.

II. ELIGIBLE CLAIMANTS

Any “school district”, as defined in Government Code section 17519, with students in grades 1 through 8-6 that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

~~This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.~~

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

1. -Beginning January 1, 2003, school districts are not eligible to claim reimbursement for this program with respect to students in grades 7 and 8. (Statutes 2002, chapter 943).
2. 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 September 29, 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. (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.

~~Government Code section 17557, prior to its amendment by Statutes 1998, chapter 681, stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimants filed the test claim for this mandate on October 28, 1998. Costs incurred on or after July 1, 1997 would be eligible for reimbursement. However, the test claim statute became effective on January 1, 1998. Therefore, all costs incurred on or after January 1, 1998 are eligible for reimbursement pursuant to these parameters and guidelines, provided that reimbursement begins no earlier than the date that the school district receives documentation from the CDE indicating that the district has been specifically selected to participate in physical education compliance reporting.~~

~~Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d) (1), all claims for reimbursement of initial years' costs shall be submitted within 120 days from the date on which the State Controller's Office issues claiming instructions.~~

~~If the total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

IV. REIMBURSEABLE 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 under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

The direct and indirect costs of labor, materials and supplies, contracted services, fixed assets, travel, and training incurred for the following mandate components are reimbursable:

COMPONENT 1 – SUPERINTENDENT OF PUBLIC INSTRUCTION REPORTS

- a. Preparing and submitting reports to the Superintendent of Public Instruction on the extent of the school district’s compliance with the minimum minutes of physical education instruction required by law for grades 1 to 6 during the school year.

COMPONENT 2 – STAFF TRAINING

- a. Developing and implementing training for school district staff on the requirements of Education Code section 51223.1 (now 51210.1).

COMPONENT 3 – RECORD KEEPING

- a. Developing and implementing record keeping procedures necessary to comply with the implementation of Education Code section 51223.1 (now 51210.1) (to the extent that these are not already standard school district record keeping procedures).
- b. Developing and implementing audit procedures necessary to comply with the implementation of Education Code section 51223.1 (now 51210.1) (to the extent that these are not already standard school district record keeping procedures).

COMPONENT 4 – CORRECTIVE PLANS

- a. Developing and issuing a plan of correction to the CDE within one year of receiving a noncompliance notification from the department.

Beginning January 1, 2003, school districts are not eligible for reimbursement for costs incurred to comply with these activities for grades 7 and 8.

V. CLAIM PREPARATION AND SUBMISSION

~~Each claim for reimbursement must be timely filed and identify each cost for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.~~

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 COSTS Direct Cost Reporting

~~Direct costs are defined as costs that can be traced to specific goods, services, units, programs, activities, or functions and shall be supported by the following cost element information:~~

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

1. Salaries and Benefits

~~Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and the related fringe benefits.~~

~~Reimbursement for personnel services includes compensation for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

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

~~Only the expenditures that can be identified as direct costs of this mandate can be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based upon a recognized method of costing, consistently applied.~~

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

~~Provide the name(s) of the contractor(s) who performed the service(s), including any fixed contracts for services. Describe the reimbursable activities performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach a copy of the contract to the claim.~~

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

~~List the purchase price paid for equipment and other fixed assets acquired for this mandate. Purchase price includes taxes, delivery costs, and installation costs. If the equipment or other capital asset is used for purposes other than this mandate, only the pro rata purchase price can be claimed.~~

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

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of the travel, inclusive dates and times of travel, destination point(s), and travel costs.~~

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, 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

~~The cost of training an employee to perform the mandated activities, as specified in Section IV of these parameters and guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the dates attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem. If the training encompasses subjects broader than this mandate, only the pro-rata portion of the training costs can be claimed.~~

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.

B. Indirect Costs Rates

~~Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate, and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.~~

~~1. — School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the CDE.~~

~~2. County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the CDE.~~

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 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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ 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.

VII. ~~OFFSETTING SAVINGS AND OTHER REVENUES AND REIMBURSEMENTS~~

~~Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any other source, including but not limited to federal funds and other state funds shall be identified and deducted from this claim.~~

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 received 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 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

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 statement of decision is legally binding on all parties and provides 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, including the statement of decision, is on file with the Commission.

VII. REQUIRED CERTIFICATION

~~An authorized representative of the claimant shall be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those cost mandated by the state contained herein.~~

IX. PARAMETERS AND GUIDELINES AMENDMENTS

~~Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15, following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.~~

Commission on State Mandates

Original List Date: 10/6/2011
Last Updated: 2/9/2012
List Print Date: 02/09/2012
Claim Number: 11-PGA-04
Issue: Physical Education Reports

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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