

ITEM 16
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE

Education Code Sections 44660-44665
(Former Ed. Code, §§ 13485-13490)

Statutes 1983, Chapter 498
Statutes 1999, Chapter 4

The Stull Act
98-TC-25

Denair Unified School District and Grant Joint Union High School District, Claimants

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Denair Unified School District and Grant Joint Union High School District, Claimants

EXECUTIVE SUMMARY

Summary of the Mandate

On May 27, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a 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 specific reimbursable activities related to evaluation and assessment of the performance of "certificated personnel" within each school district, except for those employed in local, discretionary educational programs. On September 27, 2005, the Commission adopted the parameters and guidelines.

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the State Controller's Office (SCO). On July 5, 2006, the actual claims data showed that approximately 489 school districts filed 3,243 claims between fiscal years 1997-1998 and 2004-2005, for a total of over \$104.3 million. As of May 9, 2007, the actual claims data showed that approximately 626 school districts filed 4,200 claims between fiscal years 1997-1998 and 2005-2006, for a total of over \$160 million. This data includes all initial years' claims, including late and amended claims. With late penalties assessed, the SCO's final approved amount to be paid for fiscal years 1997-1998 through 2005-2006 is over \$135.9 million.

A draft staff analysis and proposed statewide cost estimate were issued on August 3, 2006. On May 10, 2007, the Department of Finance (DOF) submitted comments, highlighting its concerns with the accuracy of the claims and proposing that the SCO audit the claims. Staff agrees that an audit of this program may be warranted. Therefore, our assumptions note that the actual claiming data is unaudited and may be inaccurate, and that an SCO audit of these claims may reduce the costs of the program.

Staff made the following assumptions to develop a statewide cost estimate for this program:

1. The actual claiming data is unaudited and may be inaccurate because:
 - a) the costs claimed do not appear to have any relationship to the number of teachers evaluated;
 - b) the Los Angeles Unified School District claimed equal amounts for activities that could have been performed concurrently;
 - c) the claims reviewed did not identify the state or federal law(s) mandating the educational program(s) being performed, and thus, staff could not verify whether the educational programs performed by the certificated employees were mandated;
 - d) the claiming forms lack a reimbursable component box for training, making costs for training unclear; and
 - e) one ineligible claimant, a charter school, filed reimbursement claims totaling \$64,126 for this program. Staff did not include this amount in the proposed statewide cost estimate.
2. Costs will vary over time, increasing as experienced teachers retire and new teachers are hired, or decreasing over time if the number of teachers retained by school districts decline as enrollment declines.
3. The SCO may reduce any reimbursement claim for this program if it deems any reimbursement claim to be excessive or unreasonable.
4. At least 626 claimants will continue to claim costs in fiscal years 2006-2007 and 2007-2008.
5. These claimants will evaluate at least the same number of certificated employees in 2006-2007 and 2007-2008.

The proposed statewide cost estimate includes 11 fiscal years for a total of \$182,828,898. This averages to more than \$16.6 million annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# of Claims Filed w/ SCO	Estimated Cost
1997-1998	335	\$ 7,896,678
1998-1999	370	8,824,529
1999-2000	398	11,459,646
2000-2001	437	13,481,818
2001-2002	466	16,197,749
2002-2003	502	16,928,399
2003-2004	521	17,779,677
2004-2005	545	21,189,243
2005-2006	626	22,081,686
2006-2007 (estimated)	N/A	22,766,218
2007-2008 (estimated)	N/A	24,223,255
TOTAL	4,200	\$182,828,898

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$182,828,898** for costs incurred in complying with *The Stull Act* program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

STAFF ANALYSIS

Chronology

- 06/30/99 The claimant, Denair Unified School District, filed the test claim.
- 05/27/04 The Commission on State Mandates (Commission) adopted the Statement of Decision.
- 08/13/04 Grant Joint Union High School District requested to be added as a co-claimant.
- 09/27/05 The Commission adopted the parameters and guidelines.
- 04/11/06 Deadline for eligible claimants to file initial reimbursement claims with the State Controller's Office (SCO).
- 07/05/06 Commission staff obtained claims data from the SCO.
- 07/20/06 Commission staff reviewed claims at the SCO.
- 08/03/06 Commission staff issued the draft staff analysis and proposed statewide cost estimate.
- 08/23/06 Department of Finance (DOF) requested an extension of time until October 23, 2006, to file comments on the proposed statewide cost estimate.
- 08/30/06 Commission staff granted DOF's request.
- 10/23/06 DOF requested an extension of time until January 22, 2007, to file comments on the proposed statewide cost estimate.
- 11/01/06 Commission staff granted DOF's request.
- 01/22/07 DOF requested an extension of time until March 27, 2007, to file comments on the proposed statewide cost estimate.
- 01/26/07 Commission staff granted DOF its final extension to file comments on the proposed statewide cost estimate by March 27, 2007.
- 05/10/07 DOF submitted comments on the proposed statewide cost estimate.
- 05/11/07 Commission staff received updated claims data from the SCO.
- 05/16/07 Commission staff issued the final staff analysis and proposed statewide cost estimate.

Summary of the Mandate

On May 27, 2004, the Commission adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a 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 specific reimbursable activities related to evaluation and assessment of the performance of "certificated personnel" within each school district, except for those employed in local, discretionary educational programs. On September 27, 2005, the Commission adopted the parameters and guidelines.

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.). (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
 - once each year for probationary certificated employees;
 - every other year for permanent certificated employees; and
 - beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
 - once each year for probationary certificated employees;
 - every other year for permanent certificated employees; and

- o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

B. Certificated (Instructional and Non-Instructional) Employees

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.

C. Training

1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. On July 5, 2006, the actual claims data showed that approximately 489 school districts filed 3,243 claims between fiscal years 1997-1998 and 2004-2005, for a total of over \$104.3 million. As of May 9, 2007, the actual claims data showed that approximately 626 school districts filed 4,200 claims between fiscal years 1997-1998 and 2005-2006, for a total of over \$160 million. This data includes all initial years' claims, including late and amended claims. With late penalties assessed, the SCO's final approved amount to be paid for fiscal years 1997-1998 through 2005-2006 is over \$135.9 million.

A draft staff analysis and proposed statewide cost estimate were issued on August 3, 2006. On May 10, 2007, DOF submitted comments, highlighting its concerns with the accuracy of the claims and proposing that the SCO audit the claims to: 1) determine whether the claims are appropriately limited to only the incremental costs of evaluations under the new criteria, and 2) determine whether the claims are consistent with all requirements of the parameters and guidelines. Staff agrees that an audit of this program may be warranted. Therefore, our assumptions note that the actual claiming data is unaudited and may be inaccurate, and that an SCO audit of these claims may reduce the costs of the program.

Based on the data available, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

Assumptions

Staff made the following assumptions:

1. *The actual claiming data is unaudited and may be inaccurate.* The 4,200 actual claims filed by approximately 626 school districts for 1997-1998 through 2005-2006 are unaudited, and therefore, may be inaccurate.¹

Staff reviewed a random sample of claims that were filed by 10 school districts. This is not a statistical scientific sample. Based on total enrollment, staff reviewed claims filed by small, medium, and large school districts located in northern California (3), central California (3), and southern California (4). The districts and their claimed amounts are shown in Table 1.

Staff notes the following:

- The costs claimed do not appear to have any relationship to the number of teachers evaluated, as shown in Table 2. Various claimant representatives have indicated that a number of other factors must be considered in addition to the number of teachers evaluated. Some of the other factors mentioned include time spent in evaluation, the position and salary of the evaluator, and the way each district conducts evaluations.

¹ Claims data reported as of May 9, 2007.

Some representatives stated that there was a lot of work involved but not enough time to capture costs for other activities. Therefore, costs claimed in one fiscal year varied from a few thousand dollars to over \$1.5 million, regardless of the number of teachers evaluated. This amounts to a few dollars to hundreds of dollars per teacher evaluation.

- The Los Angeles Unified School District claimed equal amounts for the following activities under IV.A.1. of the parameters and guidelines: “a) reviewing the employee’s instructional techniques and strategies and adherence to curricular objectives, and b) including in the written evaluation of the certificated instructional employees the assessment of these factors during the [certain] evaluation periods....” Staff notes that the performance of these activities should be concurrent.

Staff contacted a representative of the Los Angeles Unified School District to discuss the issue and the representative explained that the district used a conservative time estimate of 30 minutes to review the techniques and strategies, and another 30 minutes to include an assessment of the factors in the written evaluation. The district then multiplied the unit time by the salary of an assistant principal. The representative noted that the district was in the process of conducting a time study and that it intended to submit amended claims showing significantly higher costs. However, late and amended claims were due to the SCO in April 2007. The district did not amend its claims.

- The adopted parameters and guidelines for *The Stull Act* program noted the following in the Reimbursable Activities section:

For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.

The claims reviewed did not identify the state or federal law(s) mandating the educational program(s) being performed, and thus, staff could not verify whether these programs were mandated.

- The Commission found that training staff on implementing the reimbursable activities listed in Section IV of the parameters and guidelines is reimbursable. However, staff notes that the claiming forms lack a reimbursable component box for training, making costs for training unclear. At least three claimant representatives indicated that training costs were minimal and were claimed under a different component.
- The Eligible Claimants section of the parameters and guidelines for this program specifically states that charter schools are not eligible claimants. Staff notes that the updated claims data included claims filed by one charter school, in which the SCO approved a total amount to be paid of \$64,126. Because charter schools are not eligible claimants, staff did not include this amount in the proposed estimate.

Therefore, based on the foregoing observations, staff finds that the actual, unaudited claims only represent an estimated cost of the program for fiscal years 1997-1998 through 2005-2006.

**TABLE 1. SAMPLED SCHOOL DISTRICTS:
CLAIMED AMOUNTS BY FISCAL YEAR**

District	# of Teachers ²	Total Enrollment ³	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	Totals
Small Districts												
Mt. Shasta Union Elementary (Siskiyou County)	50	887	-	-	-	-	-	4,272	2,198	3,351	2,710	\$ 12,531
Aromas/San Juan Unified (San Benito County)	73	1,286	3,471	10,808	10,612	13,784	10,202	20,955	23,346	16,331	18,326	\$ 127,835
Imperial Unified (Imperial County)	141	2,956	-	-	-	10,480	9,480	11,025	10,656	11,787	10,746	\$ 64,174
Medium Districts												
Grant Joint Union High (Sacramento County)	624	13,558	11,619	9,367	10,247	12,408	18,066	7,356	34,452	28,299	-	\$ 131,814
Alum Rock Union Elementary (Santa Clara County)	710	13,604	15,449	29,536	31,218	49,291	41,191	46,382	55,495	69,220	52,924	\$ 390,706
Panama Buena Vista Union Elementary (Kern County)	746	14,722	34,663	38,993	43,218	33,191	27,846	37,891	29,960	40,710	31,301	\$ 317,773
Large Districts												
Elk Grove Unified (Sacramento County)	2,923	58,670	228,136	399,222	517,207	410,120	354,049	495,341	453,142	411,801	139,177	\$3,408,195
Fresno Unified (Fresno County)	4,040	80,760	29,327	48,151	50,272	74,614	84,162	86,085	86,349	95,168	86,661	\$ 640,789
Los Angeles Unified (Los Angeles County)	35,807	741,367	694,381	773,788	852,553	804,351	957,129	1,028,494	984,087	1,136,269	1,268,307	\$8,499,359
San Diego Unified (San Diego County)	7,421	134,709	762,086	855,783	972,579	949,524	983,001	875,159	760,328	924,261	1,589,949	\$8,672,670

# of teachers in sample	50,191
Total # of teachers in California	306,548
% teachers represented in sample	16.4%

² For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/> >

³ For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/> >

TABLE 2. COST OF PER TEACHER EVALUATION

District	97/98		98/99		99/00		00/01		01/02		02/03		03/04		04/05	
	# Eval	Cost/ Eval ⁴	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval
Small Districts																
Mt. Shasta Union Elementary (Siskiyou County)	-	-	-	-	-	-	-	-	-	-	18	\$237	9	\$244	13	\$258
Aromas/San Juan Unified (San Benito County)	9	\$386	27	\$400	24	\$442	23	\$599	16	\$638	35	\$599	36	\$649	24	\$680
Imperial Unified (Imperial County)	-	-	-	-	-	-	89	\$118	74	\$128	80	\$138	84	\$127	85	\$139
Medium Districts																
Grant Joint Union High (Sacramento County)	79	\$148	69	\$135	92	\$111	101	\$123	121	\$149	101	\$73	125	\$276	123	\$230
Alum Rock Union Elementary (Santa Clara County)	177	\$87	307	\$96	292	\$107	376	\$131	340	\$121	337	\$138	414	\$134	387	\$179
Panama Buena Vista Union Elementary (Kern County)	812	\$43	868	\$45	664	\$65	462	\$72	370	\$75	487	\$78	374	\$80	522	\$78
Large Districts																
Elk Grove Unified (Sacramento County)	809	\$282	995	\$401	882	\$586	877	\$468	899	\$394	1,069	\$471	1,030	\$448	896	\$467
Fresno Unified (Fresno County)	791	\$37	745	\$65	901	\$56	946	\$79	941	\$89	1,037	\$83	746	\$116	1,079	\$88
Los Angeles Unified (Los Angeles County)	13,646	\$51	14,896	\$52	15,881	\$54	15,453	\$52	16,166	\$59	17,904	\$57	16,167	\$61	18,346	\$62
San Diego Unified (San Diego County)	3,321	\$226	3,592	\$238	3,552	\$274	3,206	\$296	3,546	\$277	3,219	\$272	2,920	\$260	3,212	\$288

⁴ Derived by dividing the total amount claimed (Table 1) by the number of teachers evaluated during the fiscal year.

2. *Costs will vary over time.* Under this program, probationary teachers are evaluated once a year while permanent teachers are evaluated once every two years. Therefore, costs may increase over time as experienced teachers retire and new teachers are hired. On the other hand, costs may also decrease over time because the number of teachers retained by school districts may decline as enrollment declines.
3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.
4. *At least 626 claimants will continue to claim costs in fiscal years 2006-2007 and 2007-2008.*
5. *These claimants will evaluate at least the same number of certificated employees in 2006-2007 and 2007-2008.*

Methodology

Fiscal Years 1997-1998 through 2005-2006

The proposed statewide cost estimate for fiscal years 1997-1998 through 2005-2006 is based on the 4,200 actual reimbursement claims filed with the SCO for these years, as reduced by the SCO for any late claim penalties. Staff notes that claims filed by one charter school for a total of \$64,126 was deducted from the total claims amount. Staff also notes that the claims are unaudited and may be inaccurate for the reasons stated above.

Fiscal Years 2006-2007 and 2007-2008

Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 amount by the implicit price deflator for 2005-2006 (3.1%), as forecast by DOF. Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2006-2007 (6.4%).

The proposed statewide cost estimate includes 11 fiscal years for a total of \$182,828,898. This averages to more than \$16.6 million annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	# of Claims Filed w/ SCO	Estimated Cost
1997-1998	335	\$ 7,896,678
1998-1999	370	8,824,529
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TOTAL	4,200	\$182,828,898

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$182,828,898 for costs incurred in complying with *The Stull Act* program.

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COMMISSION ON STATE MANDATES980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814PHONE: (916) 323-3562
(916) 446-0278
E-mail: csminfo@esm.ca.gov

August 3, 2006

Mr. David Scribner
Executive Director
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: **Proposed Statewide Cost Estimate**
The Stull Act, 98-TC-25
Education Code Sections 44660 – 44665 (formerly Ed. Code §§ 13485-13490)
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4
Denair Unified School District and Grant Joint Union High School District, Claimants

Dear Mr. Scribner:

The draft staff analysis and proposed statewide cost estimate for this program are enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the staff analysis by **August 24, 2006**. Comments filed with the Commission are required to be simultaneously served on the parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) To request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1) of the Commission's regulations.

Hearing

This matter is now set for hearing on **October 4, 2006**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Cathy Cruz Jefferson at (916) 323-8218 with questions.

Sincerely,

A handwritten signature in black ink that reads "Nancy Patton".

NANCY PATTON
Assistant Executive Director

Enclosure

MAILED: MAIL ROOM
DATE: 8/30/06
INITIAL: LD
FILE: _____
WORKING BINDER: _____

ITEM _____

**DRAFT STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE**

Education Code Sections 44660-44665
(Former Ed. Code, §§ 13485-13490)

Statutes 1983, Chapter 498
Statutes 1999, Chapter 4

The Stull Act (98-TC-25)

Denair Unified School District and Grant Joint Union High School District, Claimants

EXECUTIVE SUMMARY

The Executive Summary will be included in the Final Staff Analysis.

STAFF ANALYSIS

Summary of the Mandate

On May 27, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a 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 specific reimbursable activities related to evaluation and assessment of the performance of "certificated personnel" within each school district, except for those employed in local, discretionary educational programs.

The claimant filed the test claim on March 9, 2001. The Commission adopted the Statement of Decision on March 25, 2004, and the parameters and guidelines on March 30, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by April 11, 2006.

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

A. Certificated Instructional Employees

1. Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.); (*Reimbursement period begins July 1, 1997.*)

Reimbursement for this activity is limited to:

- a. reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and
- b. including in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated instructional employees.

2. Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic content

standards as measured by state adopted assessment tests (Ed. Code, § 44662, subd. (b), as amended by Stats. 1999, ch. 4.). (*Reimbursement period begins March 15, 1999.*)

Reimbursement for this activity is limited to:

- a. reviewing the results of the Standardized Testing and Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and
- b. including in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
 - o once each year for probationary certificated employees;
 - o every other year for permanent certificated employees; and
 - o beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

B. Certificated (Instructional and Non-Instructional) Employees

1. Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498). (*Reimbursement period begins July 1, 1997.*)

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- a. evaluating and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subds. (b) and (c));

- b. reducing the evaluation and assessment to writing (Ed. Code, § 44663, subd. (a)). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the employee in writing of that fact and describe the unsatisfactory performance (Ed. Code, § 44664, subd. (b));
- c. transmitting a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- d. attaching any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- e. conducting a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a)).

Note: For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional, employees.

C. Training

1. Train staff on implementing the reimbursable activities listed in Section IV of these parameters and guidelines. (One-time activity for each employee.) (*Reimbursement period begins July 1, 1997.*)

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that about 489 school districts filed 3,243 claims between fiscal years 1997-1998 and 2004-2005, for a total of over \$104.3 million. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

Assumptions

Staff made the following assumptions:

1. *The actual claiming data is unaudited and may be inaccurate.* The 3,243 actual claims filed by about 489 school districts for 1997-1998 through 2004-2005 are unaudited, and therefore, may be inaccurate.¹

Staff reviewed a random sample of claims that were filed by 10 school districts: three are located in northern California, another three in central California, and the remaining four in southern California. This is not a statistical scientific sample. Based on total enrollment, staff reviewed claims filed by a small, medium, and large school district within each region. The districts and their claimed amounts are shown in Table 1.

¹ Claims data reported as of July 5, 2006.

**TABLE 1. SAMPLED SCHOOL DISTRICTS:
CLAIMED AMOUNTS BY FISCAL YEAR**

District	# of Teachers ²	Total Enrollment ³	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	Totals
Small Districts											
Mt. Shasta Union Elementary (Siskiyou County)	50	887	-	-	-	-	-	4,272	2,198	3,351	\$ 9,821
Aromas/San Juan Unified (San Benito County)	73	1,286	3,471	10,808	10,612	13,784	10,202	20,955	23,346	16,331	\$ 109,509
Imperial Unified (Imperial County)	141	2,956	-	-	-	10,480	9,480	11,025	10,656	11,787	\$ 53,428
Medium Districts											
Grant Joint Union High (Sacramento County)	624	13,558	11,619	9,367	10,247	12,408	18,066	7,356	34,452	28,299	\$ 131,814
Alum Rock Union Elementary (Santa Clara County)	710	13,604	15,449	29,536	31,218	49,291	41,191	46,382	55,495	69,220	\$ 337,782
Panama Buena Vista Union Elementary (Kern County)	746	14,722	34,663	38,993	43,218	33,191	27,846	37,891	29,960	40,710	\$ 286,472
Large Districts											
Oroville Unified (Sacramento County)	2,923	58,670	184,590	321,954	463,077	348,877	302,215	424,686	381,205	348,324	\$ 2,774,928
Fresno Unified (Fresno County)	4,040	80,760	29,327	48,151	50,272	74,614	84,162	86,085	86,349	95,168	\$ 554,128
Los Angeles Unified (Los Angeles County)	35,807	741,367	694,381	773,788	852,553	804,351	957,129	1,028,494	984,087	1,136,269	\$ 7,231,052
San Diego Unified (San Diego County)	7,421	134,709	\$762,086	\$855,783	\$972,579	\$949,524	\$983,001	\$875,159	\$760,328	\$924,261	\$ 7,082,721

# of teachers in sample	50,191
Total # of teachers in California	306,548
% teachers represented in sample	16.4%

² For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/>>

³ For 2004-2005, based on data from the California Department of Education's DataQuest. < <http://data1.cde.ca.gov/dataquest/>>

TABLE 2. COST OF PER TEACHER EVALUATION

District	97/98		98/99		99/00		00/01		01/02		02/03		03/04		04/05	
	# Eval	Cost/ Eval ⁴	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval	# Eval	Cost/ Eval
Small Districts																
Mt. Shasta Union Elementary (Siskiyou County)	-	-	-	-	-	-	-	-	-	-	18	\$237	9	\$244	13	\$258
Aromas/San Juan Unified (San Benito County)	9	\$386	27	\$400	24	\$442	23	\$599	16	\$638	35	\$599	36	\$649	24	\$680
Imperial Unified (Imperial County)	-	-	-	-	-	-	89	\$118	74	\$128	80	\$138	84	\$127	85	\$139
Medium Districts																
Grant Joint Union High (Sacramento County)	79	\$148	69	\$135	92	\$111	101	\$123	121	\$149	101	\$73	125	\$276	123	\$230
Alum Rock Union Elementary (Santa Clara County)	177	\$87	307	\$96	292	\$107	376	\$131	340	\$121	337	\$138	414	\$134	387	\$179
Panama Buena Vista Union Elementary (Kern County)	812	\$43	868	\$45	664	\$65	462	\$72	370	\$75	487	\$78	374	\$80	522	\$78
Large Districts																
Colk Grove Unified (Sacramento County)	809	\$228	995	\$324	882	\$525	877	\$398	899	\$336	1,069	\$397	1,030	\$370	896	\$389
Fresno Unified (Fresno County)	791	\$37	745	\$65	901	\$56	946	\$79	941	\$89	1,037	\$83	746	\$116	1,079	\$88
Los Angeles Unified (Los Angeles County)	13,646	\$51	14,896	\$52	15,881	\$54	15,453	\$52	16,166	\$59	17,904	\$57	16,167	\$61	18,346	\$62
San Diego Unified (San Diego County)	3,321	\$226	3,592	\$238	3,552	\$274	3,206	\$296	3,546	\$277	3,219	\$272	2,920	\$260	3,212	\$288

⁴ Derived by dividing the total amount claimed (Table 1) by the number of teachers evaluated during the fiscal year.

Staff notes the following:

- The costs claimed do not appear to have any relationship to the number of teachers evaluated, as shown in Table 2. Various claimant representatives have indicated that a number of other factors must be considered in addition to the number of teachers evaluated. Some of the other factors mentioned include time spent in evaluation, the position and salary of the evaluator, and the way each district conducts evaluations. Some representatives stated that there was a lot of work involved but not enough time to capture costs for other activities. Therefore, costs claimed in one fiscal year varied from a few thousand dollars to over \$1 million, regardless of the number of teachers evaluated. This amounts to a few dollars to hundreds of dollars per teacher evaluation.
- The Los Angeles Unified School claimed equal amounts for the following activities under IV.A.1. of the parameters and guidelines: "a) reviewing the employee's instructional techniques and strategies and adherence to curricular objectives, and b) including in the written evaluation of the certificated instructional employees the assessment of these factors during the [certain] evaluation periods..." Staff notes that the performance of these activities should be concurrent.

Staff contacted a representative of the Los Angeles Unified School District to discuss the issue and the representative explained that the district used a conservative time estimate of 30 minutes to review the techniques and strategies, and another 30 minutes to include an assessment of the factors in the written evaluation. The district then multiplied the unit time by the salary of an assistant principal. The representative noted that the district was in the process of conducting a time study and the district intends to submit amended claims showing significantly higher costs.

- The adopted parameters and guidelines for *The Stull Act* program noted the following in the Reimbursable Activities section:

For purposes of claiming reimbursement, eligible claimants must identify the state or federal law mandating the educational program being performed by the certificated, instructional and non-instructional employees.

The claims reviewed did not identify the state or federal law(s) mandating the educational program(s) being performed, and thus, staff could not verify whether these programs were mandated.

- The Commission found that training staff on implementing the reimbursable activities listed in Section IV of the parameters and guidelines is reimbursable. However, staff notes that the claiming forms lack a reimbursable component box for training, making costs for training unclear. At least three claimant representatives indicated that training costs were minimal and were claimed under a different component.

Therefore, based on the foregoing observations, staff finds that the actual, unaudited claims only represent an estimated cost of the program for fiscal years 1997-1998 through 2004-2005.

2. *Costs will vary over time.* Under this program, probationary teachers are evaluated once a year while permanent teachers are evaluated once every two years. Therefore, costs may increase over time as experienced teachers retire and new teachers are hired. On the other hand, costs may also decrease over time because the number of teachers retained by school districts may decline as enrollment declines.

3. *The actual amount claimed will increase when late or amended claims are filed.*
 Less than 500 eligible school districts in California have filed reimbursement claims for this program. At least three of the top fifteen school districts have not filed claims, including Santa Ana Unified, Capistrano Unified, and Riverside Unified. Also, a representative of the Los Angeles Unified School District stated that the district would be amending its claims to show higher costs. Thus, if reimbursement claims are filed by any of the remaining districts and the Los Angeles Unified School District, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until April 2007.
4. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.

Methodology

Fiscal Years 1997-1998 through 2004-2005

The proposed statewide cost estimate for fiscal years 1997-1998 through 2004-2005 is based on the 3,243 actual reimbursement claims filed with the SCO for these years. However, staff notes that the claims are unaudited and may be inaccurate for the reasons stated above.

Fiscal Years 2005-2006 and 2006-2007

Staff estimated fiscal year 2005-2006 costs by multiplying the 2004-2005 estimate by the implicit price deflator for 2004-2005 (3.5%), as forecast by the Department of Finance. Staff estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 estimate by the implicit price deflator for 2005-2006 (3.1%).

The proposed statewide cost estimate includes 10 fiscal years for a total of \$145,105,098. This averages to \$14,510,510 annually in costs for the state. Following is a breakdown of estimated total costs per fiscal year:

TABLE 3. BREAKDOWN OF ESTIMATED TOTAL COSTS PER FISCAL YEAR

Fiscal Year	# of Claims Filed w/ SCO	Estimated Cost
1997-1998	302	\$ 6,862,744
1998-1999	340	8,117,831
1999-2000	362	10,542,227
2000-2001	396	12,384,945
2001-2002	423	14,912,816
2002-2003	457	15,696,569
2003-2004	474	16,407,883
2004-2005	489	19,399,882
2005-2006 (estimated)	N/A	20,078,878
2006-2007 (estimated)	N/A	20,701,323
TOTAL	3,243	\$ 145,105,098

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$145,105,098 or costs incurred in complying with *The Stull Act* program.

Commission on State Mandates

Original List Date: 7/7/1999
Last Updated: 5/19/2006
List Print Date: 08/03/2006
Claim Number: 98-TC-25
Issue: The Stull Act

Mailing Information: Draft Staff Analysis

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.)

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Tel: (916) 445-0541
Fax: (916) 327-8308

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621
Fax: (866) 481-2682

Mr. Keith B. Peiersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Tel: (858) 514-8605
Fax: (858) 514-8645

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328
Fax: (916) 323-9530

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Tel: (916) 483-4231

Fax: (916) 483-1403

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849

Fax: (916) 327-0832

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
4100 Normal Street, Room 3209
San Diego, CA 92103-8363

Tel: (619) 725-7785

Fax: (619) 725-7564

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Claimant Representative

Tel: (916) 922-2636

Fax: (916) 922-2719

Mr. Jim Jagers

P.O. Box 1993
Carmichael, CA 95609

Tel: (916) 848-8407

Fax: (916) 848-8407

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517

Fax: (916) 446-2011

Mr. Paul Warren
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814

Tel: (916) 319-8310

Fax: (916) 324-4281

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95818

Tel: (916) 324-0258

Fax: (916) 323-6527

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Tel: (916) 669-5116

Fax: (888) 487-6441



DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ROOM 1145 SACRAMENTO CA 95814-4988 WWW.DOF.CA.GOV

May 10, 2007

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RECEIVED
MAY 19 2007
COMMISSION ON STATE MANDATES

RE: Comments on the Statewide Cost Estimate
The Stull Act, 98-TC-25
Education Code Sections 44660-44665 (formerly Ed. Code §§ 13485-13490)
Statutes 1983, Chapter 498; Statutes 1999, Chapter 4
Denair Unified School District and Grant Joint Union High School District, Claimants

Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed the draft staff analysis and proposed statewide cost estimate for Claim No. CSM-98-TC-25 ("The Stull Act") submitted in a letter from the Commission on August 3, 2006 and submits the following comments:

The significantly disparate costs per teacher claimed by districts of similar size bring to question the validity and sufficiency of the parameters and guidelines and the claiming instructions. While Finance acknowledges that this mandate adds additional requirements to teacher evaluations, the claims should represent only incremental costs over costs associated with previously required teacher evaluation activities. For example, one district claimed costs of \$62 per teacher while another district claimed costs of \$680 per teacher. It is unclear whether these districts are claiming all of the costs associated with teacher evaluation, rather than just those associated with the new reimbursable activities.

In addition, the Commission's staff notes that performance of the evaluation and assessment activities identified in the adopted parameters and guidelines, specifically the review and the documenting of the results in writing, should be conducted concurrently. However, the Commission's staff discovered that a claiming district had conducted the evaluation and assessment activities separately. Furthermore, the draft staff analysis notes that the claims reviewed did not identify state or federal law(s) mandating the educational programs being performed by the employees as required by the parameters and guidelines. As a result, Commission staff could not verify whether these educational programs were mandated.

In conclusion, Finance has concerns with the accuracy of the claims, upon which the statewide cost estimate is based, and proposes that an audit of the claims be conducted to: 1) determine whether the claims are appropriately limited to only the incremental costs of evaluations under the new criteria, and 2) determine whether the claims are consistent with all requirements of the parameters and guidelines.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 3, 2006 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Sara Swan, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: The Stull Act
 Test Claim Number: CSM-98-TC-25

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On 5/10/07, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
 Ms. Paula Higashi, Executive Director
 Commission on State Mandates
 980 Ninth Street, Suite 300
 Sacramento, CA 95814
 Facsimile No. 445-0278

Education Mandated Cost Network
 C/O School Services of California
 Attention: Dr. Carol Berg, PhD
 1121 L Street, Suite 1060
 Sacramento, CA 95814

SixTen & Associates
 Attention: Kelth Petersen
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

E-8
 Department of Education
 School Business Services
 Attention: Marie Johnson
 560 J Street, Suite 170
 Sacramento, CA 95814

Mandated Cost Systems, Inc.
 Attention: Steve Smith
 2275 Watt Avenue, Suite C
 Sacramento, CA 95825

San Diego Unified School District
 Attention: Arthur Palkowitz
 4100 Normal Street, Room 3159
 San Diego, CA 92103-2682

E-8
 State Board of Education
 Attention: Bill Lucia, Executive Director
 721 Capitol Mall, Room 532
 Sacramento, CA 95814

California Teachers Association
 Attention: Steve DePue
 2921 Greenwood Road
 Greenwood, CA 95635

Girard & Vinson
 Attention: Paul Minney
 1676 N. California Blvd., Suite 450
 Walnut Creek, CA 95496

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, Ca 95816

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal And Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Keith B. Petersen
SixTen Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Steve Smith
Steve Smith Enterprises, Inc.
4633 Whitney Avenue, Suite A
Sacramento, CA 95821

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
4100 Normal Street, Room 3209
San Diego, Ca 92103-8363

Mr. Jim Jagers
P.O. Box 1993
Carmichael, CA 95609

Mr. Paul Warren
Legislative Analyst's Office (B-29)
925 L Street, Suite 1060
Sacramento, CA 95814

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Ms. Susan Geanaco
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Ms. Beth Hunter
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8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Ms. Jeannie Oropeza
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Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Mr. Jim Spano
State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. David E. Scribner
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 5/10/07 at Sacramento, California.



Mui Phung

