

ITEM 3
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

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

Statutes 1983, Chapter 498; Statutes 1999, Chapter 4

The Stull Act

Fiscal Years 2005-2006, 2006-2007, 2007-2008, 2010-2011, 2011-2012, 2012-2013¹

19-9825-I-03

Fairfield-Suisun Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction to reimbursement claims filed by the Fairfield-Suisun Unified School District (claimant) under the *Stull Act* program for fiscal years 2005-2006 through 2007-2008 and 2010-2011 through 2012-2013 (audit period).

The claimant disputes the Controller's reduction of \$402,409 in salaries and benefits for time to perform the mandated evaluations.² The Controller found that the claimant did not provide any contemporaneous source documentation as required by the Parameters and Guidelines to support the time devoted to the reimbursable evaluation activities.³ To determine reimbursable costs for salaries and benefits, the Controller used 60 minutes per allowable evaluation claimed based on the claimant's collective bargaining agreements for the audit period that required at least two 30-minute observations per evaluation of certificated instructional personnel.⁴ The claimant argues that 60 minutes does not allow any time to write the evaluations because the collective

¹ According to the audit report, fiscal years 2008 through 2010 were not included in the audit because the statute of limitations to initiate the audit of these years had expired. Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

² The Controller found that of the \$624,988 claimed during the audit period (\$588,343 in salaries and benefits), \$197,670 is allowable and \$427,318 is unallowable, of which \$402,409 is disputed. Exhibit A, IRC, filed March 2, 2020, pages 264, 267, 273 (Audit Report).

³ Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 10.

⁴ Exhibit A, IRC, filed March 2, 2020, pages 273 (Audit Report), 112 (2005-2007 Contract), 136 (2008-2010 Contract), 162 (2012-2014 Contract). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

bargaining agreements require 60 minutes to observe the employee. The claimant also disputes the Controller's rejection of its 2017 time study showing the claimant devoted an average of 1.55 hours to write an evaluation, but requests the Commission on State Mandates (Commission) to "allow some reasonable amount of time for each final write up."⁵

Staff recommends that the Commission deny this IRC.

Procedural History

The Parameters and Guidelines were adopted on October 5, 2005.⁶ The claimant filed the reimbursement claim for fiscal year 2005-2006 on January 17, 2007,⁷ for fiscal year 2006-2007 on February 15, 2008,⁸ for fiscal year 2007-2008 on February 5, 2009,⁹ for fiscal year 2010-2011 on February 15, 2012,¹⁰ for fiscal year 2011-2012 on February 15, 2013,¹¹ and for fiscal year 2012-2013 on February 18, 2014.¹²

The Controller issued the Audit Report on June 22, 2018.¹³ The claimant filed the IRC on March 2, 2020.¹⁴ The Controller filed late comments on the IRC on July 10, 2020.¹⁵ The claimant filed rebuttal comments on August 10, 2020.¹⁶ Commission staff issued the Draft Proposed Decision on December 17, 2020.¹⁷ The Controller filed comments on the Draft Proposed Decision on December 30, 2020.¹⁸ The claimant did not file comments on the Draft Proposed Decision.

Commission Responsibilities

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

⁵ Exhibit A, IRC, filed March 2, 2020, page 3.

⁶ Exhibit A, IRC, filed March 2, 2020, pages 248- 255 (Parameters and Guidelines).

⁷ Exhibit A, IRC, filed March 2, 2020, page 287 (2005-2006 reimbursement claim).

⁸ Exhibit A, IRC, filed March 2, 2020, page 293 (2006-2007 reimbursement claim).

⁹ Exhibit A, IRC, filed March 2, 2020, page 297 (2007-2008 reimbursement claim).

¹⁰ Exhibit A, IRC, filed March 2, 2020, page 308 (2010-2011 reimbursement claim).

¹¹ Exhibit A, IRC, filed March 2, 2020, page 316 (2011-2012 reimbursement claim).

¹² Exhibit A, IRC, filed March 2, 2020, page 323 (2012-2013 reimbursement claim).

¹³ Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

¹⁴ Exhibit A, IRC, filed March 2, 2020, page 1.

¹⁵ Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020.

¹⁶ Exhibit C, Claimant's Rebuttal Comments, filed August 10, 2020.

¹⁷ Exhibit D, Draft Proposed Decision, issued December 17, 2020.

¹⁸ Exhibit E, Controller's Comments on the Draft Proposed Decision, filed December 30, 2020.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁹ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²⁰

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²¹

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²² In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.²³

Claims

The following chart provides a brief summary of the claim and issues raised and staff's recommendation.

¹⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁰ *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²¹ *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

²² *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²³ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Issue	Description	Staff Recommendation
Did the claimant timely file the IRC?	Section 1185.1 of the Commission’s regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final audit report, letter, or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c).	<i>Timely filed</i> – The Controller issued the Audit Report on June 22, 2018, which complies with Government Code section 17558.5(c). The IRC was filed on March 2, 2020, less than three years from the date the Controller issued the Audit Report, so the IRC was timely filed.
Was the Controller’s reduction of costs incurred in fiscal years 2005-2006 through 2007-2008 and 2010-2011 through 2012-2013 (audit period) correct?	<p>The <i>Stull Act</i> program, under prior law, required certificated employees to be evaluated every other year and required the evaluations to be written.²⁴</p> <p>The Parameters and Guidelines authorize reimbursement for the higher level of service mandated by the state, requiring school districts to evaluate and assess certificated instructional personnel by <i>adding</i> to the regularly scheduled written evaluation two new criteria.²⁵ For certificated instructional and non-instructional employees who previously received a <i>non-satisfactory</i> evaluation,</p>	<i>Correct as a matter of law and not arbitrary, capricious or entirely lacking in evidentiary support</i> – The claimant did not provide any contemporaneous source documentation to support the employee time devoted to the reimbursable activities involved in each evaluation. ³³ Rather, the claimant provided lists of employees evaluated, completed evaluations, the collective bargaining agreements for the audit period that required 60 minutes of observation per employee evaluated, and a 2017 time study showing an average of 1.55 hours for writing each “final evaluation.” ³⁴ Thus, the

²⁴ Former Education Code section 13488. Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, page 18.

²⁵ Exhibit A, IRC, filed March 2, 2020, page 251 (Parameters and Guidelines).

³³ Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 10.

³⁴ Exhibit A, IRC, filed March 2, 2020, pages 5-37 (Time Study); Exhibit A, IRC, filed March 2, 2020, pages 38-108 (completed evaluation forms) and pages 118-124 (evaluation form attached to the 2005-2007 collective bargaining agreement); Exhibit A, IRC, filed March 2, 2020, pages 273, 282 (Audit Report).

Issue	Description	Staff Recommendation
	<p>the test claim statutes require an additional assessment and written evaluation every other year.²⁶</p> <p>To be reimbursed for employee salaries and benefits, the Parameters and Guidelines, adopted October 5, 2005, require claimants to: (1) “Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours);”²⁷ (2) “Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed”;²⁸ and (3) “[e]ach claimed reimbursable cost [including salaries and benefits] must be supported by source documentation as described in section IV.”²⁹ Source documentation must be contemporaneous; “created at or near the same time the actual cost was</p>	<p>claimant did not comply with the Parameters and Guidelines, so the Controller’s reduction of costs is correct as a matter of law.</p> <p>Staff also finds there is no evidence in the record that the Controller’s reimbursement of 60 minutes for each allowable evaluation is arbitrary or capricious, or entirely lacking in evidentiary support. The record indicates the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.”³⁵</p>

²⁶ Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines). Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 33-34.

²⁷ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

²⁸ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

²⁹ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

³⁵ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

Issue	Description	Staff Recommendation
	<p>incurred for the event or activity in question.”³⁰</p> <p>Parameters and guidelines are regulatory in nature and, once adopted and issued, are final and binding on the parties.³¹</p> <p>In determining whether the Controller’s audit decisions are arbitrary, capricious, or entirely lacking in evidentiary support, the Commission is required to defer to the Controller’s audit decisions and simply determine whether the Controller adequately considered all relevant factors, and demonstrated a rational connection between those factors and the choice made.³²</p>	

Staff Analysis

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.

Section 1185.1 of the Commission’s regulations requires IRCs to be filed no later than three years after the Controller’s final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c). The Controller notified the claimant of the reduction by an Audit Report dated June 22, 2018,³⁶ which specifies the claim components and amounts adjusted, and the reasons for the adjustments, thereby complying with the notice requirements in

³⁰ Exhibit A, IRC, filed March 2, 2020, pages 251-252 (Parameters and Guidelines).

³¹ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

³² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

³⁶ Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

section 17558.5(c). The claimant filed the IRC on March 2, 2020,³⁷ less than three years from the date the Audit Report was issued,³⁸ so staff finds that the IRC was timely filed.

B. The Controller's Reduction of Salary and Benefit Costs Is Correct as a Matter of Law Because the Claimant Did Not Provide Contemporaneous Source Documentation to Support the Time Devoted to the Reimbursable Evaluation Activities as Required by the Parameters and Guidelines, and There Is No Evidence in the Record that the Controller's Allowance of 60 Minutes Per Evaluation Is Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.

Under prior law, the Stull Act required employee evaluations to be written.³⁹ The test claim statutes imposed a higher level of service by mandating that the school districts evaluate and assess employees by *adding* to the regularly scheduled written evaluation of certificated instructional personnel only the following criteria (in Section IV.A of the Parameters and Guidelines):

- For employees who perform the requirements of educational programs mandated by state or federal law, include in the written evaluation an assessment of the employee's performance as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives.
- For employees who teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, include in the written evaluation an assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach.⁴⁰

For certificated instructional and non-instructional employees who previously received a *non-satisfactory* evaluation, the test claim statutes require an additional assessment and written evaluation every other year.⁴¹ These evaluations must address additional specified criteria and the evaluation must include recommendations, if necessary, as to areas of improvement in the performance of the employee as specified in Section IV.B. of the Parameters and Guidelines.⁴²

To be reimbursed for employee salaries and benefits, the Parameters and Guidelines require claimants to: (1) "Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours)."⁴³ (2) "Describe the specific reimbursable activities performed and the hours devoted to

³⁷ Exhibit A, IRC, filed March 2, 2020, page 1.

³⁸ Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

³⁹ Former Education Code section 13488. Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, page 18.

⁴⁰ Exhibit A, IRC, filed March 2, 2020, page 251 (Parameters and Guidelines).

⁴¹ Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines). Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 33-34.

⁴² Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

⁴³ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

each reimbursable activity performed.”⁴⁴ And (3) “[e]ach claimed reimbursable cost [including salaries and benefits] must be supported by source documentation as described in section IV.”⁴⁵ Source documentation must be “created at or near the same time the actual cost was incurred for the event or activity in question.”⁴⁶ Parameters and guidelines are regulatory in nature and, once adopted and issued, are final and binding on the parties.⁴⁷

In this case, the only contemporaneous documentation provided by the claimant were the written evaluations themselves, which provide no evidence to support the time devoted to the reimbursable activities involved in each evaluation.⁴⁸ The other documentation that the claimant provided included master lists of employees evaluated by fiscal year, the collective bargaining agreements for the audit period that required two formal observations of 30 minutes for each certificated instructional employee evaluated, and a time study conducted in 2017, well after the audit period, showing the claimant devoted an average of 1.55 hours to writing each “final evaluation.”⁴⁹ None of these documents included contemporaneous documentation of the time devoted to the mandate. Thus, the claimant did not comply with the contemporaneous source documentation requirement in the Parameters and Guidelines, so the Controller’s reduction of costs is correct as a matter of law. However, the Controller allowed reimbursement for each allowable evaluation claimed for the audit period, despite no contemporaneous source documents being provided to support the time spent on the reimbursable activities.

Staff also finds there is no evidence in the record that the Controller’s allowance of 60 minutes for each allowable evaluation claimed is arbitrary or capricious or entirely lacking in evidentiary support. The record shows that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.”⁵⁰ In addition, the Controller fully reviewed the claimant’s time study, interviewed employees who admitted that the times were “best guesses,” and found a wide

⁴⁴ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

⁴⁵ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

⁴⁶ Exhibit A, IRC, filed March 2, 2020, pages 251-252 (Parameters and Guidelines).

⁴⁷ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

⁴⁸ Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 10.

⁴⁹ Exhibit A, IRC, filed March 2, 2020, pages 5-37 (Time Study); Exhibit A, IRC, filed March 2, 2020, pages 38-108 (completed evaluation forms) and pages 118-124 (evaluation form attached to the 2005-2007 collective bargaining agreement); Exhibit A, IRC, filed March 2, 2020, pages 273, 282 (Audit Report).

⁵⁰ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

variation in the times reported.⁵¹ Moreover, there is no indication that the claimant's time study captured only the higher level of service the Commission approved for this mandate. The claimant provides no evidence that the 1.55 hours alleged in the time study reflects anything other than the time to write a full evaluation.

Conclusion

Staff concludes that the Controller's reduction is correct as a matter of law, and there is no evidence in the record that the Controller's decision to allow 60 minutes total per evaluation is arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC.

⁵¹ Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 15-16, 26-27 (email from the Controller to the claimant, Dec. 21, 2017).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM

Education Code Sections 44660-44665
Statutes 1983, Chapter 498; Statutes 1999,
Chapter 4

Fiscal Years Fiscal Years 2005-2006, 2006-
2007, 2007-2008, 2010-2011, 2011-2012,
2012-2013

Filed on March 2, 2020

Fairfield-Suisun Unified School District,
Claimant

Case No.: 19-9825-I-03

The Stull Act

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

(Adopted March 26, 2021)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on March 26, 2021. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of costs claimed for the *Stull Act* program for fiscal years 2005-2006 through 2007-2008 and 2010-2011 through 2012-2013 (audit period) because the Fairfield-Suisun Unified School District (claimant) did not provide contemporaneous source documentation to support the times claimed by employees to perform the reimbursable activities, as required by the Parameters and Guidelines.⁵² The *Stull Act* program, under prior law, required certificated employees to be evaluated every other year and required the evaluations to be written.⁵³ The test claim statutes imposed a higher level of service on school districts by mandating additional requirements to the evaluation process; namely to evaluate certificated instructional personnel on two new criteria and to include that new information in the existing written evaluation; and to re-evaluate and write an additional evaluation every other year for certificated instructional and non-instructional personnel who previously received a non-satisfactory evaluation.

To determine reimbursable costs for salaries and benefits, the Controller allowed 60 minutes for each allowable evaluation claimed based on the claimant's collective bargaining agreements for the audit period, which require at least two 30-minute observations per evaluation of certificated instructional personnel.⁵⁴ The Controller calculated the allowable salaries and benefits by multiplying 60 minutes per evaluation by the number of allowable evaluations performed by the evaluator's productive hourly rate.⁵⁵ The claimant contends that 60 minutes does not allow any time to write the evaluations because the collective bargaining agreement requires 60 minutes to observe the employee. The claimant also disputes the Controller's rejection of its 2017 time study showing an average of 1.55 hours to write an evaluation, but requests the Commission to "allow some reasonable amount of time for each final write up."⁵⁶

The Commission finds that the reduction is correct as a matter of law since the claimant did not comply with the contemporaneous source documentation requirement in the Parameters and Guidelines to support the time devoted to the reimbursable activities.

In addition, there is no evidence that the Controller's allowance of 60 minutes per evaluation is arbitrary, capricious, or entirely lacking in evidentiary support. The record shows that the Controller "adequately considered all relevant factors, and has demonstrated a rational

⁵² Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 10. According to the audit report, fiscal years 2008 through 2010 were not included in the audit because the statute of limitations to initiate the audit of these years had expired. Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

⁵³ Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, page 18.

⁵⁴ Exhibit A, IRC, filed March 2, 2020, pages 273 (Audit Report), 112 (2005-2007 Contract), 136 (2008-2010 Contract), 162 (2012-2014 Contract). Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

⁵⁵ Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

⁵⁶ Exhibit A, IRC, filed March 2, 2020, page 3.

connection between those factors, the choice made, and the purposes of the enabling statute.”⁵⁷ The Controller fully reviewed the claimant’s time study, interviewed employees who admitted that the times were “best guesses,” and found a wide variation in the times reported.⁵⁸ Moreover, there is no indication that the claimant’s time study captured only the higher level of service the Commission approved for this mandate. The claimant provides no evidence that the 1.55 hours alleged in the time study reflects anything other than the time to write a full evaluation.

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

10/05/2005	The Commission adopted the Parameters and Guidelines. ⁵⁹
01/17/2007	The claimant filed a reimbursement claim for 2005-2006. ⁶⁰
02/15/2008	The claimant filed a reimbursement claim for 2006-2007. ⁶¹
02/05/2009	The claimant filed a reimbursement claim for 2007-2008. ⁶²
02/15/2012	The claimant filed a reimbursement claim for 2010-2011. ⁶³
02/15/2013	The claimant filed a reimbursement claim for 2011-2012. ⁶⁴
02/18/2014	The claimant filed a reimbursement claim for 2012-2013. ⁶⁵
06/22/2018	The Controller issued the Audit Report.
03/02/2020	The claimant filed the IRC. ⁶⁶
07/10/2020	The Controller filed late comments on the IRC. ⁶⁷

⁵⁷ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁵⁸ Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report). Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, pages 15-16, 26-27 (email from the Controller to the claimant, Dec. 21, 2017).

⁵⁹ Exhibit A, IRC, filed March 2, 2020, pages 248- 255 (Parameters and Guidelines).

⁶⁰ Exhibit A, IRC, filed March 2, 2020, page 287 (2005-2006 reimbursement claim).

⁶¹ Exhibit A, IRC, filed March 2, 2020, page 293 (2006-2007 reimbursement claim).

⁶² Exhibit A, IRC, filed March 2, 2020, page 297 (2007-2008 reimbursement claim).

⁶³ Exhibit A, IRC, filed March 2, 2020, page 308 (2010-2011 reimbursement claim).

⁶⁴ Exhibit A, IRC, filed March 2, 2020, page 316 (2011-2012 reimbursement claim).

⁶⁵ Exhibit A, IRC, filed March 2, 2020, page 323 (2012-2013 reimbursement claim).

⁶⁶ Exhibit A, IRC, filed March 2, 2020.

⁶⁷ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020.

08/10/2020 The claimant filed rebuttal comments.⁶⁸
12/17/2020 Commission staff issued the Draft Proposed Decision.⁶⁹
12/30/2020 The Controller filed comments on the Draft Proposed Decision.⁷⁰

II. Background

A. The Stull Act Program

The Stull Act was originally enacted in 1971 to establish a uniform system of evaluation and assessment of the performance of “certificated personnel” (including certificated non-instructional personnel) within each school district.⁷¹ As originally enacted, the Stull Act required the governing board of each school district to develop and adopt specific guidelines to evaluate and assess certificated personnel, and to avail itself of the advice of certificated instructional personnel before developing and adopting the guidelines.⁷² The evaluation and assessment of the certificated personnel had to be in writing, conducted once each school year for probationary employees and every other year for permanent employees, and a copy transmitted to the employee no later than sixty days before the end of the school year.⁷³ If the employee was not performing in a satisfactory manner according to the standards, the “employing authority” was required to notify the employee in writing, describe the unsatisfactory performance, and confer with the employee in making specific recommendations as to areas of improvement and endeavor to assist in the improvement. The employee then had the right to initiate a written response to the evaluation, which became a permanent part of the employee’s personnel file. The school district was also required to hold a meeting with the employee to discuss the evaluation.⁷⁴

The test claim statutes amended the Stull Act in 1983 and 1999 to expand the scope of evaluation and assessment of certificated instructional personnel by adding criteria that must be included in the evaluations: the employee’s instructional techniques and strategies, and adherence to curricular objectives; and the performance of instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 (i.e., the STAR test subjects) as it reasonably relates to the progress of pupils towards the state-adopted academic content standards as measured by state-adopted assessment tests.⁷⁵ And, in cases where the certificated instructional or non-instructional employee receives an unsatisfactory result, the test claim

⁶⁸ Exhibit C, Claimant’s Rebuttal Comments, filed August 10, 2020.

⁶⁹ Exhibit D, Draft Proposed Decision, issued December 17, 2020.

⁷⁰ Exhibit E, Controller’s Comments on the Draft Proposed Decision, filed December 30, 2020.

⁷¹ Former Education Code sections 13485-13490.

⁷² Former Education Code sections 13486-13487.

⁷³ Former Education Code section 13488.

⁷⁴ Former Education Code section 13488.

⁷⁵ Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 28-32.

statutes require an additional evaluation “in the years in which the permanent certificated employee would not have otherwise been evaluated.”⁷⁶

The Commission denied the activities that were required under preexisting law because they did not impose a new program or higher level of service. Denied activities included developing and adopting specific evaluation and assessment guidelines for performance; evaluating and assessing certificated personnel as it relates to the established standards; preparing and drafting a written evaluation, to include recommendations, if necessary, for areas of improvement; receiving and reviewing written responses to evaluations; and preparing for and holding a meeting with the evaluator to discuss the evaluation and assessment.⁷⁷

The Commission partially approved the Test Claim on May 27, 2004, for those activities that represent the *limited* new program or higher level of service mandated by the state by the test claim statutes. The Parameters and Guidelines were adopted on September 27, 2005, and as relevant here, authorize reimbursement for only the following new activities:

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.

⁷⁶ Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 32-33.

⁷⁷ Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, page 19.

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
 - 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.⁷⁸

The Parameters and Guidelines also require claimants to submit contemporaneous source documentation, which may include but is not limited to time records or time logs, to support their actual costs. Evidence to corroborate the source documents, such as declarations or worksheets, may also be submitted. However, corroborating documents cannot be substituted for contemporaneous source documentation. In this regard, Section IV. of the Parameters and Guidelines states:

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

⁷⁸ Exhibit A, IRC, filed March 2, 2020, pages 251-252 (Parameters and Guidelines).

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, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.⁷⁹

Section V. of the Parameters and Guidelines requires that "[e]ach claimed reimbursable cost must be supported by source documentation as described in section IV."⁸⁰ To claim costs for employee salaries and benefits, Section V. requires claimants to:

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.⁸¹

And Section VI. of the Parameters and Guidelines requires claimants to retain all documentation until the ultimate resolution of any audit findings:

All documentation used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.⁸²

Beginning in fiscal year 2013-2014, the claimant elected to receive block grant funding for the mandated programs identified in Government Code section 17581.6, which includes the *Stull Act* program, in lieu of submitting reimbursement claims to the State Controller's Office.⁸³

⁷⁹ Exhibit A, IRC, filed March 2, 2020, page 251-252 (Parameters and Guidelines).

⁸⁰ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

⁸¹ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

⁸² Exhibit A, IRC, filed, March 2, 2020, pages 254-255 (Parameters and Guidelines).

⁸³ Exhibit A, IRC, filed March 2, 2020, page 276 (Audit Report).

B. The Controller's Audit and Summary of Issues

Costs for salaries and benefits of \$588,343 were claimed for the audit period (fiscal years 2005-2006 through 2007-2008, and 2010-2011 through 2012-2013). The Controller found that \$402,409 was unallowable “primarily because the district claimed reimbursement for costs not supported by source documents.”⁸⁴

The Controller determined that the claimant did not provide contemporaneous *time* documentation as required by the Parameters and Guidelines to support the time spent on the reimbursable evaluation activities.⁸⁵ Instead, the claimant provided the Controller with master lists of employees evaluated by fiscal year and the collective bargaining agreements for the audit period, which required two formal observations lasting 30 minutes for each certificated instructional employee evaluated.⁸⁶ The Audit Report states, in relevant part, that to “achieve our audit objective,” the Controller:

- Requested supporting time documentation for the entire audit period. The district was unable to provide contemporaneous time records for the audit period. In lieu of contemporaneous time records, we reviewed the district’s collective bargaining agreements and found that certificated instructional evaluations are to be based on at least two observations of at least 30 minutes in length. We allowed 60 minutes as the time allotment for each allowable certificated instructional evaluation for the audit period.
- Requested and reviewed lists of employees evaluated for the entire audit period. Using a random number generator, we randomly selected a non-statistical sample and tested 655 evaluations (out of 2,613) for the audit period. During testing, we identified 39 errors in the sample that were not projected to the population.⁸⁷

The Controller calculated the allowable salaries and benefits by multiplying 60 minutes per evaluation by the number of allowable evaluations performed by the productive hourly rate of the employee evaluator.⁸⁸

On April 13, 2018, the Controller issued the Draft Audit Report.⁸⁹ The claimant responded to the Draft Audit Report on April 19, 2018, asserting that:⁹⁰

⁸⁴ Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

⁸⁵ Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 10.

⁸⁶ Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

⁸⁷ Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report).

⁸⁸ Exhibit A, IRC, filed March 2, 2020, page 273 (Audit Report).

⁸⁹ Exhibit A, IRC, filed March 2, 2020, page 269.

⁹⁰ Exhibit A, IRC, filed March 2, 2020, pages 281-283.

- The Controller allowed one hour for observation for each evaluation (activity a in the claiming instructions), but zero time for the final write-ups (activity b), “which we assert is out of compliance with the State’s claiming instructions”⁹¹
- The claimant provided the Controller with hundreds of written evaluations to support both the observation costs and the final write-up costs. The actual written evaluations support the costs claimed to write the evaluations.⁹²
- In Spring 2017, the claimant asked all administrators to record the time spent writing final evaluations. The District was able to obtain a large amount of data showing an average of 1.55 hours to write a final evaluation.⁹³ The claimant’s IRC explains that the time study data was obtained from 21 school sites and 188 site administrators recorded the time spent to write final evaluations.⁹⁴ Based on the time study, the claimant reported that its employees spent an average of 1.55 hours to write up each evaluation.⁹⁵ The claimant provided to the Controller a spreadsheet with the time study results on September 27, 2017.⁹⁶

The Controller did not change the audit findings following the claimant’s response to the Draft Audit Report, so 60 minutes was allowed for each allowable evaluation based on the collective bargaining agreements. The Audit Report, dated June 22, 2018, states:

- The claimant’s collective bargaining agreements do not indicate a time component to write the evaluations.
- The Controller reviewed the claimant’s time study and interviewed three site administrators who participated in it. All three stated that the times reported to write the evaluations were not the “actual times,” but were “estimated” or a “best guess.” Consequently, the Controller did not accept the times provided to write the evaluations.
- The written evaluations themselves do not identify the time spent writing the evaluations. The claimant provided no contemporaneous time documentation.⁹⁷

III. Positions of the Parties

A. Fairfield-Suisun Unified School District

The claimant argues that the Controller disallowed all time and associated costs to write the final evaluations.⁹⁸ The claimant points out that in addition to the observation, its collective

⁹¹ Exhibit A, IRC, filed March 2, 2020, page 282.

⁹² Exhibit A, IRC, filed March 2, 2020, page 282.

⁹³ Exhibit A, IRC, filed March 2, 2020, page 282.

⁹⁴ Exhibit A, IRC, filed March 2, 2020, pages 2, 5-37 (Time Study).

⁹⁵ Exhibit A, IRC, filed March 2, 2020, pages 2, 5-37 (Time Study), 279 (Audit Report).

⁹⁶ Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report).

⁹⁷ Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report).

⁹⁸ Exhibit A, IRC, filed March 2, 2020, page 2.

bargaining agreements also require writing the evaluations, asserting “to allow time for one activity and not the other means one bullet within the Collective Bargaining Agreements has more relevance than the other which is arbitrary and inconsistent.”⁹⁹ According to the claimant:

If the district’s CBA [collective bargaining agreement] for each year is the basis for the allowance of a mandated activity specifically observations [sic] by administrators, then the SCO [Controller] should be allowing at least some time for the final write up by administrators, as the two activities are required by the same employees within the same section of all the CBAs listed above.¹⁰⁰

In its rebuttal comments, the claimant repeats that if the collective bargaining agreements are the basis for the mandated activity, then the Controller should be allowing at least some time for the final write up.¹⁰¹

Because the claimant was “confident” that the Controller would allow time to write the evaluations, “it took the initiative in the Spring of 2017” to perform a time study by asking site administrators to track their time writing performance evaluations. Data was obtained from 21 school sites and 188 individual records of time spent on final evaluation write ups from the site administrators, showing an average of 1.55 hours to write each evaluation.¹⁰² The claimant alleges that 1.55 hours is substantially less than the time spent to write evaluations during the early years of the audit period when the claimant used paper evaluations instead of electronic forms.¹⁰³ Noting that its time study was rejected because “three of the administrators admitted that the time they reported was not tracked to the minute, but instead was estimated to the nearest reasonable time increment,”¹⁰⁴ the claimant requests that its time study to write the evaluations be allowed, but to exclude the time reported by the three administrators from the average time calculation.¹⁰⁵

In its rebuttal comments, the claimant states that the problems with its time study were raised by the Controller in a footnote in an email to a high school principal who would not have been familiar with the time study and had “no way of ascertaining the answers.” The problems should have been addressed to the appropriate personnel assigned to the audit who would have made every effort to answer the questions “timely and fully.”¹⁰⁶

The claimant quotes the Audit Report that the Controller reviewed 655 written evaluations (out of 2,613) for the audit period and identified 39 errors that were not projected to the population, then argues:

⁹⁹ Exhibit A, IRC, filed March 2, 2020, page 2.

¹⁰⁰ Exhibit A, IRC, filed March 2, 2020, page 2.

¹⁰¹ Exhibit C, Claimant’s Rebuttal Comments, filed August 10, 2020, page 1.

¹⁰² Exhibit A, IRC, filed March 2, 2020, pages 2, 5-37 (Time Study).

¹⁰³ Exhibit A, IRC, filed March 2, 2020, page 3.

¹⁰⁴ Exhibit A, IRC, filed March 2, 2020, page 2.

¹⁰⁵ Exhibit A, IRC, filed March 2, 2020, page 3.

¹⁰⁶ Exhibit C, Claimant’s Rebuttal Comments, filed August 10, 2020, pages 1-2.

The District pulled thousands of evaluations from its archives for this audit, spending hundreds of staff hours to support costs claimed. It was more than clear to the State Controller's Auditors when they were on site that each evaluation in the District's records had a WRITTEN FINAL EVALUATION included in the records. For the State Controller's office to conclude zero time is allowable for an activity that is clearly documented by the actual paper records is illogical and capricious.¹⁰⁷

The claimant requests that the Commission "allow some reasonable amount of time for each final write up."¹⁰⁸ According to the claimant's rebuttal comments:

[W]e have always been and are still very willing to negotiate any reasonable time increment for the final write-up, as having the entire activity 100% disallowed is unacceptable. The District is just hoping for some middle ground to be found between itself and the SCO. The District proposed 1.55 hours as the appropriate amount of allowable time, however in a desire to see some sort of resolution to the issue the District was only trying to convince the SCO to be reasonable and asking for some form of negotiation or compromise.¹⁰⁹

The claimant did not file comments on the Draft Proposed Decision.

B. State Controller's Office

The Controller maintains that the audit reductions are correct. Although the District provided contemporaneous records to support the number of evaluations conducted during the audit period, the claimant did not provide any contemporaneous records to support the time associated with performing the reimbursable activities.¹¹⁰ The Controller agrees that reducing the claims to \$0 would be arbitrary and capricious since the claimant's documentation shows that the claimant performed 2,574 reimbursable evaluations during the audit period.¹¹¹

Thus, the Controller used the claimant's collective bargaining agreements, the only documentation the claimant provided (other than the claimant's 2017 time study) that documents its time to perform "observational activities."¹¹² The collective bargaining agreements do not state a time component for writing the final evaluations.¹¹³ The Controller further states that it "makes no assessment to the relevancy of one activity versus another in the collective bargaining

¹⁰⁷ Exhibit A, IRC, filed March 2, 2020, page 3. Emphasis in original.

¹⁰⁸ Exhibit A, IRC, filed March 2, 2020, page 3.

¹⁰⁹ Exhibit C, Claimant's Rebuttal Comments, filed August 10, 2020, page 2.

¹¹⁰ Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

¹¹¹ Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

¹¹² Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, pages 13, 14.

¹¹³ Exhibit B, Controller's Late Comments on the IRC, filed July 10, 2020, page 14.

agreements. Our role is to determine whether the claims submitted by the District contain actual costs traceable to and supported by contemporaneous source documentation.”¹¹⁴

In addition, the Controller had many concerns with the claimant’s 2017 time study. For example, of the 44 total evaluators listed on the spreadsheet, six did not list any time for completing the evaluation. Also, the listed time varied widely between employees of the same classification, as the Controller noted:

- Permanent – between 0 and 120 minutes;
- Probationary 0 – between 0 and 300 minutes;
- Probationary 1 – between 0 and 300 minutes;
- Probationary 2 – between 0 and 300 minutes.¹¹⁵

The Controller was also concerned that the original email from the claimant originated on April 28, 2017, but the e-signature dates for each evaluation covered a six-month time span. The Controller observed that approximately 86 percent of time increments listed were outside the month of April, “which is cause for concern regarding the accuracy of the data provided.”¹¹⁶ Also, the entries were not signed by the evaluators confirming their listed time increments for each evaluated employee.¹¹⁷

As part of its review of the time study, the Controller selected three of the claimant’s employees to interview. These employees were selected because they totaled 36 of the 253 line items, or about 14 percent of the entire population, and also because; (1) the first employee (elementary) listed an identical time increment for each evaluation, which was conducted in January and February; (2) the second employee (high school) listed an identical time increment for each evaluation, which was conducted between February and April; (3) the third employee (elementary) listed the overall highest time increments of all evaluators and conducted the evaluations in January and February.¹¹⁸ During the interview, the three employees stated that the time entered on the spreadsheet was not the actual time taken to complete the write up, but was “approximate” or a “best guess.”¹¹⁹ According to the Controller, “there is no ‘approximate’ or ‘best guess’ standard present in the Parameters and Guidelines.”¹²⁰ In response to the claimant’s argument that the administrator’s time was tracked to the nearest reasonable time increment, the Controller notes that the site administrators did not say that their time was estimated to the nearest reasonable time increment. And one administrator said that some of the principals/vice principals may have misunderstood exactly what was to be recorded on the spreadsheet “as some

¹¹⁴ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 14.

¹¹⁵ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, pages 15, 28. Exhibit A, IRC, filed March 2, 2020, pages 5-36 (Time Study).

¹¹⁶ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 15.

¹¹⁷ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 15.

¹¹⁸ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 16.

¹¹⁹ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 16.

¹²⁰ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 16.

of the larger time increments may have included activities beyond the write up.”¹²¹ The Controller also raised questions about the lack of a signed declaration for each administrator, how the spreadsheet was created, who had access to the spreadsheet, and what controls were placed on the data to ensure accurate reporting. The Controller received no responses to those questions.¹²²

The Controller argues that the claimant contradicts itself by requesting 1.55 hours for each documented final write-up, then asks for “some reasonable amount of time” for the same activity. The Controller also argues that the claimant’s statement that the three administrators “may not have had a stopwatch handy” to record the time to write up evaluations is an admission that the time logs presented to the Controller were not actual contemporaneous documents.¹²³

The Controller urges the Commission to find that it correctly reduced the claims.¹²⁴

On December 30, 2020, the Controller filed comments concurring with the Draft Proposed Decision.¹²⁵

IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹²⁶ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

¹²¹ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, pages 16, 26-27 (email from the Controller to the claimant, Dec. 21, 2017).

¹²² Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, pages 16, 27-28.

¹²³ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 16.

¹²⁴ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 17.

¹²⁵ Exhibit E, Controller’s Comments on the Draft Proposed Decision, filed December 30, 2020.

¹²⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹²⁷

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹²⁸ Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support....” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’” [Citation.]’ ”¹²⁹

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹³⁰ In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹³¹

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the

¹²⁷ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹²⁸ *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹²⁹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹³⁰ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹³¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

claimant, and the reason for the adjustment.¹³² The claimant may then file an IRC with the Commission “pursuant to regulations adopted by the Commission” contending that the Controller’s reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.¹³³

In this case, the Audit Report, dated June 22, 2018, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).¹³⁴

The Commission’s regulations require that an IRC be timely filed within three years of the date the claimant is notified of a reduction, and the notice complies with Government Code section 17558.5(c), as follows:

All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment.¹³⁵

Because the claimant filed the IRC on March 2, 2020,¹³⁶ within three years of the Audit Report issued on June 22, 2018,¹³⁷ the Commission finds that the IRC was timely filed.

B. The Controller’s Reduction of Salary and Benefit Costs Is Correct as a Matter of Law Because the Claimant Did Not Provide Contemporaneous Source Documentation to Support the Time Devoted to the Reimbursable Evaluation Activities as Required by the Parameters and Guidelines, and There Is No Evidence in the Record that the Controller’s Allowance of 60 Minutes Per Evaluation Is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As discussed in the Background, the Stull Act program, as originally enacted in 1971, required employee evaluations to be written.¹³⁸ The test claim statutes imposed a higher level of service on school districts by mandating additional requirements to the evaluation process. For the regularly scheduled evaluations of certificated instructional personnel, the test claim statutes

¹³² Government Code section 17558.5(c).

¹³³ Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

¹³⁴ Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

¹³⁵ California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a), as amended operative October 1, 2016.

¹³⁶ Exhibit A, IRC, filed March 2, 2020, page 1.

¹³⁷ Exhibit A, IRC, filed March 2, 2020, page 264 (Audit Report).

¹³⁸ Former Education Code section 13488. Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, page 18.

mandate school districts to evaluate and assess the employee, and *add* to the written evaluation only the following criteria (reflected in Section IV.A of the Parameters and Guidelines):

- For certificated instructional employees that perform the requirements of educational programs mandated by state or federal law – include in the written evaluation an assessment of the employee’s performance as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives.
- For certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 – include in the written evaluation an assessment of the employee's performance based on the Standardized Testing and Reporting results for the pupils they teach.¹³⁹

Reimbursement is *not* required for the full written evaluation and assessment of certificated employees who have received satisfactory evaluations.

For those certificated instructional and non-instructional employees who previously received a *non-satisfactory* evaluation, the test claim statutes require an additional assessment and written evaluation “in the years in which the permanent certificated employee would not have otherwise been evaluated.”¹⁴⁰ Years in which the employee would not otherwise have been evaluated means every other year.¹⁴¹ These additional evaluations must address: (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. These new evaluations are required to be written, and include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee’s duties are not being performed 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. Section IV.B. of the Parameters and Guidelines authorizes reimbursement for this additional evaluation.¹⁴²

To receive reimbursement for employee salaries and benefits, the Parameters and Guidelines require claimants to:

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided

¹³⁹ Exhibit A, IRC, filed March 2, 2020, page 251 (Parameters and Guidelines).

¹⁴⁰ Exhibit F, Test Claim Decision, *The Stull Act*, 98-TC-25, adopted May 27, 2004, pages 33-34.

¹⁴¹ Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

¹⁴² Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.¹⁴³

The Parameters and Guidelines also require that “[e]ach claimed reimbursable cost [including salaries and benefits] must be supported by source documentation as described in section IV.”¹⁴⁴ Section IV. requires claimants to support their costs with contemporaneous source documentation “created at or near the same time the actual cost was incurred for the event or activity in question.”¹⁴⁵

The Parameters and Guidelines were adopted on September 27, 2005, well before January 17, 2007 when the first reimbursement claim at issue for fiscal year 2005-2006 was filed with the Controller, so the claimant had notice of the requirements in the Parameters and Guidelines.¹⁴⁶ Parameters and guidelines are regulatory in nature and, once adopted and issued, are final and binding on the parties.¹⁴⁷

In this case, the only contemporaneous documentation provided by the claimant were the written evaluations themselves, which show that the evaluations were reduced to writing but provide no evidence to support the amount of time devoted to writing or the other required activities for each evaluation.¹⁴⁸ The only other documentation that the claimant provided the Controller was master lists of employees evaluated by fiscal year, the collective bargaining agreements for the audit period, which required two formal observations lasting 30 minutes for each certificated instructional employee evaluated, and a 2017 time study, well after the audit period, showing an average of 1.55 hours for writing each “final evaluation.”¹⁴⁹ None of these include contemporaneous documentation of the time devoted to the mandate. Although the claimant’s collective bargaining agreements are ‘contracts’ and therefore corroborating documentation, the Parameters and Guidelines specify that “corroborating documents cannot be substituted for source documents.”¹⁵⁰

¹⁴³ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

¹⁴⁴ Exhibit A, IRC, filed March 2, 2020, page 253 (Parameters and Guidelines).

¹⁴⁵ Exhibit A, IRC, filed March 2, 2020, page 252 (Parameters and Guidelines).

¹⁴⁶ Exhibit A, IRC, filed March 2, 2020, pages 251-252 (Parameters and Guidelines), 287 (2005-2006 reimbursement claim).

¹⁴⁷ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

¹⁴⁸ Exhibit A, IRC, filed March 2, 2020, page 268 (Audit Report); Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 10.

¹⁴⁹ Exhibit A, IRC, filed March 2, 2020, pages 5-37 (Time Study); Exhibit A, IRC, filed March 2, 2020, pages 38-108 (completed evaluation forms) and pages 118-124 (evaluation form attached to the 2005-2007 collective bargaining agreement); Exhibit A, IRC, filed March 2, 2020, pages 273, 282 (Audit Report).

¹⁵⁰ Exhibit A, IRC, filed March 2, 2020, page 251-252 (Parameters and Guidelines).

As indicated in the Test Claim Decision and Parameters and Guidelines, full or “final” evaluations (as phrased by the claimant) for certificated instructional employees receiving a regular evaluation every two years are not eligible for reimbursement; the only activities eligible for reimbursement are evaluating and assessing the employee using the limited new criteria mandated by the test claim statutes and adding that criteria to the existing written evaluation for those instructional employees working on educational programs mandated by state or federal law or who teach the courses specified in the Parameter and Guidelines. Full evaluations are only required every other year for those certificated instructional and non-instructional employees who work in educational programs that are mandated by state or federal law that received a prior negative evaluation.¹⁵¹ Thus, the claimant did not comply with the contemporaneous source documentation requirements of the Parameters and Guidelines and the Controller’s reduction of costs is correct as a matter of law.

The Commission further finds that the Controller’s allowance of 60 minutes per evaluation conducted during the audit period is not arbitrary, capricious, or entirely lacking in evidentiary support. Under this standard, the Commission is required to defer to the Controller’s audit decisions and simply determine if the Controller adequately considered all relevant factors, and demonstrated a rational connection between those factors and the choice made.¹⁵²

Since the claimant did not provide any contemporaneous source documents, the Controller reviewed the collective bargaining agreements effective during the audit period and determined that the claimant should be allowed 60 minutes total for each allowable evaluation claimed during the audit period, based on the requirement in the agreements for at least two 30-minute observations during a *full* evaluation:

At least two (2) formal observations, one scheduled, and the other may be scheduled or unscheduled, will be held during a unit member's evaluation year to observe unit members using only the District's Certificated Personnel Observation Form (Appendix J). These formal observations will be at least thirty (30) minutes in length. These formal observations may take place any time a certificated unit member is performing within the scope of his/her classroom duties. The number, frequency and duration of the observations may vary with the requirements imposed by the type of class, the needs of the teacher, and individual situation. Formal observations may be preceded by a pre-conference and must be followed with a post-conference between the unit member and the evaluator.¹⁵³

¹⁵¹ Education Code section 44664, as amended by Statutes 1983, chapter 498.

¹⁵² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁵³ Exhibit A, IRC, filed March 2, 2020, pages 112 (2005-2007 Contract), 136 (2008-2010 Contract), 162 (2012-2014 Contract), 273 (Audit Report). Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 14.

The claimant argues that the 60-minute requirement is just to observe the employee, but not to write the evaluation. Thus, the claimant alleges that the Controller's allowance of 60 minutes per evaluation is insufficient and does not allow the costs to write the "final evaluations."¹⁵⁴

However, there is no evidence in the record that allowing 60 minutes for each evaluation claimed is arbitrary or capricious, or entirely lacking in evidentiary support. Except where a certificated employee receives a prior negative evaluation, the Parameters and Guidelines do not require reimbursement for a full evaluation.

Moreover, the Controller allowed reimbursement for all but 122 evaluations claimed during the audit period, which the claimant does not dispute.¹⁵⁵ In some fiscal years, there are no separate costs claimed for writing the evaluation. As indicated in the chart below, no costs were claimed for writing evaluations in fiscal year 2007-2008;¹⁵⁶ (2) no costs were claimed during any years in the audit period for writing the part of the evaluation regarding the STAR examination as authorized in Section IV.A.2(b) of the Parameters and Guidelines; and (3) only one hour was claimed in 2012-2013 for writing the additional evaluation when an employee receives a prior negative evaluation pursuant to Section IV.B of the Parameters and Guidelines.¹⁵⁷ The claimant's reimbursement claims reveal the following hours claimed per activity per fiscal year:

Fiscal year reimbursement claim	Ps&Gs Section IV.A(1)(b) Hours worked or quantity to include in the written evaluation of the certificated instructional employees the assessment of instructional techniques and strategies and adherence to curricular objectives	Ps&Gs Section IV.A.(2)(b) Hours worked or quantity to include in the written evaluation of certificated instructional employees that teach reading, writing, mathematics, history/ social science, and science in grades 2 to 11, a review of the results of the Standardized Testing and Reporting test as it reasonably relates to the employee's performance	Ps&Gs Section IV.B. Hours worked or quantity to write the additional evaluation when a certificated employee receives a prior negative evaluation
2005-2006 ¹⁵⁸	From .5 to 59 hours	-0-	-0-
2006-2007 ¹⁵⁹	From 2.5 to 66 hours	-0-	-0-

¹⁵⁴ Exhibit A, IRC, filed March 2, 2020, pages 2-3.

¹⁵⁵ Exhibit IRC, filed March 2, 2020, page 274 (Audit Report). The Controller found that 122 of 2,696 evaluations claimed were not eligible for reimbursement.

¹⁵⁶ Exhibit A, IRC, filed March 2, 2020, page 304 (2007-2008 reimbursement claim).

¹⁵⁷ Exhibit A, IRC, filed March 2, 2020, page 331 (2012-2013 reimbursement claim).

¹⁵⁸ Exhibit A, IRC, filed March 2, 2020, pages 291-292 (2005-2006 reimbursement claim).

¹⁵⁹ Exhibit A, IRC, filed March 2, 2020, pages 296 (2006-2007 reimbursement claim).

2007-2008 ¹⁶⁰	“no activity”	-0-	-0-
2010-2011 ¹⁶¹	From 2 to 50 hours	-0-	-0-
2011-2012 ¹⁶²	From 3 to 51 hours	-0-	-0-
2012-2013 ¹⁶³	From 4 to 80.28 hours	-0-	1 hour

The Commission also finds that the Controller’s rejection of the claimant’s time study reviewed during the audit is not arbitrary, capricious, or without evidentiary support. The Controller reviewed the time study and selected three employees to interview whose time entries raised red flags, two of whom recorded the same time for each evaluation.¹⁶⁴ The interviewed employees admitted they estimated their “best guess” time to complete the written evaluations but did not record actual time spent on the mandate as required by the Parameters and Guidelines.¹⁶⁵ The Parameters and Guidelines only reimburse ‘actual’ costs, not estimated costs.¹⁶⁶

The Controller also noted that of the 44 total evaluators listed on the time-study spreadsheet, six did not list any time for completing the evaluation, and that the listed time varied widely between employees of the same classification, as follows:

- Permanent – between 0 and 120 minutes;
- Probationary 0 – between 0 and 300 minutes;
- Probationary 1 – between 0 and 300 minutes;
- Probationary 2 – between 0 and 300 minutes.¹⁶⁷

The Controller was also concerned that the original email from the claimant to the time-study participants originated on April 28, 2017, but the e-signature dates for each evaluation covered a six-month time span. The Controller noted that approximately 86 percent of time increments

¹⁶⁰ Exhibit A, IRC, filed March 2, 2020, pages 299-304 (2007-2008 reimbursement claim).

¹⁶¹ Exhibit A, IRC, filed March 2, 2020, pages 312-316 (2010-2011 reimbursement claim).

¹⁶² Exhibit A, IRC, filed March 2, 2020, pages 320 (2011-2012 reimbursement claim).

¹⁶³ Exhibit A, IRC, filed March 2, 2020, page 327-331 (2012-2013 reimbursement claim).

¹⁶⁴ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 16. The Controller indicated that the employees were selected to interview because they totaled 36 of the 253 line items, or about 14 percent of the entire population. They were also selected because: (1) the first employee (elementary) listed an identical time increment for each evaluation, which was conducted in January and February; (2) the second employee (high school) listed an identical time increment for each evaluation, which was conducted between February and April; (3) the third employee (elementary) listed the overall highest time increments of all evaluators and conducted the evaluations in January and February.

¹⁶⁵ Exhibit A, IRC, filed March 2, 2020, page 279 (Audit Report). Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 16.

¹⁶⁶ Exhibit A, IRC, filed March 2, 2020, page 250 (Parameters and Guidelines).

¹⁶⁷ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, pages 15, 28. Exhibit A, IRC, filed March 2, 2020, pages 5-36 (Time Study).

listed were outside the month of April, “which is cause for concern regarding the accuracy of the data provided.”¹⁶⁸ Also, the entries were not signed by the evaluators confirming their listed time increments for each evaluated employee.¹⁶⁹ The Controller also raised questions related to the time study about the lack of a signed declaration for each administrator, how the spreadsheet was created, who had access to the spreadsheet, and what controls were placed on the data to ensure accurate reporting, but received no responses from the claimant to those questions.¹⁷⁰

Accordingly, the Commission finds that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.”¹⁷¹

Moreover, the average time identified in the time study of 1.55 hours to write each evaluation appears to reflect the time to write the *entire* evaluation rather than the limited criteria authorized in Section IV.A. of the Parameters and Guidelines. The claimant gives no indication that the 1.55 hours per evaluation reflects anything other than the time to write a full evaluation.¹⁷² As indicated above, the claimant claimed the vast majority of the costs under Section IV.A of the Parameters and Guidelines to “include” in the existing written evaluation of the certificated instructional employees only the new criteria required by the test claim statutes, and claimed only one hour in fiscal year 2012-2013 for the full written evaluation required when an employee receives a prior negative evaluation.¹⁷³

Therefore, the Controller’s reduction of costs for salaries and benefits is correct as a matter of law, and there is no evidence in the record that the Controller’s decision to allow 60 minutes total per evaluation is arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the foregoing analysis, the Commission denies this IRC.

¹⁶⁸ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 15.

¹⁶⁹ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, page 15.

¹⁷⁰ Exhibit B, Controller’s Late Comments on the IRC, filed July 10, 2020, pages 16, 27-28.

¹⁷¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁷² Exhibit A, IRC, filed March 2, 2020, pages 4-36 (Time Study).

¹⁷³ Exhibit A, IRC, filed March 2, 2020, page 331 (2012-2013 reimbursement claim).