

ITEM 4

PARAMETERS AND GUIDELINES AMENDMENT PROPOSED DECISION

Education Code Section 76300 as added or amended by Statutes 1984 2nd Ex. Sess., Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72

California Code of Regulations, Title 5, Sections 58501, 58502, 58503, 58611, 58612, 58613, 58620, and 58630 (Register 2006, No. 17)

Enrollment Fee Collection and Waivers 08-PGA-02 (99-TC-13 and 00-TC-15)

Los Rios Community College District, Cerritos Community College District, Citrus Community College District, El Camino Community College District, Gavilan Community College District, Kern Community College District, Long Beach Community College District, Mt. San Jacinto Community College District, Palomar Community College District, Pasadena Area Community College District, San Bernardino Community College District, Santa Monica Community College District, State Center Community College District, Sierra Joint Community College District, Victor Valley Community College District, West Kern Community College District, and Yosemite Community College District, Requesters

EXECUTIVE SUMMARY

I. Summary of the Mandate

The Commission on State Mandates (Commission) adopted parameters and guidelines for the *Enrollment Fee Collection and Waivers* program on January 26, 2006, which authorize one-time reimbursement to prepare district policies and procedures and train staff on the collection of enrollment fees. Reimbursement is also authorized for the ongoing activities to calculate and collect the student enrollment fee for each student enrolled. With respect to fee waivers, reimbursement for one-time activities to prepare policies and procedures and to train staff is authorized. In addition, reimbursement for adopting procedures, and recording and maintaining records, with respect to the financial assistance provided on behalf of students is authorized on an ongoing basis, as well as a list of activities to waive student fees.

II. Summary of the Request

This is a request to amend the parameters and guidelines (PGA) for the *Enrollment Fee Collection and Waivers* program, 99-TC-13 and 00-TC-15 to include a reasonable reimbursement methodology (RRM) in lieu of filing detailed documentation of actual costs as authorized by Government Code sections 17557(b) and 17518.5. The proposed RRM is in the form of two unit costs to claim reimbursement for all direct and indirect costs associated with calculating and collecting the community college student enrollment fee (a unit cost of \$14.98 multiplied by the number of students that pay fees each semester/quarter), and for waiving student fees in accordance with the Education Code (a unit cost of \$17.92 multiplied by the number of students who request fee waivers each year).

The current parameters and guidelines provide reimbursement based on the time taken by community college employees to calculate and accept student enrollment fees and to determine and provide fee waivers to students as authorized by the Education Code. The unit costs proposed by the requesters are not based on the average time to comply with the reimbursable activities, but on an average of the costs identified and claimed for all direct and indirect costs in reimbursement claims filed with the State Controller's Office (SCO) by 24 community college districts in fiscal years 2004-2005, 2005-2006, and 2006-2007.

III. Procedural History

On May 22, 2009, requesters filed a PGA to adopt the proposed RRM. On July 9, 2009, the State Controller's Office (SCO) filed a request for a pre-hearing conference on the RRM, citing a need for additional information. On August 5, 2009, the requesters responded to the SCO asking what additional information the SCO would require. On August 28, 2009, the SCO filed a letter identifying two areas where the SCO would like additional information: data source information to support the methodology used to calculate the RRM; and whether the calculated unit cost truly represents an average cost per student. On December 9, 2009, Commission staff held a prehearing conference on the proposed PGA to adopt an RRM. Then, on March 17, 2010, Commission staff held another prehearing conference, at the request of Mr. Keith Petersen, the requesters' representative. The draft proposed decision was issued May 23, 2014. Requesters filed comments on June 2, 2014, disagreeing with the analysis in the draft proposed decision. The SCO filed late comments on June 4, 2014, agreeing with the draft proposed decision to deny this request to amend the parameters and guidelines.

IV. Discussion

The law requires substantial evidence in the record to support the adoption of a unit cost RRM and the finding that the proposed unit cost reasonably represents the costs incurred by any eligible claimant to comply with the mandated program.¹

¹ Article XIII B, section 6 of the California Constitution; Government Code sections 17518.5, 17557, and 17559; Evidence Code section 1280; California Code of Regulations, title 2, section 1187.5; *Chesney v. Byram* (1940) 15 Cal.2d 460, 465; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.

Although a reimbursement claim, which is filed under penalty of perjury with the SCO, is evidence that is admissible under the Commission's regulations and the Evidence Code that may be used to support a proposed unit cost RRM,² the evidence submitted in this case is not sufficient to support a finding that the proposed unit cost RRM reasonably represents the costs mandated by the state for this program.

First, the requesters have included the costs claimed for the one-time activities to prepare district policies and procedures for the collection of enrollment fees and to determine which students are eligible for waiver of the fees in the calculation of the proposed unit costs. The period of reimbursement for this program began on July 1, 1999, and the one-time activities to prepare policies and procedures should have been completed and eligible for reimbursement before July 1, 2008, the potential period of reimbursement for this request. The inclusion of one-time costs, then, inflates the average actual costs incurred by community college districts to comply with this program on an ongoing basis.

Second, of the 24 community college districts whose claims were used to calculate the proposed unit costs, the reimbursement claims of seven districts have now been audited by the SCO, resulting in significant reductions to the costs claimed. Although an RRM can be adopted pursuant to Government Code sections 17518.5 and 17557 without the SCO's audit of the reimbursement claims, the fact remains that, here, audits have been done on the reimbursement claims used by the requesters to calculate the unit cost proposals and are relevant to the issue whether the unit cost proposal reasonably represents the costs mandated by the state to comply with this program on an ongoing basis. The results of those audits bring additional uncertainty to the reliability of the actual total costs used to develop the unit cost proposals. For example, a final audit report for Palomar Community College District (Palomar) was issued April 22, 2013.³ For fiscal year 2004-2005, Palomar claimed \$648,022 in total program costs, and the SCO reduced the claim to \$0. For fiscal year 2005-2006, Palomar claimed \$683,218 and the SCO reduced the claim to \$0. The SCO cited numerous reasons for the reductions:

The costs are unallowable primarily because the district claimed estimated costs that were not supported by source documentation, claimed ineligible time, overstated student enrollment numbers, understated the number of Board of Governors Grant fee waivers, misstated indirect costs, and misstated eligible offsetting revenues.”⁴

Similarly, the SCO completed an audit of Santa Monica Community College District (Santa Monica) on March 14, 2014, reducing the costs claimed.⁵ For fiscal year 2004-2005,

² Evidence Code section 1280; California Code of Regulations, title 2, section 1187.5.

³ Exhibit I. The final audit reports are also available on the SCO's website at: http://www.sco.ca.gov/aud_mancost_commcolleges_constrpt.html#sect9605. (Accessed on May 23, 2014.)

⁴ Exhibit I, Palomar Audit Report dated April 22, 2013, at p. 2. (All audit reports are found in Exhibit I.)

⁵ Exhibit I, Santa Monica Audit Report dated March 14, 2014, at p. 2.

Santa Monica claimed \$1,093,169 in total program costs. The SCO reduced the claimed costs to \$813,019. For fiscal year 2005-2006, Santa Monica claimed \$1,281,585 in total program costs. The SCO reduced claimed costs to \$1,006,784. The reductions were based on the grounds that:

The costs are is [sic] unallowable primarily because the district claimed ineligible and unsupported salaries and benefits, overstated indirect costs, and understated offsetting savings/reimbursements.”⁶

Finally, one of the requesters, Gavilan Community College District, also had its claims reduced by the SCO for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008 by \$3,766,932⁷ and those reductions are the subject of an IRC currently pending before the Commission (13-9913-I-01).

While the Commission does not determine whether the audit conclusions are correct for purposes of this request to amend the parameters and guidelines, the Commission does take notice that the audits are an official act by the SCO and remain binding unless challenged by a claimant.

Given the significant reductions in allowable claimed costs used by the requesters to calculate the proposed unit cost RRM, staff finds that the evidence submitted by the requesters is not sufficient to support a finding that the proposed RRM reasonably represents the costs mandated by the state.

V. Staff Recommendation

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

⁶ Exhibit I, Santa Monica Audit Report dated October 4, 2012, at p. 2.

⁷ Exhibit I, Gavilan Audit Report dated April 8, 2011, at p. 2.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Education Code Section 76300 as added or amended by Statutes 1984 2nd Ex. Sess., Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;

California Code of Regulations, Title 5 Sections 58501, 58502, 58503, 58611, 58612, 58613, 58620, and 58630 (Register 2006, No. 17).

Filed by Los Rios Community College District, Cerritos Community College District, Citrus Community College District, El Camino Community College District, Gavilan Community College District, Kern Community College District, Long Beach Community College District, Mt. San Jacinto Community College District, Palomar Community College District, Pasadena Area Community College District, San Bernardino Community College District, Santa Monica Community College District, State Center Community College District, Sierra Joint Community College District, Victor Valley Community College District, West Kern Community College District, and Yosemite Community College District, Requesters.

Case No.: 08-PGA-02 (99-TC-13, 00-TC-15)

Enrollment Fee Collection and Waivers

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

(Adopted July 25, 2014)

DECISION

The Commission on State Mandates (Commission) adopted this decision on the request to amend the parameters and guidelines during a regularly scheduled hearing on July 25, 2014. [Witness list will be included in the final 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/deny] the request to amend the parameters and guidelines at the hearing by a vote of [vote count will be included in the final decision].

I. Summary Of The Mandate

This is a request to amend the parameters and guidelines (PGA) for the *Enrollment Fee Collection and Waivers* program, 99-TC-13 and 00-TC-15, to include a reasonable reimbursement methodology (RRM), in lieu of filing detailed documentation of actual costs as authorized by Government Code sections 17557(b) and 17518.5. The proposed RRM is in the form of two unit costs to claim reimbursement for all direct and indirect costs associated with calculating and collecting the community college student enrollment fee (a unit cost of \$14.98, multiplied by the number of students that pay fees each semester/quarter), and for waiving student fees in accordance with the Education Code (a unit cost of \$17.92, multiplied by the number of students who request fee waivers each year).

Enrollment Fee Collection and Waiver Program

The Commission approved the test claim for this program on April 24, 2003, finding that the following activities were mandated by the state:

- Calculate and collect a student enrollment fee for each student except nonresident students and except for special part-time students cited in section 76300(f). (Ed. Code § 76300(a) and (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 and 58503.)
- Waive student fees in accordance with Education Code section 76300(g) and (h).⁸
- Waive fees for students who apply for and are eligible for BOG fee waivers.
- Report to the Community Colleges Chancellor the number of and amounts provided for BOG fee waivers.
- Adopt procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and include in the procedures the rules for retention of support documentation which will

⁸ Education Code section 76300 allows a governing board of a community college district to exempt special part-time students, nonresident students, and students who receive benefits under the Temporary Assistance to Needy Families program (TANF), SSI, or a general assistance program, from paying the fee.

enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

On January 26, 2006, the Commission adopted the current parameters and guidelines for the *Enrollment Fee Collection and Waivers* program, approving reimbursement for the following activities only:

For each eligible claimant, the following activities are reimbursable:

A. Enrollment Fee Collection (*Reimbursement Period begins July 1, 1998*)

1. One-Time Activities

a. Policies and Procedures

Prepare district policies and procedures for the collection of enrollment fees.

b. Staff Training (One-time per employee)

Training district staff that implement the program on the procedures for the collection of enrollment fees.

2. Ongoing Activities

- a. Calculating and collecting the student enrollment fee for each student enrolled, except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, §76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503). This includes:
 - i. Referencing student accounts and records to determine course workload, status of payments, and eligibility for fee waiver. Printing a list of enrolled courses.
 - ii. Calculating the total enrollment fee to be collected. Identifying method of payment. Collecting cash and making change as necessary. Processing credit card and other non-cash payment transactions (however, any fees that may be charged to a community college district by a credit card company or bank are not reimbursable). Preparing a receipt for payment received.
 - iii. Answering student's questions regarding enrollment fee collection or referring them to the appropriate person for an answer.
 - iv. Updating written and computer records for the enrollment fee information and providing a copy to the student. Copying and filing enrollment fee documentation.
 - v. Collecting delinquent enrollment fees, including written or telephonic collection notices to students, turning accounts over to collection agencies, or small claims court action.
 - vi. For students who establish fee waiver eligibility after the enrollment fee has been collected, providing a refund or enrollment fees paid and updating student and district records as required. (Refund process for change in program is not reimbursable).

B. Enrollment Fee Waiver (*Reimbursement Period begins July 1, 1999*)

1. One-Time Activities

a. Policies and Procedures

Prepare district policies and procedures for determining which students are eligible for waiver of the enrollment fees.

b. Staff Training (One-time per employee)

Training district staff that implement the program on the procedures for determining which students are eligible for waiver of the enrollment fee.

2. Ongoing Activities

- a. Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Recording and maintaining records that document all of the financial assistance provided to students for the waiver of enrollment fees in a manner that will enable an independent determination of the district's certification of the need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

- b. Waiving student fees in accordance with groups listed in Education Code section 76300, subdivisions (g) and (h).) Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal. Code Regs., tit. 5§§ 58612, 58613 & 58620). This includes:

- i. Answering student's questions regarding enrollment fee waivers or referring them to the appropriate person for an answer.
- ii. Receiving of waiver applications from students by mail, fax, computer online access, or in person, or in the form of eligibility information processed by the financial aid office.
- iii. Evaluating each application and verification documents (dependency status, household size and income, SSI and TANF/CalWorks, etc.) for compliance with eligibility standards utilizing information provided by the student, from the student financial aid records (e.g., Free Application for Federal Student Aid (FAFSA)), and other records.
- iv. In the case of an incomplete application or incomplete documentation, notify the student of the additional required information and how to obtain that information. Hold student application and documentation in suspense file until all information is received.

- v. In the case of an approved application, copy all documentation and file the information for further review or audit. Entering the approved application information into district records and /or notifying other personnel performing other parts of the process (e.g., cashier's office). Providing the student with proof of eligibility or an award letter, and file paper documents in the annual file.
- vi. In the case of a denied application, reviewing and evaluating additional information and documentation provided by the student if the denial is appealed by the student. Provide written notification to the student of the results of the appeal or any change in eligibility status.
- c. Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.)

II. Summary of the Requested Amendment to the Parameters and Guidelines

The requesters propose that the following RRM language be added to the parameters and guidelines for all direct and indirect costs:

2. Enrollment Fee Collection Uniform Cost Allowance

The reasonable reimbursement methodology for the mandated activities of calculating and collecting the student enrollment fees for those students that paid enrollment fees each semester/quarter (except nonresident students and special part-time students cited in Section 76300, subdivision (f)), and all related reimbursable program activities, shall consist of a uniform cost allowance calculated as follows:

Multiply the total number of students that paid enrollment fees each semester/quarter by the weighted average unit cost rate for the relevant fiscal year. The weighted average unit cost rate for FY 2008-09 is \$14.98. The weighted average unit cost rate shall be adjusted each subsequent year by the Implicit Price Deflator.

3. Enrollment Fee Waiver Uniform Cost Allowance

The reasonable reimbursement methodology for the mandated activities of providing students a waiver of the payment of enrollment fees, and all related reimbursable program activities, shall consist of a uniform cost allowance calculated as follows:

Multiply the total number of students that requested enrollment fee waivers each year by the weighted average unit cost rate for the relevant fiscal year. The weighted average unit cost rate for FY 2008-09 is \$17.92. The weighted average unit cost rate shall be adjusted each subsequent year by the Implicit Price Deflator.

The requesters state that the proposed "weighted average" unit cost rates are derived from the annual reimbursement claim cost data submitted to the State Controller (SCO) by 24 community

college districts (one-third of the total number of community college districts in the state) for fiscal years 2004-2005, 2005-2006, and 2006-2007.⁹

III. Procedural History

On May 22, 2009, requesters filed a PGA to adopt an RRM. On July 27, 2009, SCO filed a request for a pre-hearing conference on the RRM, citing a need for additional information.¹⁰ On August 10, 2009, the requesters responded to the SCO asking what additional information the SCO would require.¹¹ On September 3, 2009, the SCO filed a letter identifying two areas where the SCO would like additional information: data source information to support the methodology used to calculate the RRM; and whether the calculated unit cost truly represents an average cost per student.¹² On December 9, 2009, Commission staff held a prehearing conference on the proposed PGA to adopt an RRM. Then, on March 17, 2010, Commission staff held another prehearing conference, at the request of Mr. Keith Petersen, the requesters' representative. On May 23, 2014, the Commission issued the draft proposed decision on this proposed PGA.¹³ On June 2, 2014, requesters filed comments disagreeing with the analysis in the draft proposed decision, again asserting that an RRM is appropriate for this program.¹⁴ On June 4, 2014, the SCO filed late comments concurring with the draft proposed decision.¹⁵

IV. Position of the Parties

A. Requesters' Position

The requesters urge the Commission to adopt the proposed RRM, beginning July 1, 2008, to reimburse community college districts for all direct and indirect costs of the program.

Requesters assert that the proposed RRM is reasonable as the proposed weighted average unit cost rates are derived from the annual reimbursement claim cost data submitted to the SCO for 24 community college districts, which is one-third the total number of community college districts in the state. Requesters assert that the annual reimbursement cost data used is from the three most recent fiscal years for which data was available. Requesters assert that the proposed RRM will result in at least 50 percent of the districts receiving reimbursement in an amount sufficient to fully offset their projected costs to implement the mandate in a cost-efficient manner. Requesters assert the proposed uniform cost allowances consider the variation in costs between the districts because the proposed uniform cost allowances are dependent upon the number of students paying enrollment fees and the number of students obtaining waivers at each

⁹ Exhibit A, Request to Amend Parameters and Guidelines, pages 8-9.

¹⁰ Exhibit C, SCO Comments filed July 27, 2009.

¹¹ Exhibit D, Requesters' Comments filed August 10, 2009.

¹² Exhibit E, SCO Comments filed September 3, 2009.

¹³ Exhibit F, Draft Proposed Decision.

¹⁴ Exhibit G, Requesters' Comments filed June 2, 2014.

¹⁵ Exhibit H, SCO Comments filed June 4, 2014.

district. This number of students varies between districts and the level of actual costs incurred is tied to the number of students.¹⁶

In comments received on June 2, 2014, requesters dispute the findings in the draft proposed decision as follows:¹⁷

- A denial of a proposed RRM based on average time as opposed to average cost creates a new and irrelevant standard for consideration of an RRM.
- The relevant standard of review for an RRM has no accounting rules.
- One-time costs are de minimus and irrelevant as a matter of law.
- Audited data is not required for the RRM process.
- The SCO's audit results are not reliable for the purposes of the RRM process.
- The SCO's audit standards are misstated.
- The Generally Accepted Governing Auditing Standards were not actually applied and are not applicable.
- The SCO's use of documentation standards is capricious.

B. Department Of Finance Position

Department of Finance (DOF) opposes the PGA to establish an RRM for two reasons. First, DOF asserts that the SCO has not yet conducted field audits of reimbursement claims. DOF asserts that results of a field audit might significantly reduce the allowed claimed amounts, which in turn might result in an inflated unit cost.

Additionally, DOF asserts that a significant difference exists between the lowest and highest costs used to calculate the proposed unit costs for the two reimbursable programs. DOF asserts that the wide divergence in the unit cost suggests inconsistencies in the data that could be reconciled by SCO field audits. Finally, DOF asserts that there is not a high degree of correlation between data for the weighted average cost for each program and between the number of students paying enrollment fees and receiving fee waivers and the per unit cost of administering the activities.¹⁸

C. SCO Position

In comments filed by the SCO on the proposed amendment, the SCO did not take a position on whether the RRM was appropriate. However, the SCO was unable to reconcile the requesters' data for students paying fees and receiving waivers, with data obtained from the California Community Colleges Chancellor's Office for the community college districts used in the RRM calculations. The SCO also questioned whether the calculated unit cost truly represents an average cost per student. The SCO suggested that the wide variation in the unit cost for each

¹⁶ Exhibit A, Request to Amend Parameters and Guidelines.

¹⁷ Exhibit G, Requesters' Comments filed June 2, 2014.

¹⁸ Exhibit B, DOF Comments filed July 13, 2009.

program might be more accurate if the requesters applied a methodology that excluded those districts with extremely high or low unit costs, resulting in a more accurate approximation of actual costs.¹⁹

The SCO filed comments on the draft proposed decision, agreeing with the recommendation to deny the proposed RRM.

V. Commission Findings

The question before the Commission is whether the evidence submitted, which includes voluminous documentation of 2004-2007 fiscal year costs to implement the program, is sufficient to support the adoption of the proposed RRM consistent with the substantial evidence standard, and the constitutional and statutory requirements for RRMs and for Commission decisions generally.

A. The only statutory requirements of an RRM are that it considers variations in costs and balances accuracy in reimbursement with simplicity in the claiming process.

Government Code sections 17518.5 and 17557 authorize the Commission to adopt an RRM and include the RRM in parameters and guidelines. Statutory authority for the adoption of an RRM was originally enacted in 2004, and was amended in 2007 to promote greater flexibility in the adoption of an RRM.²⁰ In a 2007 report, the Legislative Analyst's Office (LAO) states that an RRM is intended to reduce local and state costs to file, process, and audit claims; and to reduce disputes regarding mandate reimbursement claims and SCO's claim reductions. The report identifies, under the heading "Concerns with the Mandate Process," the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or "parameters and guidelines") typically require local governments to document their actual costs to carry out each element of the mandate.
- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller's Office.

The LAO's recommendation to address these issues was to:

¹⁹ Exhibit E, SCO Comments dated September 3, 2009.

²⁰ Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute...²¹

The LAO's recommendations were implemented in Statutes 2007, chapter 329 (AB 1222). The former section 17518.5 provided that an RRM must "meet the following conditions:"

- (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.²²

The 2007 amendments to section 17518.5 now define an RRM as follows:

- (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or projections of other local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs
- (e) A reasonable reimbursement methodology may be developed by any of the following:
 - (1) The Department of Finance.
 - (2) The Controller.
 - (3) An affected state agency.
 - (4) A claimant.
 - (5) An interested party.²³

²¹ Exhibit I "State-Local Working Group Proposal to Improve the Mandate Process," Legislative Analyst's Office, June 21, 2007, page 3.

²² Government Code section 17518.5 (Stats. 2004, ch. 890 § 6 (AB 2856)).

An RRM diverges from the traditional requirement of supporting a reimbursement claim with detailed documentation of actual costs incurred and, instead, may apply a standard formula or single standard unit cost, based on approximations of local costs mandated by the state. A unit cost based on approximations or other projections may result in some entities receiving more than their actual costs incurred to comply with a mandated program, and some receiving less.

Rather than providing rigid requirements or elements to which an RRM proposal for adoption must adhere, the amended statute focuses on the *sources of information for the development of an RRM*. Section 17518.5 provides that an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of other local costs.”²⁴ The statute does not *require* any one of these options; it merely outlines these as *possible sources* for the development of evidence to support an RRM. Government Code section 17557 only requires that the end result “balances accuracy with simplicity.”

B. The Constitution requires that an RRM represent a reasonable approximation of the actual costs incurred by each eligible claimant to implement the state-mandated program.

Even though the 2007 amendment to section 17518.5 provides for more flexibility when adopting a unit cost RRM, as compared with prior law, and some claimants may receive more or less than their actual costs incurred with a unit cost RRM, the RRM adopted by the Commission must comply with the constitutional requirements of article XIII B, section 6.

Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government [defined to include school districts], the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]....” This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”²⁵ Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. With certain exceptions, section 6 “[e]ssentially” requires the state ‘to pay for any new government programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies’ that result in increased actual expenditures of limited tax proceeds that are counted against their spending

²³ Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

²⁴ Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

²⁵ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

limit.²⁶ Section 17561 is the primary code section that sets forth the State's duty to reimburse once a mandate is determined by the Commission and parameters and guidelines are adopted. Section 17561(a) states: "The state shall reimburse each local agency and school district for *all* 'costs mandated by the state,' as defined in Section 17514." (Emphasis added.) Government Code section 17514 defines "costs mandated by the state" as any increased cost incurred as a result of any statute or executive order that mandates a new program or higher level of service.

Although article XIII B, section 6 requires reimbursement for the actual increased costs mandated by the state, the Legislature has the power to enact statutes that provide "reasonable" regulation and control of the rights granted under the Constitution.²⁷ The Commission must presume that Government Code sections 17518.5 and 17557, which provide for the consideration and adoption of RRM's based on projections of costs, meet this standard and are constitutionally valid.²⁸ Additionally, the Commission has the duty of applying Government Code section 17518.5 in a constitutional manner.²⁹ In this respect, a unit cost RRM adopted by the Commission must represent a reasonable approximation of the actual costs incurred by each eligible claimant to comply with the state-mandated program, in order to fulfill the constitutional requirement that all costs mandated by the state be reimbursed to a local government entity.

C. Substantial evidence in the record must support a finding that the proposed RRM reasonably represents the actual costs incurred by an eligible claimant to comply with the state-mandated program.

Government Code section 17559 requires that Commission decisions be based on substantial evidence in the record. Section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under 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."³⁰

Code of Civil Procedure section 1094.5, in turn, provides:

Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. *In all other cases, abuse*

²⁶ *CSBA, supra*, 192 Cal.App.4th 770, 785-786; *County of San Diego v. State of California, supra*, 15 Cal.4th at p. 81; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1188-1189; *County of Sonoma, supra*, 84 Cal.App.4th at p. 1282; *Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 985.

²⁷ *Chesney v. Byram* (1940) 15 Cal.2d 460, 465.

²⁸ *CSBA, supra*, 192 Cal.App.4th 770, 795; *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 837.

²⁹ *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084.

³⁰ Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

*of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.*³¹

The latter finding is required for Commission decisions: when reviewing a decision of an administrative body exercising quasi-judicial power, “the reviewing court is limited to the determination of whether or not the decision is supported by substantial evidence and the court may not substitute its view for that of the administrative body, nor reweigh conflicting evidence.”³² Moreover, Government Code section 17559 expressly “requires that the trial court review the decision of the Commission under the substantial evidence standard.”³³

The evidence required to adopt an RRM is necessarily more relaxed than an actual cost reimbursement methodology.³⁴ However, when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record. Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.³⁵ The Commission’s regulations specifically identify the quasi-judicial matters that are subject to these evidentiary rules, including proposed parameters and guidelines and requests to amend parameters and guidelines.³⁶

The proponent of the RRM has the burden of proof on the issue of whether the proposed unit cost reasonably represents the actual costs incurred by any eligible claimant to comply with the mandated program and that the proposal is supported by substantial evidence in the record.³⁷

Pursuant to the Commission’s regulations, the technical rules of evidence and witnesses that are required in court are not required before the Commission. Under the Commission’s process, evidence to support or rebut any issue can be by either oral or written testimony provided under oath or affirmation.³⁸ Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence, but shall not be sufficient itself to support a finding unless it would be admissible over objection in civil actions.³⁹ Hearsay evidence is defined as an out-of-court statement (either oral or written) that is offered to prove the truth of the matter stated. Under the

³¹ Code of Civil Procedure section 1094.5 (Stats. 2011, ch. 296 § 41 (AB 1023)).

³² *Board of Trustees of the Woodland Union High School District v. Munro* (Cal. Ct. App. 3d Dist. 1958) 163 Cal.App.2d 440, 445.

³³ *City of San Jose v. State* (Cal. Ct. App. 6th Dist. 1996) 45 Cal.App.4th 1802, 1810.

³⁴ See Government Code 17518.5 [Statute employs terms like “projections;” “approximations”].

³⁵ *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

³⁶ California Code of Regulations, title 2, section 1187.1.

³⁷ Evidence Code section 500; *Cornell v. Reilly* (1954) 127 Cal.App.2d 178, holding that the party asserting the affirmative in an administrative proceeding has the burden of proof.

³⁸ California Code of Regulations, title 2, section 1187.5 (Register 2014, No. 21.)

³⁹ *Ibid.*

evidentiary requirements for the courts, written testimony in the form of a declaration or affidavit is considered hearsay because the declarant is an out-of-court witness making statements about the truth of the matters asserted and is not available for cross examination. However, under the relaxed rules of evidence in section 1187.5 of the Commission's regulations, written testimony made under oath or affirmation is considered direct evidence and may properly be used to support a fact.⁴⁰

Out-of-court statements that are not made under oath or affirmation, however, are hearsay. Unless there is an exception provided by law, hearsay evidence alone cannot be used to support a finding under Government Code section 17518.5 because out-of-court statements are generally considered unreliable. The witness is not under oath, there is no opportunity to cross-examine the witness, and the witness cannot be observed at the hearing.⁴¹ There are many exceptions to the hearsay rule, however. If one of the exceptions applies, then an out-of-court statement is considered trustworthy under the circumstances and may be used to prove the truth of the matter stated.⁴²

In addition, the Commission may take judicial notice of any facts which may be judicially noticed by the courts.⁴³ Such facts include the official acts of any legislative, executive, or judicial body; records of the court; and other facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination.⁴⁴

The Commission's regulation governing evidence is borrowed from the evidence requirements of the Administrative Procedures Act (Gov. Code, § 11513). The courts have interpreted the evidentiary requirement for administrative proceedings as follows:

While administrative bodies are not expected to observe meticulously all of the rules of evidence applicable to a court trial, common sense and fair play dictate certain basic requirements for the conduct of any hearing at which facts are to be determined. Among these are the following: the evidence must be produced at the hearing by witnesses personally present, or by authenticated documents, maps or photographs; ordinarily, hearsay evidence standing alone can have no weight [citations omitted], and this would apply to hearsay evidence concerning someone else's opinion; furthermore, cross-examination within reasonable limits must be allowed. Telephone calls to one of the officials sitting in the case, statements

⁴⁰ *Windigo Mills v. Unemployment Ins. Appeals Bd.* (1979) 92 Cal.App.3d 586, 597.

⁴¹ *People v. Cudjo* (1993) 6 Cal.4th 585.

⁴² See Evidence Code sections 1200 et seq. for the statutory hearsay exceptions.

⁴³ California Code of Regulations, title 2, section 1187.5, See also, Evidence Code sections 451 and 452.

⁴⁴ Evidence Code section 452(c)(d)(g)(h).

made in letters and arguments made in petitions should not be considered as evidence.⁴⁵

Accordingly, the plain language of the statutory and regulatory mandates scheme requires substantial evidence in the record to support the adoption of an RRM and that evidence needs to support the finding that the proposed unit cost reasonably represents the costs incurred by any eligible claimant to comply with the mandated program.

D. The evidence in the record is not sufficient to support a finding that the proposed RRM reasonably represents the costs mandated by the state for this program.

The current *Enrollment Fee Collection and Waivers* parameters and guidelines provide reimbursement based on the time taken by community college employees to calculate and accept student enrollment fees and to determine and provide fee waivers to students as authorized by the Education Code. The unit costs proposed by the requesters are based on an average of the costs identified and claimed for all direct and indirect costs in reimbursement claims filed with the SCO by 24 community college districts in fiscal years 2004-2005, 2005-2006, and 2006-2007.

The submission of reimbursement claims, which are filed under penalty of perjury, is evidence that is admissible under the Commission's regulations and the Evidence Code that may be used to support a proposed unit cost RRM.⁴⁶ However, for the reasons below, the evidence in this case is not sufficient to support a finding that the proposed RRM reasonably represents the costs mandated by the state for the reasons described below.

First, the requesters have included in the calculation of the proposed unit costs, the costs claimed for the one-time activities to prepare district policies and procedures for the collection of enrollment fees and to determine which students are eligible for waiver of the fees. The period of reimbursement for this program began on July 1, 1999, and the one-time activities to prepare policies and procedures should have been completed and eligible for reimbursement before July 1, 2008, the potential period of reimbursement for this request. The requesters argue, however, that there is no deadline for preparing policies and procedures, the costs included in the proposed unit cost for preparing policies and procedures are de minimus, and that policies and

⁴⁵ *Desert Turf Club v. Board of Supervisors for Riverside County* (1956) 141 Cal.App.2d 446, 455. In that case, the board of supervisors denied a permit to use land subject to a zoning ordinance as a race track. The board based its decision on testimony, letters and phone calls from members of the public opposing horse racing and betting on moral grounds. The court held that there was no evidence in the record to support the decision. On remand, the court directed the board to "reconsider the petition of appellants as to land use, wholly excluding any consideration as to the alleged immorality of horse racing and betting as authorized by state law, and wholly excluding from such consideration all testimony not received in open hearing, and all statements of alleged fact and arguments in petitions and letters on file, except the bare fact that the petitioners or letter writers approve or oppose the granting of the petition; also wholly excluding each and every instance of hearsay testimony unless supported by properly admissible testimony, it being further required that the attorneys representing any party in interest be granted a reasonable opportunity to examine or cross-examine every new witness produced." (*Id.* at p. 456.)

⁴⁶ Evidence Code section 1280; California Code of Regulations, title 2, section 1187.5.

procedures changed when the districts transitioned from manual processing to internet online processing of enrollment fees and waivers.⁴⁷ The inclusion of one-time costs to develop policies and procedures, although potentially de minimus as asserted by the requesters, can still inflate the average actual costs used by the requesters to develop the proposed unit cost RRM to be applied to this program on an ongoing basis. Moreover, reimbursement is not authorized, as suggested by the requesters, to amend or change policies and procedures to address the change from manual processing to online processing of the fees and waivers.

Second, of the 24 community college districts whose claims were used to calculate the proposed unit costs, the reimbursement claims of seven districts have now been audited by the SCO, resulting in significant reductions to the costs claimed.⁴⁸ The results of those audits bring additional uncertainty whether the proposed RRM reasonably represents the costs mandated by the state for community college districts on an ongoing basis.

For example, a final audit report for Palomar Community College District (Palomar) was issued April 22, 2013.⁴⁹ For fiscal year 2004-2005, Palomar claimed \$648,022 in total program costs. The SCO reduced the claimed costs by \$648,022 reducing the claimed costs to zero. For fiscal year 2005-2006, Palomar claimed \$683,218 and the SCO reduced claimed costs by \$683,218, reducing the claimed costs to zero. The SCO cited numerous reasons for the reductions, including ineligible time claimed, student enrollment numbers overstated, understated fee waivers, and misstated offsetting revenues, as follows.

The costs are unallowable primarily because the district claimed estimated costs that were not supported by source documentation, claimed ineligible time, overstated student enrollment numbers, understated the number of Board of Governors Grant fee waivers, misstated indirect costs, and misstated eligible offsetting revenues.”⁵⁰

Similarly, the SCO completed an audit of Santa Monica Community College District (Santa Monica) on March 14, 2014, reducing the claimed costs significantly.⁵¹ For fiscal year 2004-2005, Santa Monica claimed \$1,093,169 in total program costs. The SCO reduced the claimed costs to \$813,019. For fiscal year 2005-2006, Santa Monica claimed \$1,281,585 in total

⁴⁷ Exhibit G, Requesters’ Comments filed June 2, 2014, p. 5.

⁴⁸ Audits were completed for five of the requesters to this item, Cerritos Community College District, Gavilan Community College District, Los Rios Community College District, Palomar Community College District, and Santa Monica Community College District, and to two other community college districts (Contra Costa Community College District and North Orange County Community College District) whose costs were used to formulate the proposed unit costs here.

⁴⁹ Exhibit I, Palomar Final Audit at p. 1. The final audit reports are available on the SCO’s website at: http://www.sco.ca.gov/aud_mancost_commmcolleges_costrpt.html#sect9605.

⁵⁰ Exhibit I, Palomar Final Audit, SCO Audit Cover Letter, dated April 22, 2013, at p.2.

⁵¹ Exhibit I, Santa Monica Final Audit dated March 14, 2014, at p. 2.

program costs. The SCO reduced claimed costs to \$1,006,784. The reductions were based on the grounds that:

The costs are is [sic] unallowable primarily because the district claimed ineligible and unsupported salaries and benefits, overstated indirect costs, and understated offsetting savings/reimbursements.”⁵²

Finally, one of the requesters, Gavilan Community College District, also had its claims under this program reduced by the SCO for fiscal years, including those used for the calculation of the proposed unit costs here (1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008) for a total of \$3,766,932 and those reductions are the subject of an IRC currently pending before the Commission (13-9913-I-01).⁵³ The reductions for fiscal years 2004-2005 were \$427,505, reducing claimed costs to zero. The reductions for fiscal year 2005-2006 were \$450,729, also reduced to zero. The SCO’s cover letter states:

The costs are unallowable because the district claimed unsupported and ineligible salaries and benefits and contract services, overstated the indirect costs rates, and overstated offsetting savings’ reimbursements.⁵⁴

The requesters argue that these audit findings are not relevant to the adoption of a unit cost RRM since audited data is not required for the RRM process. The requesters further assert that the SCO audit results are not reliable for purposes of the RRM process, since reductions occurred based on a lack of documentation. The requesters state that documentation acceptable to the SCO is a different standard than documentation needed for an RRM determination. The requesters also address the merits of the reductions and the standards used by the SCO in the audit, to argue that the audit findings are not relevant here.⁵⁵

Although an RRM can be adopted pursuant to Government Code sections 17518.5 and 17557 without the SCO’s audit of the reimbursement claims, the fact remains that, here, audits have been done on the reimbursement claims used by the requesters to calculate the unit cost proposals. And those audit results are relevant to the issue of whether the proposed unit cost RRM reasonably represents the costs mandated by the state for this program on an ongoing basis.

Under the statutes governing the mandate determination process, the SCO has the authority to audit reimbursement claims to “verify the actual amount of the mandated costs” and to reduce any claim that the SCO determines is excessive or unreasonable.⁵⁶ The official findings of the SCO following an audit are final unless a claimant successfully appeals the SCO’s findings and

⁵² Exhibit I, Santa Monica Final Audit dated October 4, 2012, at p .2.

⁵³ Each audit report reviewed contained similar bases for reduction although some had significantly more findings than others.

⁵⁴ Exhibit I, Gavilan Final Audit, 2011, SCO Final Audit Cover Letter dated April 8, 2011, at p. 2.

⁵⁵ Exhibit G, Requesters’ Comments filed June 2, 2014, pp. 6-13.

⁵⁶ Government Code section 17561(b) and (d)(2).

conclusions in an IRC filed with the Commission, which results in a determination that the SCO was incorrect as a matter of law or abused its discretion.⁵⁷ When reviewing the exercise of the SCO's discretion, the claimant has the burden to show that the SCO's audit decisions are arbitrary, capricious, or entirely lacking in evidentiary support. The Commission's scope of review of the SCO's audit decisions is limited, out of deference to the agency's authority and presumed expertise.⁵⁸

While the Commission does not determine whether the audit conclusions are correct for purposes of this request to amend the parameters and guidelines, the Commission does take notice that the audits are an official act by the SCO and remain binding unless challenged by a claimant.

Given the significant reductions in allowable claimed costs used by the requesters to calculate the proposed unit cost RRM, the Commission finds that the evidence submitted by the requesters is not sufficient to support a finding that the proposed RRM reasonably represents the costs mandated by the state.

V. Conclusion

For the foregoing reasons the Commission hereby denies the request to amend the parameters and guidelines.

⁵⁷ Government Code section 17551(d).

⁵⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.