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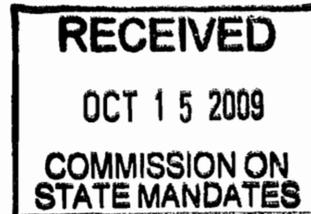
Gregory A. Wedner
Attorney at Law

E-mail: gwedner@lozanosmith.com

October 14, 2009

By U.S. Mail & Fax: (916) 445-0278

Paula Higashi, Executive Director
Nancy Patton, Assistant Executive Director
Camille Shelton, Chief Legal Counsel
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814



Re: "Request to Add Boilerplate Language" by the State Controller's Office

Dear Ms. Higashi, Ms. Patton, and Ms. Shelton:

This is submitted on behalf of the Petitioners involved in *Clovis Unified School District et al. v. Westly et al.*, Sacramento County Superior Court Case No. 06CS00748, Clovis Unified School District, Fremont Unified School District, Norwalk-La Mirada Unified School District, Newport Mesa Unified School District, Riverside Unified School District, San Mateo County Community College District, El Camino Community College District, Santa Monica Community College District, State Center Community College District, Sweetwater Union High School District, and San Juan Unified School District ("Petitioners"), and relates to the State Controller's Office's ("SCO") requested amendments to several state mandate programs' parameters and guidelines ("Ps & Gs") to purportedly add "boilerplate language."

As the Commission is aware, the Sacramento Superior Court issued a Judgment in the above-referenced litigation in February of this year, in which the Court ruled that SCO's utilization of the contemporaneous source document rule and requirement ("CSDR") to impose reimbursement claim audit reductions in the Collective Bargaining and Intradistrict Attendance Programs, was an unlawful practice, i.e., an invalid underground regulation violative of the Administrative Procedure Act ("APA"). The Court's Judgment is based on the fact that the SCO applied the CSDR to reduce reimbursable costs claimed by school and community college district claimants, where although the SCO first added the CSDR to its general claiming instructions in the fall of 2003, the Collective Bargaining and Intradistrict Attendance Programs' Ps & Gs did not and still do not contain a *contemporaneous* source document requirement to support costs claimed. As such, the Judgment decrees that the CSDR, as applied by the SCO in Collective Bargaining and Intradistrict Attendance Program reimbursement claim audits, violates the APA as an underground regulation, and audit reductions based on same are invalid, void and unenforceable. The Court's Judgment and accompanying Peremptory Writ prohibits the SCO from utilizing the CSDR in audits of Collective Bargaining and Intradistrict Attendance Program reimbursement

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One Capitol Mall, Suite 640 Sacramento, California 95814 Tel 916-329-7433 Fax 916-329-9050

unless and until the CSDR is adopted pursuant to the APA, added to the programs' Ps & Gs, or otherwise made lawful under the statutes and laws governing the SCO's auditing authority, and orders the SCO to reverse the improper CSDR-based audit reductions imposed in Collective Bargaining and Intradistrict Attendance Program audits for all affected audits that did not become final prior to the three year limitations period before the filing of the related petitions in the litigation. The SCO's challenge to the Court's ruling, as well as related appeals by the Petitioners, are now pending before the Court of Appeal, Case No. C061696.

The SCO's request to amend the Ps & Gs of thirty-nine (39) state mandate programs to "add boilerplate language" is actually the SCO's request to, among other things, add the CSDR to state mandate program Ps & Gs, including the Collective Bargaining Program and Intradistrict Attendance Program. It is the Petitioners' understanding that the Commission will hear the SCO's request at its scheduled hearings in October 2009, December 2009, and January 2010, respectively, addressing 3 proposed amendments in October, 21 in December, and the remainder in 2010.

The SCO's surreptitious efforts should be rejected or at the very least, deferred until completion of appellate proceedings. First, it is the Petitioners' position the CSDR and its requirement of *contemporaneous* source document records to support costs claimed, is unrealistic and inconsistent with the day-to-day operations of school and community college districts, and will severely impact the districts' rightful entitlement to reimbursement for the costs of mandated activities. Second, the Commission should not address or take action on the SCO's request to amend program Ps & Gs to include the CSDR until the pending appeals in *Clovis Unified School District et al. v. Westly et al.*, Sacramento County Superior Court Case No. 06CS00748, and Court of Appeal Case No. C061696, are fully resolved in the judicial process. Third, if the Commission does in fact address and take action on the SCO's requested CSDR-amendments, such amendments will affect *costs claimed and reimbursement claims filed prospectively only* and in no way validates or makes lawful the SCO's prior unlawful application of the CSDR to costs claimed and reimbursement claims filed where the CSDR was not included in the relevant state mandate programs' Ps & Gs. This final conclusion is based on fundamental legal principles of due process, notice, and fairness, as well as the practical recognition that it is metaphysically impossible to go back in time and create "contemporaneous" documentation to support costs claimed and reimbursement claims filed, where no such requirement existed when such reimbursable events and activities took place.

Pursuant to our review of the Commission's agenda for its October 30, 2009 meeting, it does not appear that the SCO's "boilerplate" amendments to the Collective Bargaining and Intradistrict Attendance Program will be addressed then. The same appears to be true for the Commission's December 3, 2009 meeting, during which it appears that the Commission will address the SCO's requested amendments to 21 more state mandate programs (but not Collective Bargaining or Intradistrict Attendance). Consistent with Commission practice, this serves as the Petitioners'

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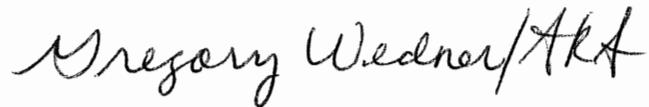
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request to address the Commission when the SCO's subject request to amend program Ps & Gs of the Collective Bargaining and Intradistrict Attendance Programs as described herein is agendaized for a Commission meeting, at which either I or my associate Sloan Simmons will appear on behalf of the Petitioners.

Sincerely,

LOZANO SMITH

A handwritten signature in black ink that reads "Gregory Wedner/AKA". The signature is written in a cursive, flowing style.

Gregory A. Wedner

GAW/ks

cc: Petitioners
 Robert Miyashiro
 Patrick Day
 Art Palkowitz
 Michael Johnston
 Richard Hamilton
 Keith Peterson