

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Education Code Sections 250, 251, 262.3
Statutes 1982, Chapter 1117; Statutes 1988,
Chapter 1514; Statutes 1998, Chapter 914
California Code of Regulations, Title 5,
Sections 4611, 4621, 4622, 4631, and 4632
Register 92, Number 3; Register 93,
Number 51
Period of reimbursement beginning:
July 1, 2002.

Case No.: 03-TC-02

Uniform Complaint Procedures (K-12)

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

(Adopted January 25, 2013)

(Served January 31, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines on consent during a regularly scheduled hearing on January 25, 2013.

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 section 17500 et seq., and related case law.

I. Summary of the Mandate

These proposed parameters and guidelines address activities associated with the procedures involved for filing, investigating, and resolving the following two types of complaints arising in a school district: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. These proposed parameters and guidelines also address the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

II. Procedural History

On September 28, 2012, the Commission on State Mandates (Commission) adopted a statement of decision on the test claim finding that Education Code sections 250, 251, and 262.3, and sections 4611, 4621, 4622, 4631, and 4632 of the Title 5 regulations impose a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.¹

The claimant requested that the Commission issue expedited draft proposed parameters and guidelines, which Commission staff issued for comment on October 5, 2012.² On October 16, 2012, the State Controller's Office (Controller) submitted comments indicating concurrence with the draft parameters and guidelines.³ On October 25, 2012, the Department of Finance (Finance) filed comments concerning potential offsetting revenues, but otherwise concurring with the draft parameters and guidelines.⁴ On January 9, 2013, the claimant submitted late comments, challenging Finance's identification of offsetting revenues, and requesting that the Commission deny the request to include those items in the parameters and guidelines.⁵

III. Commission Findings

The test claim statement of decision, the draft parameters and guidelines, and the comments filed by Finance and the claimant were reviewed and considered by the Commission as discussed below.

VII. Offsetting Revenues and Reimbursements

In comments submitted in response to the draft expedited parameters and guidelines, Finance provided a table entitled "Funding History for Adult Education, Child Nutrition, and Special Education. The table lists Education Code sections and Budget Act appropriations for fiscal years 2002-03 through 2012-13 for the following three programs: Adult Basic Education (6110-156-0001, 6110-156-0890), Child Nutrition Programs (6110-203-0001, 6110-201-0890), and Special Education Programs (6110-161-0001, 6110-161-0890) "[t]hese appropriations represent funding available for both mandated and discretionary activities." Finance asserts that "these appropriations should be considered offsetting revenues, to the extent that school districts and county offices of education used these funds for activities found to be state-reimbursable mandates by the Commission under this test claim." Finance requested that "these funds be referenced in the parameters and guidelines (Section VII. Offsetting Revenues and Reimbursements) and for claims to be reduced accordingly."⁶

¹ Exhibit A, Test Claim Statement of Decision.

² Exhibit B, Draft Expedited Parameters and Guidelines.

³ Exhibit C, SCO Comments on Draft Expedited Parameters and Guidelines.

⁴ Exhibit D, DOF Comments on Draft Expedited Parameters and Guidelines.

⁵ Exhibit E, Claimant's Response to DOF Comments on Draft Expedited Parameters and Guidelines.

⁶ Exhibit D, DOF Comments on Draft Expedited Parameters and Guidelines.

The claimant responded to Finance’s request, in late comments submitted January 9, 2013, saying that “although the above activities may involve the education programs of adult basic education, child nutrition, and special education, the Department of Finance provides no authority the programs [*sic*] funding shall be an offset for activities approved by the Commission for this claim.”

The Commission found in the test claim statement of decision that no “additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate” was provided for the *Uniform Complaint Procedures* program, pursuant to Government Code section 17556(e), to deny this claim. Now the Commission is called upon to determine whether any revenues other than local proceeds of taxes must be identified as offsetting revenue against the costs of the mandated activities.

The Commission is required to identify offsetting revenues that can be applied to cover the costs of the mandate.

In adopting parameters and guidelines, the Commission is required by Government Code section 17557 to determine the “amount to be subvended” under the Constitution. Specifically, Government Code section 17553 requires a test claim filing to include identification of revenues that could be available to cover the costs of the mandate, and the Commission’s regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

- i. Dedicated state and federal funds appropriated for this program.
- ii. Non-local agency funds dedicated for this program.
- iii. Local agency’s general purpose funds for this program.
- iv. Fee authority to offset partial costs of this program.⁷

Based on these or other funds identified, the Controller may reduce a claimant’s reimbursement claim *if a claimant* was not compelled to rely on local proceeds of taxes to fund the mandate. The Controller may only make such reductions if a claimant in fact relies on potentially offsetting revenues to pay for a reimbursable activity during the fiscal year of the claim. A reduction in this manner is consistent with Article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues. The California Supreme Court has determined that:

[Article XIII B, section 6] was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations omitted.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse

⁷ Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36). See also Government Code section 17553 (Stats. 2004, ch. 890 (AB 2856)).

... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.

... As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes.⁸

And, in *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727, the Supreme Court held that claimant school districts were not entitled to reimbursement for costs incurred in complying with notice and agenda requirements for meetings of a school site council, without reaching the issue of whether the underlying funded school site council program was itself mandated, “because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda-related expenses.” In that case, the court “found nothing to suggest that a school district is precluded from using a portion of the [program] funds obtained from the state for the implementation of the underlying funded program to pay the associated [mandated] costs.” In fact, the court found that the program “explicitly authorizes school districts to do so,” quoting the statute authorizing the appropriation of program funds to allow school districts to “claim funds appropriated for purposes of this article for expenditures in, but not limited to, reasonable district administrative expenses.”⁹ The court concluded, therefore, that “we view the state’s provision of program funding as satisfying, in advance, any reimbursement requirement.”

That finding rests on a number of different variables, which are not as clear on these facts. In *Kern*, the notice and agenda requirements applied to a number of different programs, and imposed requirements that were administrative in nature. Moreover, the court found that the mandated costs were “rather modest.” Additionally while the programs upon which the mandated activities were imposed were fully funded, there was a question as to whether those programs might also be voluntary. And finally, the funding that the court identified, at least for the “Bilingual-Bicultural Education program” was explicitly made available for costs of that nature.¹⁰

Here, the *Uniform Complaint Procedures* mandate does not consist merely of additional administrative requirements imposed within an existing program. It is a new anti-discrimination program that applies to a number of educational programs, including those programs identified in the funding language provided by Finance. Moreover, there can be no finding based on the record here that the costs are modest, as in *Kern*. Here, there is no evidence, as there was in *Kern*, that the funding provided for the Child Nutrition Program, Special Education Program, or Adult Education Program, is available for the mandated costs, either expressly or impliedly.

⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

⁹ *Kern*, supra, at pp. 747.

¹⁰ *Kern*, supra, at pp. 746-747.

While *Kern* and *County of Fresno* both addressed whether a local agency claimant had experienced increased costs requiring reimbursement, the analysis regarding offsetting revenues in parameters and guidelines is similar for school districts. Based on the case law, state funds appropriated to school districts that *can* be used for a mandated program are required to be identified as potential offsets in the parameters and guidelines.¹¹ And, in turn, by *applying* the identified potentially offsetting revenues to the mandate, an eligible claimant shows the *actual increased expenditure of funds other than its local tax revenues* on the program, and thus demonstrates that it is not in need of the protection offered by Article XIII B, section 6.¹²

The Commission finds that the programs for which funding has been identified by Finance are subject to only a small number of approved activities.

As discussed above, where program funds are authorized, or are not restricted from use, for mandated activities, those funds may be applied as offsetting revenues as against the mandate. But there must be authority to use those funds for the mandated activities: funds provided for one program cannot pay for mandated activities in all programs, and funds that are limited to specific purposes cannot be applied as offsets against mandates outside the scope of those purposes.¹³ Here, the budget language does not provide authority for the use of the identified funds for the uniform complaint process program. Rather, the funds are restricted to uses relating to the provision of special education services, the provision of meals for the child nutrition program, and the provision of adult education services. The complaint process at issue does not fit within any of these programs for which expenditure of the appropriated funds is authorized.

Even if these funds could be applied as potentially off-setting, there are very few activities to which they could have possibly applied. Here, the only activity approved for reimbursement that relates to special education is the one-time activity of adopting policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints. And that activity is limited to school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year and *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation). Thus the portion of activities approved relating in any way to special education in this test claim is very limited.

The approved activities related to adult education and child nutrition are also very limited, and include the one-time adoption of policies and procedures for the investigation of complaints, but again only for school districts formed during the reimbursement period, and only for non-

¹¹ See *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284, wherein the court determined that reimbursement is required only for *increased actual expenditures* of the limited tax proceeds that are counted against the local government's spending limit.

¹² *Ibid.*

¹³ See *Kern, supra*, at pp. 746-747.

employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation. The Adult Education and Child Nutrition programs were also approved for:

Notification of Complaint Procedures, and Investigation and Disposition of Complaints (Cal. Code Regs., Tit. 5, §§ 4622 and 4631)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):¹⁴

- (1) Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

- (2) Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)

¹⁴ These activities *are not reimbursable* for complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56000-56885 and 59000-59300.

- (3) Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

- (4) The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

Forwarding of Information to the Superintendent of Public Instruction Regarding
Appealed District Decisions (Cal. Code Regs., Tit. 5, § 4632)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):¹⁵

- (1) Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such

¹⁵ "Unlawful discrimination" as used in this activity is not limited and applies to complaints alleging unlawful discrimination on all grounds. This activity, however, is not reimbursable with respect to complaints regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550)); and (7) Special Education programs established pursuant to Education Code sections 56390-56392, 56400-56414, 56472-56474, 56475-56476, 56846-56847, and 59000-59300.

other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

These activities are the only reimbursable activities identified in the statement of decision that are related to the three programs for which Finance has asserted that funding should be identified as potentially offsetting.

The Commission finds that the appropriation for child nutrition cannot be used by a school district to pay for these activities.

Line Item 6110-203-0001 states that “[f]unds appropriated in Schedule (1) shall be allocated pursuant to Section 41311 of the Education Code.”¹⁶ Section 41311, in turn, provides as follows:

It is the intent of the Legislature that the Child Nutrition Program shall provide permanent financial assistance to eligible school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, for implementing the school meal program. That financial assistance shall be used to reimburse the cafeteria account of school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, *based upon the number of qualifying meals served to students.*¹⁷

Read together with the budget language, this statute indicates the Legislature’s intent that the funding provided for the Child Nutrition Program will be allocated to local educational agencies only on the basis of meals provided, and not on the basis of costs incurred pursuant to the *Uniform Complaint Procedures* mandate, or other ancillary activities. Furthermore, Line Item 6110-203-0001 indicates that “[o]f the funds appropriated in this item, \$0 is to reflect a cost-of-living adjustment,” suggesting that the Legislature intended all funds provided in this Line Item to fund meals provided to school children, and nothing else. Even though the federal pass-through funding that Finance identifies (Line Item 6110-201-0890) does not contain similar limiting language, there is no reason to conclude that the prohibition found in section 41311 would not apply with equal force to the federal funds provided for the Child Nutrition Program. Based on this analysis, the Child Nutrition Program funds are not intended to provide for *Uniform Complaint Procedures* mandated activities, and cannot be used by local educational agencies in this way.

The Commission further finds that state funds provided for special education and adult basic education need not be identified as potentially offsetting for the *Uniform Complaint Procedures* mandated activities described above.

¹⁶ See, e.g. Exhibit F, Statutes 2012, chapters 21&29 (AB 1464); Statutes 2011, chapter 33 (SB 87); Statutes 2010, chapter 712 (SB 870).

¹⁷Exhibit F, Education Code section 41311 (Stats. 1976, ch. 1010; Stats. 1985, ch. 1546) [emphasis added].

Based on the analysis found in *Kern* and *County of Fresno*, as discussed above, offsetting revenues must be identified, consistent with the Commission’s regulations, where the revenues are non-local, and sufficiently related in purpose and scope to the mandated activities.

Funds for Adult Basic Education are appropriated to provide adult education programs, not for alleged complaints that the programs were not provided. Significantly, Line Item 6110-156-0001, which provides state funding for Adult Education Programs, states that the funds are intended “[f]or local assistance, Department of Education (Proposition 98), Program 10.50.010-*Instruction*, for transfer to Section A of the State School Fund...for the purposes of Proposition 98 educational programs funded by this item.” Not only does the Line Item state that the funds are to be used for “instruction,” but also the provisions following state that:

Of the funds appropriated in this item, \$0 is provided for adjustments in average daily attendance. If growth funds are insufficient, the State Department of Education may adjust the per pupil growth rates to conform to available funds. Additionally, \$0 is to reflect a cost-of-living adjustment.

This language suggests that the Legislature intended these funds to be applied only to providing instruction, and not investigating and disposing of complaints regarding the provision of services, or forwarding information to the Superintendent of Public Instruction regarding appeals of district decisions.¹⁸

Moreover, Education Code section 52501.5 provides specifically that, except for circumstances not relevant on these facts, “*no revenue derived from the average daily attendance of adult education programs shall be expended for other than adult education purposes, nor shall revenue derived from other average daily attendance be expended for adult education purposes.*”¹⁹ Additionally, section 52616 describes the block funding of adult education, stating, in pertinent part:

(b) The adult block entitlement shall be deposited in a separate fund of the school district to be known as the “adult education fund.” Money in an adult education fund shall be expended *only for adult education purposes*. Moneys received for programs other than adult education shall not be expended for adult education.²⁰

In *Kern*, as discussed above, the funds that the court identified as “satisfying, in advance, any reimbursement requirement” were intended to fund the costs of the underlying program, and were “explicitly” authorized to include administrative costs. Here, not only is there no such explicit authorization, there is in fact substantial limiting language suggesting an intention to provide only for the costs of adult education instruction and related services. Moreover, the Uniform Complaint Procedures mandated activities approved for the adult education program are not merely administrative requirements of the adult education program. Therefore, based on a

¹⁸ See, e.g., Exhibit F, Statutes 2012, chapters 21 & 29 (AB 1464); Statutes 2011, chapter 33 (SB 87); Statutes 2010, chapter 712 (SB 870).

¹⁹ Exhibit F, Education Code section 52501.5 (Stats. 1991, ch. 1132 (AB 339)).

²⁰ Exhibit F, Education Code section 52616 (Stats. 1992, ch. 1195 (AB 1891)).

plain reading of sections 52501.5 and 52616, and of the language in Line Items 6110-156-0001 and 6110-156-0890, adult education funds are not authorized to fund activities mandated under the Uniform Complaint Process.

Similarly, state Special Education funds provided in the annual Budget Acts are intended to provide Special Education instruction, not to provide for the ancillary costs of the *Uniform Complaint Procedures* mandate. Line Item 6110-161-0001, which provides state funding for special education, states that it is intended for “Special Education Programs for Exceptional Children.” Schedule (1) of Line Item 6110-161-0001 specifically cites “Special education instruction,” as the focus of the largest portion of this funding. The remaining portion is targeted toward “Early Education Program for Individuals with Exceptional Needs.” Line Item 6110-161-0001 goes on to provide for a number of specific permissible uses of the schedule (1) funds, but makes no mention of the activities required by the *Uniform Complaint Procedures*, or of the regulations imposing those requirements at Title 5, section 4600 et seq. Neither is there any reference to ancillary or administrative costs.

Given that the activities approved for reimbursement relating to special education are limited to adopting policies and procedures for investigating complaints, and not any activity having to do with the provision of special education services or instruction, the program funds identified by Finance are not applicable broadly enough to cover the costs of the Uniform Complaint Procedures mandated activities relating to special education programs.

Based on the foregoing, the Commission finds that none of the state revenues identified by Finance are authorized to provide funding for the *Uniform Complaint Procedures* mandate, and none of the state revenues identified by Finance must be identified in the parameters and guidelines as potentially offsetting revenues.

The Commission also finds that federal funds provided for special education and adult basic education need not be identified as potentially offsetting for the Uniform Complaint Procedures mandated activities described above.

Federal funds provided for adult education are found at Line Item 6110-156-0890 in the annual Budget Act.²¹ The funding provisions describe a number of audit rules and guidelines for non-local educational agency providers of adult education, but make no mention of administrative or ancillary uses of the funds, either permissive or prohibitive. Because *Kern* relied in part on an express provision permitting use of identified funds for the mandated administrative costs, the funding here is distinguishable, and need not be identified as potentially offsetting revenue.

Similarly, Line Item 6110-161-0890 provides allocation of federal funds in the annual Budget Act for Special Education, which funds are not expressly limited or expressly permissive of ancillary costs imposed by state mandates. However, both the federal Individuals with Disabilities Education Act (IDEA), and a complementary state statute, Education Code section 56844, provide that the state may not use IDEA funds for state-mandated funding obligations to local educational agencies, implying that although the local educational agency may have

²¹ See, e.g., Exhibit F, Statutes 2012, chapters 21&29 (AB 1464); Statutes 2011, chapter 33 (SB 87); Statutes 2010, chapter 712 (SB 870).

discretion in the expenditure of funds, the state cannot compel the use of federal funds to satisfy its subvention requirement. Section 1412 of title 20 of the United States Code provides, in pertinent part:

(20) Rule of construction

In complying with paragraphs (17) and (18), *a State may not use funds paid to it under this subchapter to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.*²²

Education Code section 56844 provides, similarly:

In complying with paragraph (17), regarding the prohibition against supplantation of federal funds, and paragraph (18), regarding maintenance of state financial support for special education and related services, of subsection (a) of Section 1412 of Title 20 of the United States Code, the *state may not use funds paid to it under Part B of the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to satisfy state-mandated funding obligations to local educational agencies, including funding based on pupil attendance or enrollment, or on inflation.*²³

These statutes provide that the *state* may not apply federal funds to satisfy state-mandated funding obligations to local educational agencies. The LAO interpreted the federal provision, in recommending the amendments to the education code which became Education Code section 56844, to mean that the state cannot apply federal funds to cover the state share of cost of living adjustments and mandatory increases in funding due to growth.²⁴ While neither the state statute, nor the federal statute, touches on how a local educational agency may expend funds received, both suggest a legislative intent that federal funds should be applied only to program costs, and not costs incurred on the basis of ancillary requirements of state law.

Section 1411 of Title 20 of the United State Code is also illuminating, stating that

The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide *special education and related services* to children with disabilities in accordance with this subchapter.

Section 1411 goes on to provide that the state may reserve a portion of the funds granted in each fiscal year for specified “authorized activities,” including “support and direct services, including

²² Exhibit F, 20 United States Code section 1412(a)(20) (Pub. L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2676).

²³ Exhibit F, Education Code section 56844 (Stats. 2005, ch. 653 (AB 1662)). See also 20 United States Code section 1412(a)(20) (Pub. L. 108-446, Title I, § 101, Dec. 3, 2004, 118 Stat. 2676).

²⁴ Exhibit F, LAO Report on Education, at pp. 72-74.

technical assistance, personnel preparation, and professional development and training,” “[t]o support paperwork reduction activities, including expanding the use of technology in the IEP process,” and a host of other activities, all related to the provision of special education services.

Here, the mandated activities for which Finance has identified the federal special education funds as a potential offset include the adoption of policies and procedures to investigate and resolve complaints. That activity is not sufficiently related to the provision of services as to fall within the purposes and scope of the federal funding. Based on the limitations expressed in the federal law, and the authorized activities identified for reserved funding, the federal funds identified by Finance for special education are not expressly or impliedly authorized for funding activities approved under the *Uniform Complaint Procedures* mandate.

IV. Conclusion

The Commission adopts the parameters and guidelines and statement of decision for the *Uniform Complaint Procedures (K-12)*, 03-TC-02, with a period of reimbursement beginning July 1, 2002.

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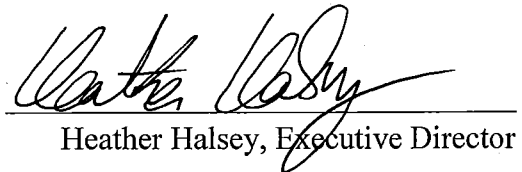
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Heather Halsey, Executive Director

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I. SUMMARY OF THE MANDATE

These parameters and guidelines address activities associated with the procedures involved for filing, investigating, and resolving the following two types of complaints arising in a school district: (1) complaints that allege violations of federal or state law governing specific educational programs; and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. These parameters and guidelines also address the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

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II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, including county boards of education, and excluding community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Solana Beach School District filed the test claim on July 23, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, costs incurred for the activities in these parameters and guidelines are reimbursable on or after July 1, 2002.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a)
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to 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.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

1. Assurance of Compliance with Antidiscrimination Laws in Excess of Federal Law, and Notices Regarding Civil Remedies (Ed. Code, §§ 250, 251, and 262.3)
 - a. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws

- prohibiting discrimination on the basis of religion and sexual orientation.¹ (Ed. Code, § 250 (Stats. 1998, ch. 914).)
- b. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)
 - c. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
 - d. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
2. Uniform Complaint Procedures
- a. Referral of Complaints to Appropriate Entities (Cal. Code Regs., Tit. 5, § 4611)
 - (1) Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue.² (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)
 - (2) Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)³
 - (3) Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)

¹ Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

² The limitation's reference to "state discrimination law or regulation at issue" refers to *any* state discrimination laws or regulations.

³ California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

(4) Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)

b. Adoption of Policies and Procedures for the Investigation of Complaints (Cal. Code Regs., Tit. 5, § 4621) (One-Time Activity)

Only school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year are mandated to engage in the below activity, but *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, §§ 56000 – 56885, excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847):⁴

- (1) Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.

The policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

⁴ This activity *is not reimbursable* for complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

c. Notification of Complaint Procedures, and Investigation and Disposition of Complaints (Cal. Code Regs., Tit. 5, §§ 4622 and 4631)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):⁵

- (1) Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

- (2) Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)
- (3) Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE,

⁵ These activities *are not reimbursable for* complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56000-56885 and 59000-59300.

and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

- (4) The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

d. Forwarding of Information to the Superintendent of Public Instruction Regarding Appealed District Decisions (Cal. Code Regs., Tit. 5, § 4632)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):⁶

- (1) Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV. Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

⁶ “Unlawful discrimination” as used in this activity is not limited and applies to complaints alleging unlawful discrimination on all grounds. This activity, however, is not reimbursable with respect to complaints regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390–56392, 56400–56414, 56472–56474, 56475–56476, 56846–56847, and 59000–59300.

A. Direct Cost Reporting

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

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁷ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If 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.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and

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

the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.