

**Item 11**  
**Final Staff Analysis**  
**Proposed Statewide Cost Estimate**  
**\$209, 613**  
**(Approximate Prospective Cost of \$34,751 Annually)**

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  
*Uniform Complaint Procedures (K-12)*  
03-TC-02  
Solana Beach School District, Claimant

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

This program 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. It also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

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.<sup>1</sup>

Parameters and Guidelines were adopted on January 25, 2013 approving the reimbursable activities described below under the *Reimbursable Activities* section.<sup>2</sup>

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2002, and June 30, 2012) with the State Controller's Office (SCO) by August 29, 2013. Late initial reimbursement claims may be filed until August 29, 2014. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

## Eligible Claimants and Period of Reimbursement

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.

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 test claim was filed on July 23, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2002.

## **Reimbursable Activities**

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

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.<sup>3</sup> (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

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<sup>3</sup> Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

discrimination law or regulation at issue.<sup>4</sup> (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).)<sup>5</sup>
- (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).)
- (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):<sup>6</sup>

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<sup>4</sup> The limitation's reference to "state discrimination law or regulation at issue" refers to *any* state discrimination laws or regulations.

<sup>5</sup> 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).

<sup>6</sup> 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-

- (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).)

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):<sup>7</sup>

- (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

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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.

<sup>7</sup> 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.

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, 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):<sup>8</sup>

(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

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<sup>8</sup> "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.

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).)

## Statewide Cost Estimate

### Assumptions

Staff reviewed the reimbursement claims data submitted by 12 school districts and compiled by the SCO. The actual claims data showed that 37 initial claims were filed for fiscal years 2002-2003 through 2011-2012 for a total of \$209,613. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 1050 school districts in California. Of those, only 12 school districts filed initial reimbursement claims totaling \$209,613 for this program for fiscal years 2002-2003 through 2011-2012. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2002-2003 through 2011-2012 may be filed until August 29, 2014.
  - Additionally, the total costs claimed in the most recent three years of the initial claiming period are trending upward. It is likely that the costs of the activities will continue to increase with the costs of living moving forward.
- *The number of reimbursement claims filed will vary from year to year.*

This program requires school districts to follow specific procedures 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. Claims will be case load driven and, thus, will vary annually depending on the number of discrimination complaints filed or investigated within the school districts.

- *There is a wide variation in costs claimed for this program based on: (a) the hourly rate of the employee performing the reimbursable activities; and (b) the total number of hours worked to perform the reimbursable activities.*

Staff reviewed the claims data and found a wide variation in costs among claimants. The program generally allows for school districts to file, investigate, and resolve specific types of discrimination complaints. The variation in costs is evident in the hourly rate of the employee performing the reimbursable activities.

For example, for fiscal year 2002-2003<sup>9</sup>, Etiwanda Elementary School District claimed an hourly rate that ranged from \$160 to \$175 for an attorney. In comparison, Grossmont Union High School District claimed an hourly rate that ranged from \$133 to \$159 for

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<sup>9</sup> Exhibit C. Actual claims filed by three districts for fiscal year 2002-2003.

their attorney; and Rowland Unified claimed \$52.16 an hour for their Director of Special Projects to handle their claims.

The variation in costs is also evident in the total number of hours worked to perform the reimbursable activities. For example, for fiscal year 2002-2003, Etiwanda Unified School District claimed 105.9 total hours to investigate and dispose of claims. In comparison, Grossmont Union High School District claimed 9.25 total hours; and Rowland Unified claimed 34 total hours.

These factors, coupled with the variable number of complaints, are likely the reason for the wide variation in claims for costs during 2002-03 as shown below:

- Etiwanda Elementary School District - \$30,991
- Grossmont Union High School District - \$1,291
- Rowland Unified School District - \$1,896
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. The reimbursable activities in this program are only a small part of a larger process. Claimants may file claims for activities that, while part of the larger process, are not reimbursable and those claims may therefore be reduced by the SCO. Additionally, the SCO may find the amounts claimed for approved activities are excessive and may reduce claims for that reason.

Methodology

*Fiscal Years 2002-2003 through 2011-2012*

The statewide cost estimate for fiscal years 2002-2003 through 2011-2012 was developed by totaling the 37 reimbursement claims filed with the SCO for these years, for a total of \$209,613. For the reasons discussed above, staff finds that the averages for the most recent three-year period are most indicative of potential costs. For the most recent three-year period, costs averaged \$34,751 annually. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2002-2003	3	\$34,178
2003-2004	2	\$4,508
2004-2005	1	\$1,921
2005-2006	2	\$4,027
2006-2007	1	\$1,834
2007-2008	2	\$8,596
2008-2009	5	\$50,296
2009-2010	9	\$46,931
2010-2011	6	\$30,070
2011-2012	6	\$27,252
<b>TOTAL</b>	<b>37</b>	<b>\$209,613</b>

### **Comments on Draft Staff Analysis and Proposed Statewide Cost Estimate**

Staff issued a draft staff analysis on October 10, 2013.<sup>10</sup> No comments were received.

### **Staff Recommendation**

Staff recommends the Commission adopt the proposed statewide cost estimate of \$209,613 (Approximate Prospective Cost of \$34,751 Annually) for costs incurred in complying with the *Uniform Complaint Procedures (K-12)* program.

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<sup>10</sup> Exhibit D.