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DRAFT STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Education Code Section 33126, Education Code Section 35256
Education Code Section 35256.1, Education Code Section 35258
Education Code Section 41409, Education Code Section 41409.3

Statutes 2007, Chapter 530; Statutes 1997, Chapters 918, and 912;
Statutes 1994, Chapter 824; Statutes 1993, Chapter 1031;
Statutes 1992, Chapter 759; Statutes 1989, Chapter 1463

School Accountability Report Cards
10-PGA-02 (97-TC-21)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request to amend the parameters and guidelines for the *School Accountability Report Cards* (SARC) program filed by the State Controller's Office to delete two reimbursable activities that were repealed by Statutes 2007, chapter 530 (AB 1061), and to update the boilerplate language.

Background

Proposition 98, an initiative measure approved by the California voters, required each school in each school district to develop and issue a school accountability report card. Proposition 98 set forth thirteen items that were to be included in the school accountability report cards. Statutes adopted after the approval of Proposition 98 added new subjects to be included in the school accountability report card.

On April 23, 1998, the Commission on State Mandates (Commission), adopted a statement of decision for the SARC program (97-TC-21) determining that inclusion of new subjects in the SARC imposed a new program or higher level of service upon school districts, within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

On August 20, 1998, the Commission adopted the parameters and guidelines for this program.

In 2004 and 2005, the Legislature directed the Commission to reconsider this program. On July 28, 2005 and January 26, 2006, the Commission reconsidered the SARC program, and determined that it was not a state-mandated local program pursuant to Government Code section 17556(f) as amended in 2005. The Commission set aside the statement of decision and parameters and guidelines. On March 9, 2009, the Third District Court of Appeal in *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1198-1203, held that the Legislature's direction to set aside or reconsider prior Commission decisions goes beyond the power of the Legislature and violates the separation of powers doctrine set forth in Article III,

section 3 of the California Constitution. The court directed that the Commission reinstate the *SARC* statement of decision and parameters and guidelines.

The Legislature enacted Statutes 2007, chapter 530 (AB 1061) to streamline completion of the *SARC*, and make it more understandable by deleting provisions that were obsolete or reported elsewhere. AB 1061 deleted two of the activities the Commission determined were reimbursable activities:

1. Reporting the average verbal and math Scholastic Aptitude Test scores of high school seniors, to the extent that those scores are provided, and the average percentage of seniors taking that exam for the most recent three-year period.
2. The degree to which pupils are prepared to enter the workforce.

Thus, beginning January 1, 2008, these activities are no longer mandated by the state.

In 2010, the Legislature enacted Statutes 2010, chapter 724 (AB 1610) that directed the State Controller's Office to confirm whether or not school districts were no longer filing reimbursement claims for the above activities that were repealed, and if the Controller found that claims were still being filed, to file a request to amend the parameters and guidelines with the Commission to delete the repealed activities.

On February 2, 2011, the State Controller's Office requested amendments to the parameters and guidelines to clarify that the above two activities are no longer reimbursable.¹ The State Controller's Office is also requesting several amendments to the boilerplate language included in the parameters and guidelines.

Discussion

Staff reviewed the statutes and the State Controller's request. Non-substantive changes were made to the parameters and guidelines to bring them into conformity with the other parameters and guidelines adopted by the Commission. Staff modified all other sections of the parameters and guidelines as discussed below.

I. Summary of the Mandate

The State Controller's Office requested that this section include language that states Statutes 2007, chapter 520 repealed specified activities in *SARC*.

Staff revised this section to list the specific activities that were repealed, and to clarify that these activities are no longer mandated or reimbursable as of January 1, 2008.

III. Period of Reimbursement

The State Controller's Office requested that this section clarify that the amendments to the parameters and guidelines are effective beginning with the 2010-2011 fiscal year.

Deletion of Reimbursable Activities

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed on or before February 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. On February 22, 2011, the State Controller requested that these parameters and guidelines be amended. This filing date would make the proposed budget

¹ See Exhibit A.

changes to activities in the parameters and guidelines effective July 1 2010. However, Statutes 2007, chapter 530 repealed the two reimbursable activities effective January 1, 2008. Therefore, staff revised this section to clarify that reimbursement for the repealed activities ends on January 1, 2008.

Effective Date of Boilerplate Language

Each set of parameters and guidelines include language that is common to all parameters and guidelines, and provides guidance to claimants on the procedures for filing reimbursement claims, the documentation required to support the reimbursement claims, records retention requirements and the legal and factual basis for the parameters and guidelines. This language is known as “boilerplate language.” When the boilerplate language is amended, certain sections will have different effective dates, depending on different statutes.

Staff added the effective dates for the boilerplate language as further discussed in the analysis. As proposed, Section III, Period of Reimbursement, states the following:

The amendments made to these parameters and guidelines become effective as follows:

1. Activities deleted by Statutes 2007, chapter 530 are not reimbursable beginning January 1, 2008.
2. The amendment made to Section IV, adding language requiring that claims be supported with contemporaneous source documents, is effective beginning July 1, 2011. Government Code section 17557(d)(2)(H) provides that “any amendment to the boilerplate language that does not increase or decrease reimbursable costs shall limit the eligible filing period commencing with the fiscal year in which the amended parameters and guidelines were adopted.” The Commission amended the boilerplate language requiring contemporaneous source documentation in fiscal year 2011-2012.
3. The amendment made to Section V(B) of these parameters and guidelines addressing the indirect cost rate, is effective beginning July 1, 2010. Pursuant to Government Code section 17557(d)(1), “A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to section 17561, and on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The State Controller’s Office filed this request to amend the parameters and guidelines on February 22, 2011, making the amendments to Section V(B) of these parameters and guidelines effective for the 2010-2011 fiscal year.

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. (Gov. Code §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 and V. Claim Preparation and Submission

A. Deletion of Reimbursable Activities

The State Controller's Office requested that Section IV be amended to clarify that the activities repealed by Statutes 2007, chapter 520 be deleted from the parameters and guidelines.

Staff made the amendments proposed by the State Controller's Office and clarified that beginning January 1, 2008 (the effective date of the statute), the repealed activities are no longer reimbursable.

B. Source Documentation Language

The State Controller's Office requested that the standard boilerplate language requiring claimants to support their claims with contemporaneous source documentation (documents created at or near the same time the actual cost was incurred for an activity or event) be included in the parameters and guidelines.

Staff added the language proposed by the State Controller's Office. Pursuant to Government Code section 17557(d)(2)(H), and as described below in section D of this analysis, this amendment affects reimbursement claims for costs incurred in fiscal year 2011-2012.

C. Amendments Proposed to Indirect Cost Rate Language.

The Controller proposed revising the boilerplate language for indirect cost rate. Currently, the language allows school districts to use the J-380 *non-restrictive* indirect cost rate approved by the Department of Education. The Controller's Office proposes that the method now be a "*restricted* indirect cost rate for K-12 Local Educational Agencies (LEAs) Five Year Listing issued by the California Department of Education (CDE) School Fiscal Services Division, for the fiscal year costs." (Emphasis added.)

After this language was proposed, staff was informed that in 2003-2004, when all districts converted to SACS (Standardized Account Code Structure), the California Department of Education discontinued the software for the J-380 and J-580, and approved restricted indirect cost rates for school districts.

As a result, at the January 2012 hearing, the Commission adopted new indirect cost rate language for school districts as follows:²

² Amendment to Parameters and Guidelines for the *Pupil Promotion and Retention* program, (10-PGA-03, 98-TC-19).

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

Staff revised the SARC parameters and guidelines to include this language. This will ensure that the parameters and guidelines are consistent with the practices of the State Controller and California Department of Education (CDE). Pursuant to Government Code section 17557(d)(1), and as described below in Section D of this analysis, this amendment is effective beginning July 1, 2010.

D. Effective Date of Amendments to Boilerplate Language

The general rule for the effective date of a parameters and guidelines amendment is governed by Government Code section 17557(d)(1) and provides that an amendment resulting from a request filed on or before February 15 following a fiscal year, “shall establish reimbursement eligibility for that fiscal year.” Applying the general rule to the proposed amendments here results in an effective date of July 1, 2010.

In 2011, the Legislature enacted SB 112 (Statutes 2011, chapter 144) to revise when amendments to boilerplate language in parameters and guidelines become effective. SB 112 amended Government Code section 17557(d)(2)(H) to provide that a request for amendment of the boilerplate language in parameters and guidelines “*that does not increase or decrease reimbursable costs* shall limit the eligible filing period commencing with the fiscal year in which the amended parameters and guidelines were adopted.” If section 17557(d)(2)(H) applies, then the amendments to boilerplate would take effect on July 1, 2011.

1) Effective date of contemporaneous source documentation requirement

Staff finds that the contemporaneous source documentation requirements do not increase or decrease reimbursable costs for the state mandated program and only imposes procedural requirements for claiming those costs. Thus, pursuant to Government Code section 17557(d)(2)(H), the amendment requiring claimants to support reimbursement claims with contemporaneous source documentation is effective beginning July 1, 2011, and will apply to the reimbursement claims filed for the 2011-2012 fiscal year.

Therefore, staff recommends that the Commission delete the July 1, 2010 effective date for this change as requested by the SCO, since the appropriate effective date is July 1, 2011.

2) Effective date of the amendment to the indirect cost rate

Staff finds that the amendment to the indirect cost rate, and the change to the restricted rate currently approved by the CDE, affects reimbursable costs and, thus, the correct period of reimbursement for the change, if adopted, is governed by the general rule provided in Government Code section 17557(d)(1), and becomes effective beginning July 1, 2010.

An indirect cost rate is the percentage of an organization’s indirect costs to its direct costs and is a standardized method of charging individual programs for their share of indirect costs. The United States Department of Education provides the following guidance on the differences between restricted and unrestricted indirect cost rates:

Unrestricted indirect cost rates are those calculated for use on programs without limitations on indirect costs. Certain ED grant programs have a statutory requirement prohibiting the use of federal funds to supplant non-federal funds. These programs require the use of a restricted indirect cost rate, computed in

accordance with 34 CFR 76.564-76.569. Generally, adjustments to the unrestricted rate calculation are made and *result in a lower rate* to claim indirect cost reimbursement on restricted rate programs.³

The CDE cost rates are negotiated rates between CDE and the United States Department of Education. The United States Department of Education has approved the fixed with carry-forward restricted rate methodology for calculating indirect cost rates for California LEAs. CDE has been delegated authority to calculate and approve indirect cost rates annually for LEAs.⁴ According to the California School Accounting Manual:

Approved indirect cost rates for K–12 LEAs, including charter schools, are posted online annually at <http://www.cde.ca.gov/fg/ac/ic>, usually in early spring. The rates may be used, as appropriate, to budget, allocate, and recover indirect costs for federal programs, grants, and other assistance governed by the Office of Management and Budget (OMB) Circular A-87, the *Education Department General Administrative Regulations* (EDGAR), and the *Code of Federal Regulations (CFR)*, Title 34. The rates may also be used for state programs, subject to any restrictions that may govern the individual programs.⁵

Here, the proposed change to the boilerplate language changes the indirect cost rate from a “nonrestrictive indirect cost rate” to the current restricted indirect cost rates adopted by the CDE. This change will generally decrease the reimbursable costs.⁶ Thus, the general rule for the effective date for an amendment of the parameters and guidelines applies. Therefore, staff finds that the appropriate effective date for the amendment to the indirect cost rate is July 1, 2010.

E. Amendments Proposed to Clarify and Provide Notice of Existing Law Regarding Direct Cost Reporting, Records Retention, Offsetting Revenues, Revised Claiming Instructions, Remedies Before the Commission, and the Legal and Factual Basis for Parameters And Guidelines.

The following proposed amendments to the parameters and guidelines have no effective date since they are statements of existing law and do not change any requirements. The California Supreme Court has found that “a statute that merely clarifies, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment” “because the true meaning of the statute remains the same.”⁷ The following amendments are proposed for purpose of clarification and to provide notice of the law to the claimants:

³ United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9 (emphasis added).

⁴ California School Accounting Manual, 2011 Edition, p 915-1.

⁵ *Id.*, p. 915-7, underlining added (italics in original).

⁶ See United States Department of Education, Cost Allocation Guide for State and Local Governments, p. 9.

⁷ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

V.A. Direct Cost Reporting

Revise this section to include updated boilerplate language that conforms to other parameters and guidelines recently adopted by the Commission.

This section provides guidance to claimants regarding how to file their reimbursement claims for the direct costs incurred to comply with the mandated program.

VI. Records Retention

Add a new section VI that states the following:

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁸ 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 the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

This section notifies the claimant that its reimbursement claims are subject to audit by the State Controller, clarifies the audit period, and that supporting documentation must be retained during the period subject to audit.

VII. Offsetting Savings and Reimbursements

Revise title of this section for the sake of clarity, to delete “savings” (since there are no offsetting savings for this mandate) and replace it with “revenues” (since there may be offsetting revenues for this mandate) and make changes to the text of this section to make it consistent with the changes to the title.

The proposed amendment to Section VII simply updates the language regarding offsetting revenue to conform to current boilerplate changes and to make the provision in this set consistent with section 1183.1(a)(7) of the Commission’s regulations. Section 1183.1(a)(7) requires that the parameters and guidelines contain a section on offsetting revenues and reimbursements to the extent applicable.

VIII. State Controller’s Revised Claiming Instructions

Add a new section VIII, which states the following:

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

⁸ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

This section provides the claimants with notice of when the State Controller's Office is required to issue revised instructions, and notice of the right of local governments to file reimbursement claims once the claiming instructions are issued.

IX. Remedies Before the Commission

Add a new section IX, which states the following:

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 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.

This section notifies the claimants of the process for reviewing and revising claiming instructions if they do not conform with the parameters and guidelines. It also notifies parties that requests may be made to amend parameters and guidelines.

X. Legal and Factual Basis for the Parameters and Guidelines

Add a new section X, which states the following:

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

The proposed addition of Section X to the parameters and guidelines updates the document consistent with existing law. Section 1183.1(a)(11) of the Commission's regulations requires that the parameters and guidelines contain "...notice that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the commission." Therefore, these changes are merely statements of existing law that clarify the parameters and guidelines and have no effect on the costs claimed.

Staff recommends that the Commission amend these sections of the parameters and guidelines as requested by the Controller and discussed above.

Staff Recommendation

Staff recommends the Commission adopt staff's proposed amendments to the parameters and guidelines, beginning on page 10.

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