

**COMMISSION ON STATE MANDATES**

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September 9, 2005

Mr. David Scribner  
Executive Director  
Scribner Consulting Group, Inc.  
3840 Rosin Court, Suite 190  
Sacramento, CA 95834

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**Re: Final Staff Analysis and Proposed Parameters and Guidelines**

*The Stull Act, 98-TC-25*

Education Code Sections 44660 – 44665 (formerly Ed. Code §§ 13485-13490)

Statutes 1975, Chapter 1216; Statutes 1983, Chapter 498; Statutes 1986, Chapter 393;

Statutes 1995, Chapter 392; Statutes 1999, Chapter 4

Denair Unified School District and Grant Joint Union High School District, Claimants

Dear Mr. Scribner:

The final staff analysis and proposed parameters and guidelines are enclosed for your review.

**Commission Hearing**

This matter is set for hearing on **September 27, 2005**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance of the hearing if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Cathy Cruz at (916) 323-8218.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enclosures

**ITEM 7**  
**FINAL STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES**

Education Code Sections 44660-44665  
(Former Ed. Code, §§ 13485-13490)

Statutes 1983, Chapter 498  
Statutes 1999, Chapter 4

*The Stull Act (98-TC-25)*

Denair Unified School District and Grant Joint Union High School District, Claimants

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**EXECUTIVE SUMMARY**

On May 27, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for specific reimbursable activities related to evaluation and assessment of the performance of "certificated personnel" within each school district, except for those employed in local, discretionary educational programs.

Staff reviewed the claimant's proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines. A draft staff analysis was issued on August 5, 2005. No comments were received.

***III. Period of Reimbursement***

The claimant proposed a reimbursement period beginning on or after July 1, 1998, for costs incurred in compliance with the mandate. The test claim was deemed filed on June 30, 1999, and thus, a reimbursement period beginning July 1, 1997, was established. Therefore, the costs incurred for compliance with Statutes 1983, chapter 498 are eligible for reimbursement on or after July 1, 1997. Statutes 1999, chapter 4 was an urgency statute operative March 15, 1999; therefore, costs incurred for compliance with Statutes 1999, chapter 4 are eligible for reimbursement on or after March 15, 1999.

## STAFF ANALYSIS

### Claimant

Denair Unified School District and Grant Joint Union High School District

### Chronology

05/27/04 Commission on State Mandates (Commission) adopted Statement of Decision  
06/17/04 Claimant submitted proposed parameters and guidelines  
08/02/04 The State Controller's Office (SCO) submitted comments  
08/13/04 Grant Joint Union High School District added as a co-claimant to test claim  
09/29/04 The Department of Finance (DOF) submitted comments  
08/05/05 Draft staff analysis issued  
09/09/05 Final staff analysis issued

### Summary of the Mandate

On May 27, 2004, the Commission adopted the Statement of Decision for *The Stull Act* test claim, finding that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives. (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.)  

Reimbursement for this activity is limited to the review of the employee's instructional techniques and strategies and adherence to curricular objectives, and to include in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:

  - Once each year for probationary certificated employees;
  - Every other year for permanent certificated employees; and
  - Beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.
- Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic

- Transmit a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- Attach any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- Conduct a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a).)

The Commission further found that the activities listed above do not constitute reimbursable state-mandated programs with respect to certificated personnel employed in local, discretionary educational programs.

Finally, the Commission found that all other statutes in the test claim not mentioned above are not reimbursable state-mandated programs within the meaning of article XIII B, section 6 and Government Code section 17514.

### **Discussion**

Staff reviewed the claimant's proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimant's proposed parameters and guidelines. A draft staff analysis was issued on August 5, 2005. No comments were received.

### ***III. Period of Reimbursement***

The claimant proposed a reimbursement period beginning on or after July 1, 1998, for costs incurred in compliance with the mandate. The adopted Statement of Decision states that the claimant filed the test claim on July 7, 1999; however, staff clarifies that the test claim was originally filed on June 30, 1999. On July 7, 1999, the claimant submitted a corrected test claim form. Accordingly, the test claim is deemed filed on June 30, 1999, and a reimbursement period beginning July 1, 1997, was established.

Therefore, the costs incurred for compliance with Statutes 1983, chapter 498 are eligible for reimbursement on or after July 1, 1997. Statutes 1999, chapter 4 was an urgency statute operative March 15, 1999; therefore, costs incurred for compliance with Statutes 1999, chapter 4 are eligible for reimbursement on or after March 15, 1999.

### ***IV. Reimbursable Activities***

The claimant's proposed reimbursable activities mirrored those in the Commission's Statement of Decision. In its comments to the claimant's proposal, the SCO suggested a technical change to number the activities rather than using bullets. The DOF stated that the claimant's proposal did not provide guidance on which educational programs mandated by state or federal law the activities were limited to, and argued that the clarification was needed to ensure that offsetting funding is applied to the reimbursement claims.

Staff notes that the test claim draft staff analysis was issued on March 19, 2004, with a request to the parties for additional briefing on the following two issues:

## PROPOSED PARAMETERS AND GUIDELINES

Education Code Sections 44660-44665  
(Former Ed. Code, §§ 13485-13490)

~~Statutes 1975, Chapter 1216~~

Statutes 1983, Chapter 498

~~Statutes 1986, Chapter 393~~

~~Statutes 1995, Chapter 392~~

Statutes 1999, Chapter 4

*The Stull Act (98-TC-25)*

Denair Unified School District and Grant Joint Union High School District, Claimants

### I. SUMMARY OF THE MANDATE

On May 27, 2004, the Commission on State Mandates ("Commission") adopted the Statement of Decision for *The Stull Act (98-TC-25)* test claim. The Commission found that Education Code sections 44660-44665 (formerly Ed. Code, §§ 13485-13490) constitute a new program or higher level of service and impose a state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- Evaluate and assess the performance of certificated instructional employees that perform the requirements of educational programs mandated by state or federal law as it reasonably relates to the instructional techniques and strategies used by the employee and the employee's adherence to curricular objectives. (Ed. Code, § 44662, subd. (b), as amended by Stats. 1983, ch. 498.)

Reimbursement for this activity is limited to the review of the employee's instructional techniques and strategies and adherence to curricular objectives, and to include in the written evaluation of the certificated instructional employees the assessment of these factors during the following evaluation periods:

- Once each year for probationary certificated employees;
  - Every other year for permanent certificated employees; and
  - Beginning January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.
- Evaluate and assess the performance of certificated instructional employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11 as it reasonably relates to the progress of pupils towards the state adopted academic

- o Transmit a copy of the written evaluation to the certificated employee (Ed. Code, § 44663, subd. (a));
- o Attach any written reaction or response to the evaluation by the certificated employee to the employee's personnel file (Ed. Code, § 44663, subd. (a)); and
- o Conduct a meeting with the certificated employee to discuss the evaluation (Ed. Code, § 44553, subd. (a).)

The Commission further found that the activities listed above do not constitute reimbursable state-mandated programs with respect to certificated personnel employed in local, discretionary educational programs.

Finally, the Commission found that all other statutes in the test claim not mentioned above are not reimbursable state-mandated programs within the meaning of article XIII B, section 6 and Government Code section 17514.

## **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 29 30, 1999. Therefore, the costs incurred for compliance with ~~Statutes of 1975, Chapter 1216; Statutes of 1983, Chapter 498; Statutes of 1986, Chapter 393; Statutes of 1995, Chapter 392;~~ are eligible for reimbursement on or after July 1, 1997. Statutes of 1999, Chapter 4 was an urgency statute operative March 15, 1999; therefore, costs incurred for compliance with Statutes 1999, chapter 4 are eligible for reimbursement on or after July 1, 1998 March 15, 1999.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (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.

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.

## **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 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.

- a. ~~the reviewing of~~ the results of the Standardized Testing And Reporting test as it reasonably relates to the performance of those certificated employees that teach reading, writing, mathematics, history/social science, and science in grades 2 to 11, and ~~to~~
- b. ~~include~~ in the written evaluation of those certificated employees the assessment of the employee's performance based on the Standardized Testing And Reporting results for the pupils they teach during the evaluation periods specified in Education Code section 44664, and described below:
  - o ~~Once~~ each year for probationary certificated employees;
  - o ~~Every~~ other year for permanent certificated employees; and
  - o ~~Beginning~~ January 1, 2004, every five years for certificated employees with permanent status who have been employed at least ten years with the school district, are highly qualified (as defined in 20 U.S.C. § 7801), and whose previous evaluation rated the employee as meeting or exceeding standards, if the evaluator and certificated employee being evaluated agree.

B. Certificated (Instructional and Non-Instructional) Employees

~~1. Assess and~~ Evaluate and assess permanent certificated, instructional and non-instructional, employees that perform the requirements of educational programs mandated by state or federal law and receive an unsatisfactory evaluation in the years in which the permanent certificated employee would not have otherwise been evaluated pursuant to Education Code section 44664 (i.e., every other year). The additional evaluations shall last until the employee achieves a positive evaluation, or is separated from the school district. (Ed. Code, § 44664, as amended by Stats. 1983, ch. 498-). *(Reimbursement period begins July 1, 1997.)*

This additional evaluation and assessment of the permanent certificated employee requires the school district to perform the following activities:

- ea. ~~Evaluating~~ and assessing the certificated employee performance as it reasonably relates to the following criteria: (1) the progress of pupils toward the standards established by the school district of expected pupil achievement at each grade level in each area of study, and, if applicable, the state adopted content standards as measured by state adopted criterion referenced assessments; (2) the instructional techniques and strategies used by the employee; (3) the employee's adherence to curricular objectives; (4) the establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities; and, if applicable, (5) the fulfillment of other job responsibilities established by the school district for certificated non-instructional personnel (Ed. Code, § 44662, subs. (b) and (c));
- eb. ~~reducing~~ The evaluation and assessment shall be reduced to writing. (Ed. Code, § 44663, subd. (a)-). The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If the employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the school district shall notify the

#### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment 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 point, 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.

#### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A. 1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### 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 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 J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.

**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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.

## Commission on State Mandates

Original List Date: 7/7/1999  
Last Updated: 6/14/2004  
List Print Date: 09/09/2005  
Claim Number: 98-TC-25  
Issue: The Stull Act

Mailing Information: Final Staff Analysis

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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