KERN HIGH SCHOOL DISTRICT

Audit Report

STANDARDIZED TESTING AND REPORTING PROGRAM

Chapter 828, Statutes of 1997

July 1, 1997, through June 30, 2004

BETTY T. YEE

California State Controller

June 2015

BETTY T. YEE
California State Controller

June 17, 2015

Chad Vegas, President
Board of Trustees
Kern High School District
5801 Sundale Avenue
Bakersfield, CA 93309

Dear Mr. Vegas:

The State Controller's Office audited the costs claimed by the Kern High School District for the legislatively mandated Standardized Testing and Reporting Program (Chapter 828, Statutes of 1997) for the period of July 1, 1997, through June 30, 2004.

The district claimed $2,005,365 for the mandated program. Our audit found that $1,059,623 is allowable and $945,742 is unallowable. The costs are unallowable primarily because the district claimed unsupported and ineligible costs. The State paid the district $922,966. Allowable costs claimed exceed the amount paid by $136,657.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). The IRC must be filed within three years following the date of this report. You may obtain IRC information at the Commission's website at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, by telephone at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/ls

cc: Bryon Schaefer, Ed.D.
Superintendent, Kern High School District
Scott Cole, Ed.D.
Associate Superintedent of Business
Kern High School District
Bob Dickson, Director of Fiscal Services
Kern High School District
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the Kern High School District for the legislatively mandated Standardized Testing and Reporting Program (Chapter 828, Statutes of 1997) for the period of July 1, 1997, through June 30, 2004.

The district claimed $2,005,365 for the mandated program. Our audit found that $1,059,623 is allowable and $945,742 is unallowable. The costs are unallowable primarily because the district claimed unsupported and ineligible costs. The State paid the district $922,966. Allowable costs claimed exceed the amount paid by $136,657.

Background

Chapter 828, Statutes of 1997, amended Education Code sections 60607, 60609, 60615, and 60630, and added Education Code sections 60640 through 60641, and 60643. Chapter 828, Statutes of 1997, and the implementing regulations at Title 5, *California Code of Regulations*, sections 850 through 904, established the Standardized Testing and Reporting (STAR) Program related to achievement testing that school districts must administer to pupils in the state.

The STAR Program requires school districts, between March 15 and May 15 of each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts administered the Stanford Achievement Test, Ninth Edition (SAT-9) test in English to all pupils enrolled in grades 2 through 11 from FY 1997-98 through FY 2001-02. The California Achievement Test, Sixth Edition Survey (CAT/6) replaced the SAT-9 test effective for FY 2002-03. School districts administered the CAT/6 test in English to all pupils enrolled in grades 2 through 11 for FY 2002-03 and FY 2003-04. In addition, school districts administered an additional test, the Spanish Assessment of Basic Education, Second Edition (SABE/2), to every Spanish-speaking pupil of limited English proficiency who was enrolled in grades 2 through 11 if the pupil was initially enrolled in any public school in the state less than 12 months prior to the date that the English language SAT-9 test was given. School districts are also required to engage in numerous activities related to test administration and reporting.

On August 24, 2000, the Commission on State Mandates (Commission) determined that Chapter 828, Statutes of 1977, and the implementing regulations at Title 5, *California Code of Regulations*, sections 850 through 904, imposed a State mandate upon school districts reimbursable under Government Code section 17561 commencing October 10, 1997.

The parameters and guidelines establish the State mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on January 24, 2002. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies and school districts in claiming mandated program reimbursable costs.

On reconsideration by Statutes of 2004, Chapter 216, section 34, and Statutes 2004, Chapter 895, section 19, the Commission found that effective July 1, 2004, many of the reimbursable activities were either federally mandated or no longer required, and thus were not reimbursable. Accordingly, the Commission deleted the non-reimbursable activities and renamed the program to the National Norm-Referenced Achievement Test Program effective July 1, 2004.

Objectives, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the STAR Program for the period of July 1, 1997, through June 30, 2004.

The objectives of our audit were to determine whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

The legal authority to conduct this audit is provided by Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures. Our audit scope did not assess the efficiency or effectiveness of program operations.

To achieve our audit objectives, we performed the following audit procedures:

- Interviewed employees, completed the internal control questionnaire, and performed a walk-through of the cost components of each claim.
- Traced costs claimed to supporting documentation that showed when the costs were incurred, the validity of such costs, and their relationship to mandated activities.

Conclusion

Our audit found instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Kern High School District claimed $2,005,365 for costs of the STAR Program. Our audit found that $1,059,623 is allowable and $945,742 is unallowable.

For the fiscal year (FY) 1997-98 claim, the State paid the district $177,876 from funds appropriated under Chapter 724, Statutes of 2010. Our audit found that $119,483 is allowable. The State will apply $58,393 against any balances of unpaid mandated program claims due the district as of October 19, 2010.

For the FY 1998-99 claim, the State paid the district $217,710 from funds appropriated under Chapter 724, Statutes of 2010. Our audit found that $84,656 is allowable. The State will apply $133,054 against any balances of unpaid mandated program claims due the district as of October 19, 2010.

For the FY 1999-2000 claim, the State paid the district $223,082 from funds appropriated under Chapter 724, Statutes of 2010. Our audit found that $173,022 is allowable. The State will apply $50,060 against any balances of unpaid mandated program claims due the district as of October 19, 2010.

For the FY 2000-01 claim, the State paid the district $304,298 from funds appropriated under Chapter 724, Statutes of 2010. Our audit found that $161,169 is allowable. The State will apply $143,129 against any balances of unpaid mandated program claims due the district as of October 19, 2010.

For the FY 2001-02 claim, the State made no payment to the district. Our audit found that $169,918 is allowable. The State will pay that amount, contingent upon available appropriations.

For the FY 2002-03 claim, the State made no payment to the district. Our audit found that $166,868 is allowable. The State will pay that amount, contingent upon available appropriations.

For the FY 2003-04 claim, the State made no payment to the district. Our audit found that $184,507 is allowable. The State will pay that amount, contingent upon available appropriations.

Views of Responsible Officials

We issued a draft audit report on April 7, 2015. Bob Dickson, Director of Fiscal Services, responded by letter dated April 24, 2015 (Attachment), disagreeing with the audit results. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of the Kern High School District, the Kern County Office of Education, the California Department of Education, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

June 17, 2015

Schedule 1—
Summary of Program Costs
July 1, 1997, through June 30, 2004

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 1997, through June 30, 1998				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 5,117	$ 11,205	$ 6,088	Finding 1
Pre-test and post-test coordination	147,380	205,624	58,244	Finding 1
Test administration	29,687	—	(29,687)	Finding 1
Reporting and recordkeeping	7,914	8,674	760	Finding 1
Total salaries and benefits	190,098	225,503	35,405	
Total direct costs	190,098	225,503	35,405	
Indirect costs	14,029	20,498	6,469	Finding 2
Total direct and indirect costs	204,127	246,001	41,874	
Less offsetting reimbursements	—	(126,518)	(126,518)	Finding 3
Total program costs	$ 204,127	119,483	$ (84,644)	
Less amount paid by the State [2]		(177,876)		
Allowable costs claimed in excess of (less than) amount paid		$ (58,393)		
July 1, 1998, through June 30, 1999				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 5,482	$ 9,271	$ 3,789	Finding 1
Pre-test and post-test coordination	157,905	169,981	12,076	Finding 1
Test administration	31,777	—	(31,777)	Finding 1
Reporting and recordkeeping	8,475	7,168	(1,307)	Finding 1
Total salaries and benefits	203,639	186,420	(17,219)	
Total direct costs	203,639	186,420	(17,219)	
Indirect costs	14,071	12,770	(1,301)	Finding 2
Total direct and indirect costs	217,710	199,190	(18,520)	
Less offsetting reimbursements	—	(114,534)	(114,534)	Finding 3
Total program costs	$ 217,710	84,656	$ (133,054)	
Less amount paid by the State [2]		(217,710)		
Allowable costs claimed in excess of (less than) amount paid		$ (133,054)		
July 1, 1999, through June 30, 2000				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 5,679	$ 9,782	$ 4,103	Finding 1
Pre-test and post-test coordination	163,584	179,033	15,449	Finding 1
Test administration	32,878	—	(32,878)	Finding 1
Reporting and recordkeeping	8,971	7,564	(1,407)	Finding 1
Total salaries and benefits	211,112	196,379	(14,733)	

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 1999, through June 30, 2000 (continued)				
Total direct costs	211,112	196,379	(14,733)	
Indirect costs	11,970	11,135	(835)	Finding 2
Total direct and indirect costs	223,082	207,514	(15,568)	
Less offsetting reimbursements	—	(34,492)	(34,492)	Finding 3
Total program costs	$ 223,082	173,022	$ (50,060)	
Less amount paid by the State [2]		(223,082)		
Allowable costs claimed in excess of (less than) amount paid		$ (50,060)		
July 1, 2000, through June 30, 2001				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 7,545	$ 8,943	$ 1,398	Finding 1
Pre-test and post-test coordination	220,786	165,040	(55,746)	Finding 1
Test administration	44,636	—	(44,636)	Finding 1
Reporting and recordkeeping	11,477	6,556	(4,921)	Finding 1
Total salaries and benefits	284,444	180,539	(103,905)	
Total direct costs	284,444	180,539	(103,905)	
Indirect costs	19,854	12,602	(7,252)	Finding 2
Total direct and indirect costs	304,298	193,141	(111,157)	
Less offsetting reimbursements	—	(31,972)	(31,972)	Finding 3
Total program costs	$ 304,298	161,169	$ (143,129)	
Less amount paid by the State [2]		(304,298)		
Allowable costs claimed in excess of (less than) amount paid		$ (143,129)		
July 1, 2001, through June 30, 2002				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 8,061	$ 9,428	$ 1,367	Finding 1
Pre-test and post-test coordination	235,905	174,088	(61,817)	Finding 1
Test administration	47,752	—	(47,752)	Finding 1
Reporting and recordkeeping	12,258	6,913	(5,345)	Finding 1
Total salaries and benefits	303,976	190,429	(113,547)	
Total direct costs	303,976	190,429	(113,547)	
Indirect costs	18,998	11,902	(7,096)	Finding 2
Total direct and indirect costs	322,974	202,331	(120,643)	
Less offsetting reimbursements	—	(32,413)	(32,413)	Finding 3
Total program costs	$ 322,974	169,918	$ (153,056)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 169,918		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
July 1, 2002, through June 30, 2003				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 8,941	$ 9,372	$ 431	Finding 1
Pre-test and post-test coordination	261,156	172,942	(88,214)	Finding 1
Test administration	52,837	—	(52,837)	Finding 1
Reporting and recordkeeping	13,669	6,923	(6,746)	Finding 1
Total salaries and benefits	336,603	189,237	(147,366)	
Total direct costs	336,603	189,237	(147,366)	
Indirect costs	16,426	9,235	(7,191)	Finding 2
Total direct and indirect costs	353,029	198,472	(154,557)	
Less offsetting reimbursements	—	(31,604)	(31,604)	Finding 3
Total program costs	$ 353,029	166,868	$ (186,161)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 166,868		
July 1, 2003, through June 30, 2004				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 9,500	$ 10,125	$ 625	Finding 1
Pre-test and post-test coordination	276,767	186,519	(90,248)	Finding 1
Test administration	55,243	—	(55,243)	Finding 1
Reporting and recordkeeping	14,765	7,542	(7,223)	Finding 1
Total salaries and benefits	356,275	204,186	(152,089)	
Total direct costs	356,275	204,186	(152,089)	
Indirect costs	23,870	13,680	(10,190)	Finding 2
Total direct and indirect costs	380,145	217,866	(162,279)	
Less offsetting reimbursements	—	(33,359)	(33,359)	Finding 3
Total program costs	$ 380,145	184,507	(195,638)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 184,507		
Summary: July 1, 1997 through June 30, 2004				
Direct costs:				
Salaries and benefits:				
Training, policies, and procedures	$ 50,325	68,126	$ 17,801	
Pre-test and post-test coordination	1,463,483	1,253,227	(210,256)	
Test administration	294,810	—	(294,810)	
Reporting and recordkeeping	77,529	51,340	(26,189)	
Total salaries and benefits	1,886,147	1,372,693	(513,454)	
Total direct costs	1,886,147	1,372,693	(513,454)	
Indirect costs	119,218	91,822	(27,396)	

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference [1]
Summary: July 1, 1997 through June 30, 2004 (continued)				
Total direct and indirect costs	2,005,365	1,464,515	(540,850)	
Less offsetting reimbursements	—	(404,892)	(404,892)	
Total program costs	$ 2,005,365	1,059,623	$ (945,742)	
Less amount paid by the State		(922,966)		
Allowable costs claimed in excess of (less than) amount paid		$ 136,657		

[1] See the Findings and Recommendations section.

[2] Payments from funds appropriated under Chapter 724, Statutes of 2010 (Assembly Bill No. 1610).

Findings and Recommendations

FINDING 1—
Unallowable salaries and benefits

The district claimed $1,886,147 in salaries and benefits for the audit period. We found that $513,454 in salaries and benefits are unallowable. The costs are unallowable primarily because the district claimed unsupported and ineligible costs.

The following table summarizes the unallowable salaries and benefits by fiscal year and reimbursable component:

	Fiscal Year							
Reimbursable Components	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	Total
Salaries and benefits:								
Training, policies, and procedures	$ 6,088	$ 3,789	$ 4,103	$ 1,398	$ 1,367	$ 431	$ 625	$ 17,801
Pre-test and post-test coordination	58,244	12,076	15,449	(55,746)	(61,817)	(88,214)	(90,248)	(210,256)
Test administration	(29,687)	(31,777)	(32,878)	(44,636)	(47,752)	(52,837)	(55,243)	(294,810)
Reporting and recordkeeping	760	(1,307)	(1,407)	(4,921)	(5,345)	(6,746)	(7,223)	(26,189)
Audit adjustment	$ 35,405	$ (17,219)	$ (14,733)	$ (103,905)	$ (113,547)	$ (147,366)	$ (152,089)	$ (513,454)

Unsupported, ineligible, and underclaimed hours

The district claimed hours based on its fiscal year (FY) 2001-02 time study of the Standardized Testing and Reporting (STAR) program. The district provided time records to support the time study's result. The district used the results of the FY 2001-02 time study and inflated (or deflated) the results based on the number of students tested, and testing time, for each fiscal year. We reconciled claimed employee hours to the time logs provided by the district. Our audit found instances of ineligible hours, including the district claiming training hours that exceeded the one-time per employee requirement allowed by the program's parameters and guidelines, and hours claimed for a charter school. In addition, in some instances we allowed hours supported by the time logs in excess of hours claimed.

The following table summarizes the salaries and benefits that resulted from unsupported, ineligible, and underclaimed hours by fiscal year and reimbursable component:

	Fiscal Year							
Reimbursable Components	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	Total
Salaries and benefits:								
Training, policies, and procedures	$ 6,088	$ 6,770	$ 7,276	$ 6,559	$ 7,235	$ 7,602	$ 8,183	$ 49,713
Pre-test and post-test coordination	58,244	66,729	73,515	39,489	46,522	44,126	48,973	377,598
Test administration	(29,687)	(31,777)	(32,878)	(44,636)	(47,752)	(52,837)	(55,243)	(294,810)
Reporting and recordkeeping	760	998	1,046	(1,138)	(1,043)	(1,448)	(1,593)	(2,418)
Audit adjustment	$ 35,405	$ 42,720	$48,959	$ 274	$ 4,962	$(2,557)	$ 320	$130,083

Reimbursable percentages

The district's time record forms used in documenting the FY 2001-02 time study instructed staff members to record hours worked performing reimbursable activities for the STAR program. The STAR program consists of the following four tests:

1. California Standards Tests (CST)
2. Stanford Achievement Test Series, Ninth Edition (SAT-9, or CAT/6 for FY 2002-03)
3. Spanish Assessment of Basic Education, Second Edition (SABE/2)
4. California Alternate Performance Assessment (CAPA)

The program's parameters and guidelines for the mandated STAR program allow the costs of only the SAT-9 (CAT/6) and SABE/2 tests. The CST and CAPA tests are not reimbursable because they were not pled in the test claim that created this mandate.

The time records identified the applicable sections of the parameters and guidelines, and contained language that was similar to the reimbursable activities section of the parameters and guidelines. However, the time records contained no guidance that the time claimed should be limited to only two of the four tests.

We asked the district for the specific instructions provided to employees in preparing the time records, and if certain tests were to be included or excluded on the time documentation. The district did not provide any additional documentation beyond the FY 2001-02 time record forms.

To segregate reimbursable costs, we determined the percentages of the tests that related to the mandate based on the number of tests published on the California Department of Education (CDE) STAR website. The reimbursable percentages represented the ratio of mandated tests over all STAR tests administered in the district. We applied the reimbursable percentages to allowable costs. The reimbursable percentages for mandated costs were as follows: 75.67% for FY 1998-99, 75.51% for FY 1999-2000, 63.41% for FY 2000-01, 61.64% for FY 2001-02, 56.65% for FY 2002-03, and 57.26% FY 2003-04.

To calculate allowable salaries and benefits, we multiplied supported costs for all four STAR tests by allowable productive hourly rates (PHR) and reimbursable percentages for the entire audit period. We concluded that the district claimed $643,537 in salaries and benefits that were not related to the mandate.

The following table summarizes the unallowable salaries and benefits not related to the mandate by fiscal year and reimbursable activities.

	Fiscal Year						
Reimbursable Components	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	Total
Salaries and benefits:							
Training, policies, and procedures	$ (2,981)	$ (3,173)	$ (5,161)	$ (5,868)	$ (7,171)	$ (7,558)	$ (31,912)
Pre-test and post-test coordination	(54,653)	(58,066)	(95,235)	(108,339)	(132,340)	(139,221)	(587,854)
Test administration	-	-	-	-	-	-	-
Reporting and recordkeeping	(2,305)	(2,453)	(3,783)	(4,302)	(5,298)	(5,630)	(23,771)
Audit adjustment	$ (59,939)	$ (63,692)	$ (104,179)	$ (118,509)	$ (144,809)	$ (152,409)	$ (643,537)

The parameters and guidelines (section V.A.1, Claim Preparation and Submission – Direct Cost Reporting – Salaries and Benefits) state:

> 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.

The parameters and guidelines (section VI.A, Supporting Data – Source Documents) state that all incurred costs claimed must be traceable to source documents that show evidence of the validity and relationship to the reimbursable activities.

The parameters and guidelines (section IV.A, Reimbursable Activities – Training, Policies, and Procedures) state:

> Reviewing the requirement of the STAR Program and conducting or attending training sessions. Increased costs for substitute teacher time during the school day or for teacher stipends to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. However, the time the teacher spends to attend training sessions during that teacher's normal classroom hours is not reimbursable. (One-time activity per employee per test site)

Recommendation

No recommendation is applicable for this finding, as the STAR Program is no longer mandated.

District's Response

> With regard to reimbursable percentages, the SCO states on page 10 of the draft audit report: "We asked the district for specific instructions provided to the employees in preparing the time records, and if certain tests were to be included, or excluded, on the time documentation. The district did not provide any additional documentation beyond the FY 2001-02 time record forms." First, the District's Time Cards reference those portions of the applicable Parameters and Guidelines which address, in a footnote, what tests are included under the mandate. The time cards do not replicate every sentence in the Parameters and Guidelines; they include and incorporate them by reference. The SCO's preference to have a specific reference on the Time Card is not a requirement under the Parameters and Guidelines. Neither is documentation of Time Card training.

Second, the SCO's "percentage allowable" assumes that every employee ignored the Parameters and Guidelines referenced on their timesheet-an unsupported and implausible conclusion. The mere volume of KHSD employees involved in implementing the STAR mandate necessitates the conclusion that some (if not most) employees would in fact have read the Parameters and Guidelines and recorded time spent for just those tests referenced in the relevant Parameters and Guidelines footnote, even in the assumed absence of proper direction by our Test Director. Correspondingly, there is no test work performed or inquiries with actual employees to support the SCO's conclusion that 0% of employees read the Parameters and Guidelines or complied with same in Time Card preparation.

Third, the SCO has applied the "Percentage Disallowed" to all activities, even though some activities would not scale with additional tests. For instance, the "Attend the District STAR Training Workshop" line item would not scale up or down with the volume of tests being conducted. Applying a flat percentage of tests to every line item on every time sheet, without analysis of whether those items of time reported would increase or decrease depending on the number of tests provided, is arbitrary and capricious, incorrect and overstates the disallowed costs that would otherwise have been reported, even without the presence of the other errors noted above.

Finally, contrary to the SCO's position, nothing hinders the SCO from auditing claims after being filed. The field auditor was informed that the Claiming Instructions and Parameters and Guidelines were given to the District-wide Testing Director for use in drafting the Time Cards format. These Time Cards were then used at the site level to record time. The field auditor then asked to speak to the Testing Director and was informed that Testing Director had long since retired.

The relevant audit finding specifically highlights lack of access to this additional information as the basis for the large disallowed costs on this point. Yet, during the District's exit conference, the District asked the SCO if it could be permitted to locate the retired Testing Director to provide this additional information to the SCO-thus addressing the relevant audit finding and related reductions. In a written response, however, the SCO indicated that access to the Testing Director would not change the subject audit finding. In sum, the SCO has reached an audit finding on the basis the District did not provide access to the Testing Director, while at the same time the SCO has denied the District the opportunity to address the subject finding by locating the District's retired Testing Director to provide a first-hand account of the training. The SCO's position is unreasonable and improper, and reductions based upon the SCO's subject finding and reasoning for same should be rescinded.

SCO's Comments

Our finding and recommendation are unchanged.

Based on the documentation provided, we found that the district did not support its assertion that the time records recorded only the time related to the portion of the STAR program costs reimbursable under the legislatively mandated program. While the time records do make references to sections in the parameters and guidelines related to various reimbursable activities, we found no evidence that those time records

were only to be used to document the time spent on reimbursable activities of the two allowable tests (SAT-9/CAT/6 and SABE/2). As discussed in the finding, the time records identified the applicable sections of the parameters and guidelines, and contained language that was similar to the reimbursable activities sections of the parameters and guidelines. The time records did not make any reference to the parameters and guidelines and the modified language did not clarify that time claimed should be limited to only two of the four STAR tests.

The district also stated that it would be implausible that every employee ignored the parameters and guidelines referenced on their timesheet. The issue is not whether or not the employees ignored the parameters and guidelines while completing the time records. Rather, the issue is that the district did not provide documentation to show that the time records were only for the two allowable tests.

The district also believes that is incorrect to apply a "flat percentage of tests" to items such as "Attend the District STAR Training Workshop," without consideration of whether or not those items would increase or decrease depending on the number of tests provided. The district's own time records list STAR training as a reimbursable activity, but they do not include detail showing the topics discussed during the STAR training. As highlighted above, not all STAR tests are reimbursable, just as not all of the STAR training would have been conducted only to discuss the SAT-9/CAT/6 and SABE/2 tests. We believe that applying a flat percentage is a reasonable means to determine the appropriate percentage of allowable costs for a reimbursable activity.

The district stated that the SCO indicated in a written response that "access to the Testing Director would not change the subject audit findings." In reference to this statement, we indicated that "a declaration submitted, by itself, 12 years after the last fiscal year claimed would not change our audit adjustments." We would consider the declaration if the district is able to provide corroborating documentation supporting assertions made in it.

FINDING 2—Overstated indirect costs

The district claimed $119,218 in indirect costs for the audit period. Our audit found that $91,822 is allowable and $27,396 is unallowable. The unallowable indirect costs totaling a net amount of $31,140 occurred as a result of the unallowable direct cost adjustments identified in Finding 1. The district also understated indirect costs totaling a net amount of $3,744. The understated costs occurred because the district erroneously claimed incorrect indirect cost rates in fiscal years 1997-98 and 1998-99.

The following tables summarize the indirect cost rate variances and indirect cost calculations by fiscal year:

	Fiscal Year	
	1997-98	1998-99
Indirect cost rates:		
Allowable indirect cost rate	9.09%	6.85%
Claimed indirect cost rate	7.38%	6.91%
Indirect rate adjustments	1.71%	(0.06)%

	Fiscal Year							
	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	Total
Indirect costs:								
Allowable direct costs	$ 225,503	$ 186,420	$ 196,379	$ 180,539	$ 190,429	$ 189,237	$ 204,186	$ 1,372,693
times allowable indirect rate	9.09%	6.85%	5.67%	6.98%	6.25%	4.88%	6.70%	
Allowable indirect costs	$ 20,498	$ 12,770	$ 11,135	$ 12,602	$ 11,902	$ 9,235	$ 13,680	91,822
Less claimed indirect costs	14,029	14,071	11,970	19,854	18,998	16,426	23,870	119,218
Audit Adjustment	$ 6,469	$ (1,301)	$ (835)	$ (7,252)	$ (7,096)	$ (7,191)	$ (10,190)	$ (27,396)

The parameters and guidelines (section V.B.) state:

> School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Recommendation

No recommendation is applicable for this finding, as the STAR Program is no longer mandated.

SCO's Comments

The district did not respond to this finding.

FINDING 3—Unreported offsetting reimbursements

The district did not report offsetting reimbursements for the audit period. We found that the district understated offsetting reimbursements totaling $404,892. For the audit period, the district received $540,610 of annual STAR apportionments from California Department of Education (CDE) and did not properly account for the mandate related portion of annual STAR apportionments it received from the CDE.

We calculated the unreported reimbursement by verifying the amounts of annual STAR apportionments received by the district, and multiplying the reimbursable ratio of mandated tests to the number of all STAR tests administered (as identified in Finding 1).

We concluded that the mandated portion of annual STAR apportionments received by the district was $404,892.

The following table summarizes the unreported offsetting reimbursement calculation by fiscal year:

	Fiscal Year							
	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	Total
Offsetting reimbursements:								
CDE apportionments	$ (126,518)	$ (151,360)	$ (45,679)	$ (50,421)	$ (52,585)	$ (55,788)	$ (58,259)	$ (540,610)
Mandate-related percentage	100%	75.67%	75.51%	63.41%	61.64%	56.65%	57.26%	
Mandate-related apportionments	(126,518)	(114,534)	(34,492)	(31,972)	(32,413)	(31,604)	(33,359)	$ (404,892)
Claimed CDE apportionments	-	-	-	-	-	-	-	-
Audit adjustment	$ (126,518)	$ (114,534)	$ (34,492)	$ (31,972)	$ (32,413)	$ (31,604)	$ (33,359)	$ (404,892)

The parameters and guidelines (section VII) state:

> Any offsetting savings 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 received from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the claim.

Recommendation

No recommendation is applicable for this finding, as the STAR Program is no longer mandated.

District's Response

> STAR Program revenue received by the District for the years 1997-98 through 2003-04 was used by the SCO to offset claims filed. The SCO considered these funds to have been payments for the mandated costs as evidenced by their use of the payments as offsetting the District's claimed costs. This should have triggered the three (3) year window to audit the mandate. (Gov. Code, § 17558.5, subd. (a).) The SCO appears to want to have it both ways, i.e., to use prior payments as offsetting the District's claims, while also having an effectively unlimited window in which to audit the District's claims. This unlimited window is arbitrary and capricious, unreasonable, and improper, and under the draft audit report results in significant and unavoidable harm to the District's ability to respond to extremely tardy audits by the SCO, as highlighted below.

SCO's Comments

Our finding and recommendation are unchanged.

Funds appropriated through the annual Budget Act for the STAR Program do not constitute legislatively mandated payments, but are instead an offset against total claim amounts, consistent with the program's statement of decision and parameters and guidelines.

Payments toward a legislatively mandated school program are specifically identified in the Budget Act, e.g., "For local assistance, Department of Education (Proposition 98), for reimbursement, in

accordance with the provisions of Section 6 of Article XIII B of the California Constitution or Section 17561 of the Government Code, of the costs of an existing program mandated by statute or executive order, for disbursement by the Controller for claims for costs incurred during . . ..”

OTHER ISSUE—Level of Documentation Requested by the SCO

The district’s response included other comments related to the mandated cost claims. The district’s comments and SCO’s response are presented below.

District’s Response

> The District created and maintained the required documentation regarding the STAR mandate. Now, however, the SCO claims it needs a higher level of documentation that what was required or apparent to the District at the time the documentation was created. Indeed, it is impossible for the District to create contemporaneous documentation that was not required contemporaneous with the completion of mandated activities in the applicable Parameters and Guidelines now subject to audit, but which the SCO now states is necessary. Such a requirement constitutes an invalid, unenforceable underground regulation under the Administrative Procedure Act ("APA"). (See Clovis Unified Sch. Dist. v. Chiang (2010) 188 Cal.App.4th 794, 799-800.)
>
> Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) If a rule constitutes a regulation under the APA "it may not be adopted, amended, or preleased except in conformity with basic minimum procedural requirements that include public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law." (Clovis Unified Sch. Dist., 188 Cai.App.4th at 800.) Any regulation that does not comply with these requirements may be declared invalid and thus unenforceable. (Id.)
>
> Here, the SCO's heightened requirements for documentation imposed on the District for the relevant audit years appear to constitute an underground regulation that is invalid and unenforceable. The District was not alerted or notified while implementing the STAR mandate that it would be required to submit this level of documentation. The SCO's attempt to impose such requirements on the District, without notice, comment, and review, violates the APA, regardless of whether such documentation requirement would be valid for purposes of the mandate for years occurring after any such requirement was added to the Parameters and Guidelines.
>
> Moreover, the documentation requirements that the SCO attempts to impose on the District's relevant claim years violates the prohibition against retroactive laws and regulations. That is, SCO's documentation requirement is a retroactive rule imposing new legal consequences for past events. Generally, regulations "operate prospectively only." *(Sierra Pacific Industries v. Workers' Compensation Appeals Bd.* (2006) 140 Cal.App.4th 1498, 1505.) Whether a regulation or rule like the SCO's documentation requirements operates retroactively depends

> in part on whether it is procedural or substantive. *(Brenton v. Metabolife Intern., Inc.* (2004) 116 Cal.App.4th 679, 709.) If a regulatory "change is *substantive* because it would impose new, additional or different liabilities based on past conduct, courts are loath to interpret it as having retrospective application." *(Id.)* A documentation requirement that acts as prerequisites for reimbursements and imposes new or different consequences for past events is substantive in nature and, therefore, cannot lawfully be applied. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 503-05, & fn. 7; *University of Iowa Hospitals & Clinics v. Shalala* (8th Cir. 1999) 180 F.3d 943, 946-52.)

SCO's Comments

During this audit, we did not request that the district "create contemporaneous documentation." Rather, we asked if the district had any other support beyond the time records previously provided.

The program's parameters and guidelines require the district to claim only reimbursable activities and we have the responsibility to determine, based on the district's documentation, if those costs are supported. In this instance, this district's documentation did not show that the time records recorded time spent on only the two allowable tests.

Attachment—
District's Response to
Draft Audit Report

KERN HIGH SCHOOL DISTRICT

BOARD OF TRUSTEES
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Scott Cole, Ed.D.
Associate Superintendent, Business

April 24, 2015

Jim L. Spano
Chief, Mandated Costs Audits Bureau
State Controller's Office – Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

Re: Comments on Draft Audit Report: Standardized Testing and Reporting Program

Dear Mr. Spano:

The Kern High School District ("District") acknowledges receipt of the Draft Audit Report of the State Controller's Office ("SCO") on the Standardized Testing and Reporting Program ("STAR") mandate. The District disagrees with the SCO's findings. The draft report and associated disallowed costs are incorrect and improper on several bases, as described in detail below.

Finding 1: Unallowable Salaries and Benefits

With regard to reimbursable percentages, the SCO states on page 10 of the draft audit report: "We asked the district for specific instructions provided to the employees in preparing the time records, and if certain tests were to be included, or excluded, on the time documentation. The district did not provide any additional documentation beyond the FY 2001-02 time record forms." First, the District's Time Cards reference those portions of the applicable Parameters and Guidelines which address, in a footnote, what tests are included under the mandate. The time cards do not replicate every sentence in the Parameters and Guidelines; they include and incorporate them by reference. The SCO's preference to have a specific reference on the Time Card is not a requirement under the Parameters and Guidelines. Neither is documentation of Time Card training.

Second, the SCO's "percentage allowable" assumes that every employee ignored the Parameters and Guidelines referenced on their timesheet—an unsupported and implausible conclusion. The mere volume of KHSD employees involved in implementing the STAR mandate necessitates the conclusion that some (if not most) employees would in fact have read the Parameters and Guidelines and recorded time spent for just those tests referenced in the relevant Parameters and Guidelines footnote, even in the assumed absence of proper direction by our Test Director. Correspondingly, there is no test work performed or inquiries with actual employees to support the SCO's conclusion that 0% of employees read the Parameters and Guidelines or complied with same in Time Card preparation.
Third, the SCO has applied the "Percentage Disallowed" to all activities, even though some activities would not scale with additional tests. For instance, the "Attend the District STAR Training Workshop" line item would not scale up or down with the volume of tests being conducted. Applying a flat percentage of tests to every line item on every time sheet, without analysis of whether those items of time reported would increase or decrease depending on the number of tests provided, is arbitrary and capricious, incorrect and overstates the disallowed costs that would otherwise have been reported, even without the presence of the other errors noted above.

Finally, contrary to the SCO's position, nothing hinders the SCO from auditing claims after being filed. The field auditor was informed that the Claiming Instructions and Parameters and Guidelines were given to the District-wide Testing Director for use in drafting the Time Cards format. These Time Cards were then used at the site level to record time. The field auditor then asked to speak to the Testing Director and was informed that Testing Director had long since retired.

The relevant audit finding specifically highlights lack of access to this additional information as the basis for the large disallowed costs on this point. Yet, during the District's exit conference, the District asked the SCO if it could be permitted to locate the retired Testing Director to provide this additional information to the SCO—thus addressing the relevant audit finding and related reductions. In a written response, however, the SCO indicated that access to the Testing Director would not change the subject audit finding. In sum, the SCO has reached an audit finding on the basis the District did not provide access to the Testing Director, while at the same time the SCO has denied the District the opportunity to address the subject finding by locating the District's retired Testing Director to provide a first-hand account of the training. The SCO's position is unreasonable and improper, and reductions based upon the SCO's subject finding and reasoning for same should be rescinded.

Finding 3: Understated Offsetting Reimbursements

STAR Program revenue received by the District for the years 1997-98 through 2003-04 was used by the SCO to offset claims filed. The SCO considered these funds to have been payments for the mandated costs as evidenced by their use of the payments as offsetting the District's claimed costs. This should have triggered the three (3) year window to audit the mandate. (Gov. Code, § 17558.5, subd. (a).) The SCO appears to want to have it both ways, i.e., to use prior payments as offsetting the District's claims, while also having an effectively unlimited window in which to audit the District's claims. This unlimited window is arbitrary and capricious, unreasonable, and improper, and under the draft audit report results in significant and unavoidable harm to the District's ability to respond to extremely tardy audits by the SCO, as highlighted below.

Level of Documentation Requested by SCO

The District created and maintained the required documentation regarding the STAR mandate. Now, however, the SCO claims it needs a higher level of documentation that what was required or apparent to the District at the time the documentation was created. Indeed, it is impossible for the District to create contemporaneous documentation that was not required contemporaneous with the completion of mandated activities in the applicable Parameters and Guidelines now subject to audit, but which the SCO now states is necessary. Such a requirement constitutes an invalid, unenforceable underground regulation under the Administrative Procedure Act ("APA"). (See *Clovis Unified Sch. Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799–800.)

Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) If a rule constitutes a regulation under the APA "it may not be adopted, amended, or preleased except in conformity with basic minimum procedural requirements that include public notice, opportunity for comment, agency response to comment, and review by the state Office of Administrative Law." (*Clovis Unified Sch. Dist.*, 188 Cal.App.4th at 800.) Any regulation that does not comply with these requirements may be declared invalid and thus unenforceable. (*Id.*)

Here, the SCO's heightened requirements for documentation imposed on the District for the relevant audit years appear to constitute an underground regulation that is invalid and unenforceable. The District was not alerted or notified while implementing the STAR mandate that it would be required to submit this level of documentation. The SCO's attempt to impose such requirements on the District, without notice, comment, and review, violates the APA,

regardless of whether such documentation requirement would be valid for purposes of the mandate for years occurring after any such requirement was added to the Parameters and Guidelines.

Moreover, the documentation requirements that the SCO attempts to impose on the District's relevant claim years violates the prohibition against retroactive laws and regulations. That is, SCO's documentation requirement is a retroactive rule imposing new legal consequences for past events. Generally, regulations "operate prospectively only." (*Sierra Pacific Industries v. Workers' Compensation Appeals Bd.* (2006) 140 Cal.App.4th 1498, 1505.) Whether a regulation or rule like the SCO's documentation requirements operates retroactively depends in part on whether it is procedural or substantive. (*Brenton v. Metabolife Intern., Inc.* (2004) 116 Cal.App.4th 679, 709.) If a regulatory "change is *substantive* because it would impose new, additional or different liabilities based on past conduct, courts are loath to interpret it as having retrospective application." (*Id.*) A documentation requirement that acts as prerequisites for reimbursements and imposes new or different consequences for past events is substantive in nature and, therefore, cannot lawfully be applied. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 503-05, & fn. 7; *University of Iowa Hospitals & Clinics v. Shalala* (8th Cir. 1999) 180 F.3d 943, 946-52.)

Based on the above, the SCO should reconsider its findings in the District's draft audit report regarding the STAR mandate. Should you have any questions regarding the District's disagreement with the SCO's findings, please contact me directly.

Sincerely,

Bob Dickson, CPA.CITP
Director of Fiscal Services
Kern High School District

cc: Dr. Bryon Schaefer, Superintendent
Scott Cole, Associate Superintendent, Business
Don McKenzie, Assistant Director of Budget
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