



Special Education Law Update

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REPEAL OF THE “HUGHES BILL” NO MORE FUNCTIONAL ANALYSIS ASSESSMENTS OR BEHAVIOR SUPPORT PLANS

In July 2013, Governor Brown signed into law Assembly Bill 86 (“AB 86”) which resulted in the repeal of the law known in California as the “Hughes Bill.” The Hughes Bill was repealed on July 1, 2013. Additionally, the California State Controller has provided claims instructions for school districts to access more than \$1 billion in retroactive reimbursement related to the Hughes Bill costs which were incurred by school districts that were mandated to provide those services during previous school years.

REPEAL OF THE HUGHES BILL

AB 86 was an omnibus budget trailer bill which added, amended and repealed many laws associated with California school districts. This Assembly Bill repealed the Hughes Bill which was a law implemented in 1993 in regard to behavioral intervention programs mandated for special education students who exhibit “serious behavioral problems.” AB 86 is closely aligned with the Federal law, the Individuals with Disabilities Education Act (“IDEA”) and its Regulations. AB 86 revises California Education Code sections 56520-56525 and requires that the California Superintendent of Public Instruction repeal Sections 3001(d)-(g) and (ab) and Section 3052 of Title 5 of the California Code of Regulations. Section 3052 was repealed as of October 16, 2013, but Section 3001(d)-(g) and (ab) have not been repealed yet.

CHANGES TO CALIFORNIA BEHAVIORAL INTERVENTIONS

Repeal of the Legal Requirement to Conduct a Functional Analysis Assessment (“FAA”):

School districts are no longer required to conduct FAAs and develop behavioral support plans under the Hughes Bill for students who exhibit serious behavior problems. Instead, school districts are now only required to follow the Federal law, which requires that individualized education program (“IEP”) teams must address a student’s behavior when it impedes a student’s

learning or the learning of others. Federal law does not specify how school districts must address that behavior, so district staff can use many mechanisms, such as development of behavioral goals, conducting behavioral assessments and develop positive behavioral interventions and supports to address students' behavioral issues. School districts now have discretion to make those recommendations, even to those students who exhibit serious behavior problems.

Limits on the Use of Emergency Interventions:

Emergency interventions may not be used in place of an appropriate behavioral intervention plan ("BIP") that is designed to change, replace, modify or eliminate a targeted behavior. AB 86 documents that emergency interventions may only be "used to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm" to the disabled student or to others and that the conduct "cannot be immediately prevented" by a lesser restrictive response. Emergency interventions shall not be used as a substitute for the systematic BIP that is designed to change, replace, modify or eliminate a targeted behavior. No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.

Continuing Prohibitions Against Some Emergency Interventions:

AB 86 continues to prohibit the use of both restraint and seclusion (except by agencies licensed and authorized to use such interventions - such as juvenile hall and the county jail). It also prohibits the use of interventions that are designed or likely to cause pain or that subject students to ridicule, humiliation and/or verbal abuse; that deprive students of any of their senses or deprive them of sleep, food, water or shelter or proper supervision; or that involve the use of noxious sprays or substances. Additionally, emergency interventions shall not include locked seclusion, unless it is in a facility otherwise licensed or permitted by State law to use a locked room; employment of a device, material or object that simultaneously immobilizes all four extremities, except that techniques such as prone containment may be used as an emergency intervention by staff trained in those procedures.

Notification of the Use of Emergency Interventions:

Schools districts must still notify the students' parent(s), guardian(s) and residential careprovider(s) (if appropriate) of the use of an emergency intervention or of serious property damage. This notification must take place within one school day of the incident. School districts must also immediately complete a behavioral emergency report ("BER") documenting the details of the incident and whether or not the student has a BIP. The BER must be submitted to a

designated responsible administrator and placed in the student's file. The difference in the new law is that the district does not have to provide the district's SELPA with the BER. However, Schools Legal Service recommends that the administrator that receives such BERs be well versed in special education law in order to recognize the information provided on the BERs.

IEP Meeting Must Still be Scheduled and Convened When an Emergency Intervention is Used:

When a student does not have a BIP in place, school districts continue to be required to schedule an IEP meeting within two school days. The IEP team must then review the BER to determine the necessity of a functional behavioral assessment ("FBA") and an interim plan, pending the develop of a BIP, if needed. Further, when a student already has a BIP in place, the IEP team must determine whether there is a need to modify the existing BIP when the incident involves a previously unseen serious behavior problem or whether the former BIP was an effective behavioral intervention.

Behavior Intervention Case Managers ("BICMS") are Eliminated:

School districts and SELPAs are no longer required to use a BICM when a BIP is being developed and implemented. Rather, AB 86 requires the California Superintendent of Public Instruction, Mr. Tom Torlakson, to explore whether current teacher credentialing requirements include sufficient training in appropriate behavioral inventions for these students. A school district can also use a Board Certified Behavior Analyst ("BCBA") for behavioral assessments and for behavioral intervention services.

Recommendation:

Schools Legal Service recommends that each local educational agency ("LEA") review its current policies, regulations and forms to ensure that the current legal requirements are contained within the current polices, regulations and forms. Additionally, LEAs can train administrators, teachers and staff to ensure consistency with the new legal requirements surrounding the repeal of the Hughes Bill.

RETROACTIVE REIMBURSEMENT ON USE OF THE HUGHES BILL

During its existence, the Hughes Bill imposed behavioral intervention requirements in excess of those found in the Federal law. However, the Hughes Bill did not provide the funding or a mechanism for school districts to recoup the additional mandated costs. On January 25, 2013, the Commission on State Mandates unanimously agreed to use a standardized formula to allow school

districts to recover mandated costs incurred between the 1993-1994 through 2011-2012 school years under California's Hughes Bill. For the 2012-2013 school year, school districts must claim and will be reimbursed for actual costs.

On July 24, 2013, the California State Controller issued claims instructions and claim forms to be used for retroactive payment for the school years from 1993-1994 through 2012-2013. We advise you to review this information as soon as possible. The deadline for reimbursement claims for school year 1993-1994 through 2011-2012 has passed; however, the deadline for reimbursement claims for the 2012-2013 school year is **February 18, 2014**.

Instructions and forms for the 2012-2013 are posted on the State Controller's website at:

www.sco.ca.gov

If you need assistance filing for the reimbursement, please contact Stacy Inman at Schools Legal Service.

Thank you for putting your trust in us.

— STACY L. INMAN

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

OFFICE OF THE STATE CONTROLLER
STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2013-17
BEHAVIORAL INTERVENTION PLANS

JULY 24, 2013

In accordance with Government Code (GC) sections 17560 and 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state-mandated cost programs. This document contains claiming instructions and forms that eligible claimants must use for filing claims for the Behavioral Intervention Plans (BIP) program. The Parameters and Guidelines (P's & G's) are included as an integral part of the claiming instructions.

On September 28, 2000, the Commission on State Mandates (CSM) adopted a Statement of Decision finding that regulations in Title 5, California Code of Regulations, sections 3001 and 3052, which implement Education Code section 56523, impose a reimbursable state-mandated program upon school districts and special education local plan areas (SELPAs) within the meaning of Article XIII B, section 6 of the California Constitution and GC section 17514.

Reimbursement based on the unit cost reasonable reimbursement methodologies (RRMs) applies to costs incurred beginning fiscal year 1993-94 and ending 2011-12, claimable under the BIP program 348. Beginning in fiscal year 2012-13, and each year thereafter, all reimbursable activities shall be based on actual costs.

Exception

There will be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

Eligible Claimants

With the exception of community colleges, any school district, as defined in GC section 17519 that incurs increased costs as a result of this mandate is eligible to claim for reimbursement. SELPAs, whose sole constituents are school districts and county offices of education (COEs), are also eligible. Charter schools are not eligible to claim reimbursement.

Reimbursement Claim Deadline

Claims for the **2012-13** fiscal year must be filed with the SCO by **February 18, 2014**, without a late penalty. For fiscal year **1993-94** through **2011-12** claims, refer to BIP program 348. **Claims filed more than one year after the filing date will not be accepted.**

Penalty

- **Initial Claims**

When filed within one year of the initial filing deadline, claims are assessed a late penalty of 10% of the total amount of the initial claim without limitation pursuant to GC section 17561, subdivision (d)(3).

- **Annual Reimbursement Claim**

When filed within one year of the annual filing deadline, claims are assessed a late penalty of 10% of the claim amount; \$10,000 maximum penalty, pursuant to GC section 17568.

Minimum Claim Cost

GC section 17564, subdivision (a), provides that no claim may be filed pursuant to Sections 17551 and 17561, unless such a claim exceeds one thousand dollars (**\$1,000**), provided that a county superintendent of schools may submit a combined claim on behalf of school districts within their county if the combined claim exceeds **\$1,000**, even if the individual school district's claim does not each exceed **\$1,000**. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement will be allowed except as otherwise allowed by GC section 17564. The county superintendent of schools will determine if the submission of the combined claim is economically feasible and be responsible for disbursing the funds to each school district. These combined claims may be filed only when the county superintendent of schools is the fiscal agent for the districts. A combined claim must show the individual claim costs for each eligible school district. All subsequent claims based upon the same mandate will only be filed in the combined form unless a school district provides a written notice of its intent to file a separate claim to the county superintendent of schools and to the SCO at least 180 days prior to the deadline for filing the claim.

Reimbursement of Claims

To be eligible for mandated cost reimbursement beginning July 1, 2012, only actual costs may be claimed. These 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 created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating: "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5.

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, these documents cannot be substituted for source documents.

Audit of Costs

All claims submitted to the SCO are subject to review to determine if costs are related to the mandate, are reasonable and not excessive, and if the claim was prepared in accordance with the SCO's claiming instructions and the P's & G's adopted by the CSM. If any adjustments are made to a claim, the claimant will be notified of the amount adjusted, and the reason for the adjustment.

On-site audits will be conducted by the SCO as deemed necessary. Pursuant to GC section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a claimant is subject to audit by the SCO no later than three years after the date the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for the SCO to initiate an audit will commence to run from the date of initial payment of the claim.

All documents used to support the reimbursable activities must be retained during the period subject to audit. If an audit has been initiated by the SCO during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. Supporting documents must be made available to the SCO on request.

Record Retention

All documentation to support actual costs claimed must be retained for a period of three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated or no payment was made at the time the claim was filed, the time for the Controller to initiate an audit will be from the date of initial payment of the claim. Therefore, all documentation to support actual costs claimed must be retained for the same period, and must be made available to the SCO on request.

Claim Submission

Submit a signed original Form FAM-27 and one copy with required documents. **Please sign the Form FAM-27 in blue ink and attach the copy to the top of the claim package.**

Mandated costs claiming instructions and forms are available online at the SCO's website: **www.sco.ca.gov/ard_mancost.html**.

Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivered by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

If you have any questions, you may e-mail **LRS DAR@sco.ca.gov** or call the Local Reimbursements Section at (916) 324-5729.

PARAMETERS AND GUIDELINES

California Code of Regulations, Title 5, Sections 3001 and 3052

Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

Behavioral Intervention Plans
CSM-4464

Period of reimbursement begins July 1, 1993

I. Summary of the Mandate

On September 28, 2000, the Commission on State Mandates (Commission) adopted its statement of decision finding that regulations in Title 5, California Code of Regulations, sections 3001 and 3052, which implement Education Code section 56523, impose a reimbursable state-mandated new program on school districts and special education local plan areas (SELPAs) 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 the following categories of reimbursable activities:

- SELPA plan requirements. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (j).)
- Development and implementation of behavioral intervention plans (BIPs). (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subds. (a), (c), (d), (e), and (f).)
- Functional analysis assessments. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subds. (b), (c), and (f).)
- Modifications and contingent BIPs. (Cal. Code of Regs., tit. 5, § 3052, subds. (g) and (h).)
- Development and implementation of emergency interventions. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (i).)
- Prohibited behavioral interventions. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052, subd. (l).)
- Due process hearings. (Cal. Code of Regs., tit. 5, § 3052, subd. (m).)

II. Eligible Claimants

School districts and county offices of education (COEs), as defined in Government Code section 17519, are eligible to claim reimbursement where specified below. SELPAs, whose sole constituents are school districts and COEs, are also eligible as specified below. Community colleges and charter schools are not eligible to claim reimbursement.

III. Period of Reimbursement

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim on September 28, 1994, establishing eligibility for reimbursement on or after July 1, 1993. Therefore, costs incurred pursuant to Code of Regulations, Title 5, sections 3001 and 3052, on or after July 1, 1993, are eligible for reimbursement under these parameters and guidelines.

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

- Reimbursement based on the unit cost reasonable reimbursement methodologies (RRMs) provided for in these parameters and guidelines applies to costs incurred beginning on July 1, 1993, and ending June 30, 2012.
- Actual costs for one fiscal year shall be included in each claim submitted beginning July 1, 2012.
- 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.
- Pursuant to Government Code section 17560(a), a claimant may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim for that fiscal year based on the RRM.
- If revised claiming instructions are issued by the State Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a claimant filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
- 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).
- There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement beginning July 1, 2012, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

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

A. One-Time Activities - SELPA Only.

The direct and indirect costs of labor, materials and supplies, contracted services, equipment and other capital assets, travel, and training incurred for the following mandate components are eligible for reimbursement on a one-time basis:

1. Preparing and Providing SELPA Procedures and Initial Training.

Preparing procedures for the SELPA local plan regarding the systematic use of behavioral intervention, for the training of behavioral intervention case managers and personnel involved with implementing behavioral intervention plans, for special training for emergency interventions, and for identification of approved behavioral emergency procedures.

B. On-Going Activities - SELPA Only.

The direct and indirect costs of labor, materials and supplies, contracted services, equipment and other capital assets, travel, and training incurred for the following mandate components are eligible for reimbursement on an on-going basis:

1. Training.

Providing and obtaining training in behavior analysis, positive behavioral interventions, and behavioral emergency interventions. Time spent by personnel who design and conduct the training and time spent by personnel who receive the training is reimbursable. Such personnel include behavioral intervention case managers and personnel involved with implementing behavioral intervention plans, conducting functional analysis assessments, or implementing emergency interventions.

2. Emergency Interventions.

Preparing reports on the number of Behavioral Emergency Reports to the California Department of Education (CDE) and Advisory committee on Special Education.

3. Due Process Hearings.

Preparing for, attending, and documenting and informing appropriate staff concerning the results of any mediation or due process hearing related to functional analysis assessments or the development or implementation of behavioral intervention plans.

C. On-going Activities - School Districts and COEs Only.

The direct and indirect costs of labor, materials and supplies, contracted services, equipment and other capital assets, travel, and training incurred for the following mandate components are eligible for reimbursement on an on-going basis:

1. Conducting Functional Analysis Assessments.

Providing notice to and obtaining written consent from parents to conduct functional analysis assessments; conducting functional analysis assessments; preparing written reports of assessment

results; providing copies of assessment reports to parents and the IEP Team; conducting IEP Team meetings to review assessment results.¹

2. Developing and Evaluating BIPs.

Participating in IEP Team meetings in which BIPs are developed, evaluated, or modified, or in which functional analysis assessment results are reviewed; preparing BIPs; and developing contingency plans for altering the procedures or the frequency or duration of the procedures. Providing copies of SELPA procedures on behavioral interventions and behavioral emergency interventions to parents and staff.

3. Implementing BIPs.

Implementing and supervising the implementation of BIPs; measuring and documenting the frequency, duration, and intensity of targeted behavior and effectiveness of the BIP. Costs of employing personnel with documented training in behavioral analysis including positive behavioral interventions (whether such personnel are new staff or existing staff) to serve as behavioral intervention case managers is reimbursable under this component.

4. Modifications to BIPs.

Providing notice to parents or parent representatives of the need to make minor modifications to the BIPs, meeting with parents to review existing program evaluation data; and developing minor modifications to BIPs with parents or parent representatives.

5. Emergency Interventions.

Employing emergency interventions; notifying parents and residential care providers after an emergency intervention is used; preparing and maintaining a Behavioral Emergency Report following the use of an emergency intervention; administrative review of Behavioral Emergency Reports; scheduling and conducting an IEP Team meeting to review a Behavioral Emergency Report and the need for a functional analysis assessment, interim BIP, or modification to an existing BIP.

6. Prohibited Interventions.

Training appropriate staff regarding the types of interventions that are prohibited under Title 5, California Code of Regulations section 3052(l).

7. Due Process Hearings.

Preparing for, attending, and documenting and informing appropriate staff concerning the results of any mediation or due process hearing related to functional analysis assessments or the development or implementation of BIPs.

V. Claim Preparation and Submission

In lieu of filing detailed documentation of actual costs, the Commission adopted a reasonable reimbursement methodology (RRM) to reimburse claimants for all *direct* and *indirect* costs of the reimbursable activities identified in Section IV. Reimbursable Activities of this document as authorized by Government Code sections 17557(b) and 17518.5. The RRM is the method of

¹ An IEP is an Individualized Education Program (Ed. Code § 56023 (Stats. 1993, ch. 1296 § 13.1 (AB 369))).

claiming from July 1, 1993 to June 30, 2012 only. Beginning July 1, 2012, eligible claimants will be reimbursed based on actual costs. Additionally, each reimbursement claim must be filed in a timely manner.

A. Reasonable Reimbursement Methodology For Costs Incurred from July 1, 1993 to June 30, 2012

The RRM for the mandated activities shall consist of three uniform cost allowances as follows:

1. RRM for One-time Activities - SELPA Only.

The RRM for the one-time activities shall be calculated as follows: Multiply the total number of SELPA ADA for the one fiscal year during which the one-time activities were performed, likely the 1993-94 fiscal year, by the relevant unit cost rate for one-time SELPA activities for that fiscal year. The unit cost rate for one time SELPA activities is \$.32818 for FY 2006-07. This unit cost rate shall be adjusted by the Implicit Price Deflator to the appropriate fiscal year during which the one-time activities were performed.

SELPA ADA figures shall be those found on the CDE website for AB 602, P2 ADA or a comparable source.

The State Controller's Office shall provide the correct unit cost rate for each fiscal year with each year's claiming instructions.

2. RRM for On-going Activities - SELPA Only - Training.

The RRM for the on-going activities shall be calculated as follows: Multiply the total number of SELPA ADA for the fiscal year by the relevant unit cost rate for on-going SELPA activities for the fiscal year. The unit cost rate for on-going SELPA activities is \$1.18702 for FY 2006-07. This unit cost rate shall be adjusted for each prior and subsequent year by the Implicit Price Deflator.

ADA figures shall be those found on the CDE website for AB 602, P2 ADA or a comparable source.

The State Controller's Office shall provide the correct unit cost rate for each fiscal year with each year's claiming instructions.

3. RRM for On-going Activities - School Districts and COEs.

The RRM for the on-going activities shall be calculated as follows: Multiply the total number of ADA per fiscal year by the relevant unit cost rate for on-going school district and COE activities for the fiscal year. The unit cost rate for ongoing school district and COE activities is \$9.45701 for FY 2006-07. This unit cost rate shall be adjusted for each prior and subsequent year by the Implicit Price Deflator.

ADA figures shall be those found on the CDE website for AB 602, P2 ADA or a comparable source.

The State Controller's Office shall provide the correct unit cost rate for each fiscal year with each year's claiming instructions.

B. Actual Cost Claiming Applicable to Ongoing Claims Beginning July 1, 2012

The following shall apply to all claims filed on or after July 1, 2012.

Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

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

5. Travel

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

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.

Indirect Cost Rates

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

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

Claimants must use the CDE approved indirect cost rate for the year that funds are expended.

VI. Record Retention

Pursuant to Government Code section 17558.5(a), a reimbursement claim for costs filed by a claimant pursuant to this chapter is subject to the initiation of an audit by the State 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 State 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. Pursuant to Government code section 17561(d)(2), the State Controller has the authority to audit the application of a reasonable reimbursement methodology. If an audit has been initiated by the State Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. Claimants must retain documentation that supports the application of the RRM, including ADA documentation.

VII. Offsetting Revenues and Other Reimbursements

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

The following offsetting revenues are identified, for purposes of the reimbursable activities approved in the test claim:

- Except as provided by Statutes 2001, chapter 203 (SB 982)², Item 6110-161-0001 of Section 2.00 of the annual Budget Act provides state funding for special education that is potentially offsetting from July 1, 1993 (the beginning of the period of reimbursement) until June 30, 2010. To the extent an eligible claimant applies these potentially offsetting revenues to the approved mandated activities during this time period, those funds shall be identified and deducted from the reimbursement claims filed on the basis of the RRM.
- Commencing with the 2010-11 fiscal year, and except as provided by Statutes 2001, chapter 203 (SB 982), and Statutes 2011, chapter 43, section 54 (AB 114) for fiscal years 2011-2012 and 2012-2013,³ state funding provided for purposes of special education pursuant to Item 6110-161-0001 of Section 2.00 of the annual Budget Act shall first be used to directly offset any mandated costs in this program. Except as provided in Statutes 2001, chapter 203 and Statutes 2011, chapter 43, funds received by an eligible claimant from this appropriation shall be identified and deducted from the reimbursement claims filed on the basis of the RRM, beginning in the 2010-2011 fiscal year.
- Except as provided by Statutes 2011, chapter 43, section 54 (AB 114) for fiscal years 2011-2012 and 2012-2013, Item 6110-161-0890 of Section 2.00 of the annual Budget Act, which provides for state pass-through allocation of federal funding for special education, constitutes potentially offsetting revenue beginning July 1, 1993 (the beginning of the period of reimbursement). To the extent an eligible claimant applies this potentially offsetting revenue to the approved mandated activities, those funds shall be identified and deducted from the reimbursement claims filed on the basis of the RRM.

VIII. State Controller's Claiming Instructions

Pursuant to Government Code section 17558(b), the State Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies

² SB 982 provided for \$100 million in augmentation of Line Item 6110-161-0001, beginning in 2001, and continuing in the annual budget acts, to provide for the *Special Education Mandated Costs* test claim (CSM 3986). That funding is intended exclusively, and by express priority, to fund the costs of the specified mandated programs identified in Education Code 56836.156, and therefore cannot be identified as potentially offsetting revenue for this mandate.

³ AB 114 earmarked a portion of funds appropriated in Item 6110-161-0001 and Item 6110-161-0890 for educationally related mental health services, including out-of-home residential services for emotionally disturbed pupils, required by the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to be exclusively available for these mental health services only for the 2011-2012 and 2012-2013 fiscal years. Thus, the funds identified in AB 114 cannot be used for purposes of the *BIPs* mandate in fiscal years 2011-2012 and 2012-2013.

and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

IX. Remedies before the Commission

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

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

X. Legal and Factual Basis for the Parameters and Guidelines

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

BEHAVIORAL INTERVENTION PLANS CLAIM FOR PAYMENT		For State Controller Use Only		PROGRAM
		(19) Program Number 00349 (20) Date Filed (21) LRS Input		349
(01) Claimant Identification Number		Reimbursement Claim Data		
(02) Claimant Name		(22) FORM 1, (04) A.1. (f)		
County of Location		(23) FORM 1, (04) B.1. (f)		
Street Address or P.O. Box		(24) FORM 1, (04) B.2. (f)		
City		(25) FORM 1, (04) B.3. (f)		
		Type of Claim		
	(03)	(09) Reimbursement <input type="checkbox"/>	(26) FORM 1, (04) C.1. (f)	
	(04)	(10) Combined <input type="checkbox"/>	(27) FORM 1, (04) C.2. (f)	
	(05)	(11) Amended <input type="checkbox"/>	(28) FORM 1, (04) C.3. (f)	
			(29) FORM 1, (04) C.4. (f)	
Fiscal Year of Cost	(06)	(12)	(30) FORM 1, (04) C.5. (f)	
Total Claimed Amount	(07)	(13)	(31) FORM 1, (04) C.6. (f)	
Less: 10% Late Penalty (refer to attached Instructions)		(14)	(32) FORM 1, (04) C.7. (f)	
Less: Prior Claim Payment Received		(15)	(33) FORM 1, (06)	
Net Claimed Amount		(16)	(34) FORM 1, (07)	
Due from State	(08)	(17)	(35) FORM 1, (09)	
Due to State		(18)	(36) FORM 1, (10)	
(37) CERTIFICATION OF CLAIM				
<p>In accordance with the provisions of Government Code Sections 17560 and 17561, I certify that I am the officer authorized by the school district, county office of education or special educational local plan area to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 of the Government Code.</p> <p>I further certify that there was no application other than from the claimant, nor any grant(s) or payment(s) received, for reimbursement of costs claimed herein; claimed costs are for a new program or increased level of services of an existing program; and claimed amounts do not include charter school costs, either directly or through a third party. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements.</p> <p>I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>				
Signature of Authorized Officer				
_____		Date Signed _____		
_____		Telephone Number _____		
_____		E-mail Address _____		
Type or Print Name and Title of Authorized Signatory				
(38) Name of Agency Contact Person for Claim				
_____		Telephone Number _____		
_____		E-mail Address _____		
Name of Consulting Firm / Claim Preparer				
_____		Telephone Number _____		
_____		E-mail Address _____		

PROGRAM 349	BEHAVIORAL INTERVENTION PLANS CLAIM FOR PAYMENT INSTRUCTIONS	FORM FAM-27
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- (01) Enter the claimant identification number assigned by the State Controller's Office.
- (02) Enter claimant official name, county of location, street or postal office box address, city, State, and zip code.
- (03) to (08) Leave blank.
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate Form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim as shown on Form 1 line (11). The total claimed amount must exceed \$1,000; minimum claim must be \$1,001.
- (14) Initial claims must be filed as specified in the claiming instructions. Annual reimbursement claims must be filed by **February 15**, or otherwise specified in the claiming instructions following the fiscal year in which costs were incurred. Claims filed after the specified date must be reduced by a late penalty. Enter zero if the claim was filed on time. Otherwise, enter the penalty amount as a result of the calculation formula as follows:
- Late Initial Claims: Form FAM-27 line (13) multiplied by 10%, without limitation; or
 - Late Annual Reimbursement Claims: Form FAM-27 line (13) multiplied by 10%, late penalty not to exceed \$10,000.
- (15) Enter the amount of payment, if any, received for the claim. If no payment was received, enter zero.
- (16) Enter the net claimed amount by subtracting the sum of lines (14) and (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., Form 1, (04) A.1. (f), means the information is located on Form 1, line (04) A.1., column (f). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 7.548% should be shown as 8. **Completion of this data block will expedite the process.**
- (37) Read the statement of Certification of Claim. The claim must be dated, signed by the agency's authorized officer, and must type or print name, title, date signed, telephone number and e-mail address. **Claims cannot be paid unless accompanied by an original signed certification. (Please sign the Form FAM-27 in blue ink and attach the copy of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the agency contact person for the claim. If claim was prepared by a consultant, type or print the name of the consulting firm, the claim preparer, telephone number, and e-mail address.

SUBMIT A SIGNED ORIGINAL FORM FAM-27 AND ONE COPY WITH ALL OTHER FORMS TO:**Address, if delivered by U.S. Postal Service:**

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 3301 C Street, Suite 700
 Sacramento, CA 95816

PROGRAM 349	BEHAVIORAL INTERVENTION PLANS CLAIM SUMMARY	FORM 1
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(01) Claimant	(02) Fiscal Year 20__ / 20__
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(03) Leave Blank

Direct Costs	Object Accounts					
(04) Reimbursable Activities	(a) Salaries and Benefits	(b) Materials and Supplies	(c) Contract Services	(d) Fixed Assets	(e) Travel and Training	(f) Total
A. One-Time Activities – SELPAs Only						
1. Preparing and Providing SELPA Procedures and Initial Training						
B. On-Going Activities – SELPAs Only						
1. Training						
2. Emergency Interventions						
3. Due Process Hearings						
C. On-going Activities – School Districts and County Offices of Education Only						
1. Conducting Functional Analysis Assessments						
2. Developing and Evaluating BIPs						
3. Implementing BIPs						
4. Modifications to BIPs						
5. Emergency Interventions						
6. Prohibited Interventions						
7. Due Process Hearings						
(05) Total Direct Costs						

Indirect Costs		
(06) Indirect Cost Rate	[Refer to Claim Summary Instructions]	%
(07) Total Indirect Costs	[Line (05)(f) – line (05)(d) - \$ <input style="width:50px;" type="text"/>] x line (06)	
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]	

Cost Reduction		
(09) Less: Offsetting Revenues (Attachment A)		
(10) Less: Other Reimbursements		
(11) Total Claimed Amount	[Line (08) - {(line (09) + line (10))}]	

PROGRAM 349	BEHAVIORAL INTERVENTION PLANS CLAIM SUMMARY INSTRUCTIONS	FORM 1
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year of costs.
- (03) Leave Blank.
- (04) For each reimbursable activity, enter the totals from Form 2, line (05), columns (d) through (h), to Form 1, block (04), columns (a) through (e), in the appropriate row. Total each row and enter the amount in column (f).
- (05) Total columns (a) through (f).
- (06) Enter the indirect cost rate from the California Department of Education approved indirect cost rate for the year that funds are expended.
- (07) From the Total Direct Costs, line (05)(f), deduct Total Fixed Assets, line (05)(d) and any other item excluded from indirect cost distribution base in accordance with CSAM Procedure 915. Enter zero if there are no exclusions. Multiply the result by the Indirect Cost Rate, line (06).
- (08) Enter the sum of Total Direct Costs, line (05)(f), and Total Indirect Costs, line (07).
- (09) If applicable, enter any revenue received by the claimant for this mandate from any state or federal source. Complete Attachment A detailing the reimbursement sources. Refer to the P's and G's Section VII, Offsetting Revenues and Other Reimbursements for more information.
- (10) If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds that reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) From Total Direct and Indirect Costs, line (08), subtract the sum of Offsetting Revenues, line (09), and Other Reimbursements, line (10). Enter the remainder on this line and carry the amount forward to Form FAM-27, line (13) for the Reimbursement Claim.

PROGRAM 349	BEHAVIORAL INTERVENTION PLANS ACTIVITY COST DETAIL	FORM 2
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(01) Claimant	(02) Fiscal Year 20__ / 20__
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(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

<p>A. One-Time Activities – SELPAs Only</p> <p><input type="checkbox"/> Preparing and Providing SELPA Procedures and Initial Training</p> <p>B. On-Going Activities – SELPAs Only</p> <p><input type="checkbox"/> Training</p> <p><input type="checkbox"/> Emergency Interventions</p> <p><input type="checkbox"/> Due Process Hearings</p>	<p>C. Ongoing Activities – School Districts and County Offices of Education Only</p> <p><input type="checkbox"/> Conducting Functional Analysis Assessments</p> <p><input type="checkbox"/> Developing and Evaluating BIPs</p> <p><input type="checkbox"/> Implementing BIPs</p> <p><input type="checkbox"/> Modifications to BIPs</p> <p><input type="checkbox"/> Emergency Interventions</p> <p><input type="checkbox"/> Prohibited Interventions</p> <p><input type="checkbox"/> Due Process Hearings</p>
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(04) Description of Expenses			Object Accounts				
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries and Benefits	(e) Materials and Supplies	(f) Contract Services	(g) Fixed Assets	(h) Travel and Training

(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: ___ of ___	
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PROGRAM 349	BEHAVIORAL INTERVENTION PLANS ACTIVITY COST DETAIL INSTRUCTIONS	FORM 2
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year for which costs were incurred.
- (03) Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 must be prepared for each applicable activity.
- (04) The following table identifies the type of information required to support reimbursable costs. To detail costs for the activity box checked in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, and travel expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated or no payment was made at the time the claim was filed, the time for the Controller to initiate an audit will be from the date of initial payment of the claim. Such documents must be made available to the SCO on request.

Object/ Sub object Accounts	Columns								Submit supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries and Benefits	Employee Name and Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked					
	Activities Performed	Benefit Rate		Benefits = Benefit Rate x Salaries					
Materials and Supplies	Description of Supplies Used	Unit Cost	Quantity Used		Cost = Unit Cost x Quantity Used				
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Cost = Hourly Rate x Hours Worked or Total Contract Cost			Copy of Contract and Invoices
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage				Cost = Unit Cost x Usage		
Travel and Training	Purpose of Trip Name and Title Departure and Return Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode					Total Travel Cost = Rate x Days or Miles	
	Employee Name/Title Name of Class		Dates Attended					Registration Fee	

- (05) Total line (04), columns (d) through (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the activity costs, number each page. Enter totals from line (05), columns (d) through (h) to Form 1, block (04), columns (a) through (e) in the appropriate row.

PROGRAM 349	BEHAVIORAL INTERVENTION PLANS DETAILED SUMMARY OF OFFSETTING REVENUES	ATTACHMENT A
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(01) Claimant	(02) Fiscal Year 20__/20__
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(03) FUNDING SOURCES (Refer to the P's & G's Section VII, Offsetting Revenues and Other Reimbursements)

A. Federal Program	
1.	
2.	
3.	
4.	
5.	
B. State Program	
1.	
2.	
3.	
4.	
5.	
C. Other Source Funds	
1.	
2.	
3.	
4.	
5.	

(04) TOTAL OFFSETTING REVENUES	
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