



Education Legal Alliance



Butte County SELPA
Butte County Special Education Local Plan Area



NOTICE TO LEAS

Re: Pending Settlement of the Behavioral Intervention Plans
[Hughes Bill] Mandated Cost Claim

This Notice is intended to inform all local educational agencies (“LEAs”) in California about their rights regarding the Behavioral Intervention Plans Mandated Cost Test Claim, claim CSM-4464, initiated September 28, 1994 by San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education (“Claimants”), and the subsequent Sacramento Superior Court case, case No. 03CS01432, regarding this same test claim (“the Claim”). For purposes of this Notice, LEAs include all school districts, county offices of education, special education local plan areas (“SELPAs”), and joint agencies composed of such organizations in the State of California. The Claim has significant fiscal implications for LEAs. For this reason, LEAs are advised to review this Notice and the attached Waiver with legal counsel before deciding whether to sign the Waiver.

In reviewing this Notice, please be aware of the following items:

1. This Notice and the attached Waiver apply only to the Behavioral Intervention Plans Mandated Cost Claim and claims arising from California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052, as those sections read on or before July 1, 2008, (collectively “the Hughes Bill Statute and Regulations”).
2. This Notice and the attached Waiver do not affect any rights any LEAs may have to file test claims with the Commission on State Mandates (“the Commission”) on any mandates created as a result of changes to state or federal statutes or regulations that occur after July 1, 2008.

A. What is the Behavioral Intervention Plans Mandated Cost Claim?

The Behavioral Intervention Plans Mandated Cost Claim is a fourteen-year effort by local school districts, county offices of education, and SELPAs to obtain reimbursement for costs associated with behavioral intervention plans required by the Hughes Bill Statute and Regulations under state law.

The California Constitution requires that whenever the Legislature mandates a new program or a higher level of service, the State must provide funds to reimburse local government for the actual costs of implementation, with certain exceptions. State law requires that the State shall reimburse each local agency for all unfunded costs mandated by the State. The Commission has the authority to hear and decide tests claims that local agencies file as a result of new laws passed by the Legislature and signed into law by the Governor. The legal framework and authority for the mandated claims reimbursement process is found at article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of title 2 of the California Code of Regulations.

The Behavioral Intervention Plans Mandated Cost Claim was initiated in 1994 when San Diego Unified School District, Butte County Office of Education, and San Joaquin County Office of Education filed test claim CSM-4464 asking the State to reimburse LEAs for the unfunded costs associated with behavioral intervention plans, as required by state law under the Hughes Bill

Statute and Regulations. Under the Commission's rules, test claims are treated like class actions, and therefore the Claim is applicable to all LEAs statewide.

B. What is the Outcome of the Behavioral Intervention Plans Mandated Cost Claim?

On September 28, 2000, after years of filings and hearings, the Commission adopted a Statement of Decision regarding CSM-4464 finding that the Hughes Bill Statute and Regulations imposed a reimburseable state mandate on school districts by requiring the following seven activities in excess of federal law: SELPA plan requirements, development and implementation of behavioral intervention plans, functional analysis assessments, modifications and contingent behavioral intervention plans, development and implementation of emergency interventions, prohibited behavioral intervention plans, and due process hearings. The settlement of the Special Education Mandated Cost Claim in 2000-01 explicitly omitted the Behavioral Intervention Plans Mandated Cost Claim. (Ed. Code § 56836.156(g).)

Subsequently, Claimants proposed parameters and guidelines for the CSM-4464 claiming process, but various disputes arose with the State and a final draft of the claiming parameters and guidelines was never adopted by the Commission. The parties attempted to settle without success and the matter reached a stalemate.

On September 26, 2003, the State's Department of Finance filed a lawsuit in the Sacramento Superior Court (Department of Finance v. Commission on State Mandates, Case No. 03CS01432) challenging the Commission's decision in CSM-4464. The State and the Claimants ("Parties") agreed to delay the proceedings before the Court in order to attempt to negotiate a settlement. The initial settlement negotiations were unsuccessful.

On October 4, 2007, pending reforms in the mandate process prompted the Parties to continue negotiations. The Parties began meeting to work on a mutually agreeable resolution.

A chief task in the settlement process was developing a statewide cost estimate for the claim. Claimants surveyed more than 20 SELPAs representing more than 10% of the public school students statewide. The State's Department of Finance staff reviewed copies of all survey returns and verified that the cumulative cost totals accurately reflected the SELPA data.

In May 2008, the Sacramento Superior Court notified the State that it must bring its case to trial by September 26, 2008, or be subject to dismissal under the state law which requires all matters to be brought to trial within five years. The Parties filed a stipulation with the Sacramento Superior Court agreeing to extend the five-year period pending this resolution.

C. What is the Outcome of the Settlement Negotiations?

The State and Claimants have negotiated a settlement agreement ("Agreement") which is contingent upon the following three events occurring:

1. On or before February 28, 2009, no less than 85% of all K-12 school districts, county offices of education (COEs), and SELPAs shall sign the Waiver, attached hereto as Exhibit A. In addition, the school districts and county offices of education signing Exhibit A must have served student populations accounting for no less than 92% of the second principal apportionment ("P-2") average daily attendance ("ADA") in the 2007-08 fiscal year.

2. The parties shall seek a superior court ruling that the settlement is final and binding on all LEAs, assuming implementing legislation is enacted. In the absence of such a ruling, the parties shall seek an alternative, mutually agreeable final and formal resolution of the dispute.
3. Legislation must be enacted appropriating the following funds for the settlement:
 - a. \$65 million as a permanent increase to the AB 602 base, commencing 2009-10, subject to COLA and ADA growth in subsequent years.
 - b. \$510 million retroactive payment in total for general fund use payable to school districts in \$85 million installments over six years, commencing 2011-12 and ending 2016-17, all payments to be based on 2007-08 P-2 ADA. The State may enlarge these installments, discharging the obligation more quickly if it so decides. These payments may be suspended in a year in which Test 3 of Proposition 98 is operative. If the payment is suspended in any year or years, it must be made in the year or years immediately following the designated six-year period or lesser period if the State has discharged its obligation prior to the end of the six years.
 - c. \$10 million lump sum retroactive payment for general fund use payable in 2009-10, divided as follows:
 - \$1.5 million to COEs based on December, 2007 county special education pupil count, with no county office of education receiving less than \$5000;
 - \$6.0 million to SELPAs based on December, 2007 special education pupil count, with no SELPA receiving less than \$10,000; and
 - \$2.5 million to San Joaquin County Office of Education for administrative costs incurred in pursuing the Claim.

By separate agreement among the Claimants, the \$2.5 million allocation to the San Joaquin County Office of Education will be used to pay for the administrative costs incurred to pursue the Claim from 1994 to the present.

The Parties intend that the legislation will be requested in early 2009 and enacted on an urgency basis prior to or concurrent with the Budget Act for the 2009-10 fiscal year. It is possible that non-substantive changes to the proposed legislation described above may occur with the consent of the parties.

D. What Rights Are Waived by LEAs Who Elect to Sign the Waiver?

Under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of title 2 of the California Code of Regulations, LEAs have the right to file mandated cost claims with the Commission on State Mandates. Further, under section 1542 of the Civil Code, a waiver does not extend to unknown claims. However, LEAs who sign this Waiver agree to give up certain of these rights as follows:

1. **Known Claims:** LEAs electing to sign the attached Waiver agree to waive their right to file or to otherwise pursue reimbursement claims for the mandated programs and services contained in the Behavioral Intervention Plans Mandated Cost Claim or any other known claim arising from California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and

3052, as those sections read on or before July 1, 2008. Further, LEAs signing the Waiver acknowledge that the amount needed to satisfy the State's minimum funding obligation under Proposition 98 shall not be increased by the retrospective payments required by the settlement and forever give up their right to contend otherwise.

2. **Unknown Claims:** LEAs electing to sign the attached Waiver also agree to waive their right to pursue any unknown mandated cost claim arising from California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052, as those sections read on or before July 1, 2008.
3. **Exemptions:** The Waiver does not prohibit LEAs from filing mandated cost claims to the extent that state or federal statutes or regulations are amended or added or changed in any way after July 1, 2008.

Of course, unless the three events take place which are set out in Section C above, the Waiver is not binding.

E. Where is More Detailed Information on the Settlement Available?

With the mailing of this notice all LEAs have been sent a copy of the Settlement and Release Agreement in this matter and a copy of the Proposed Draft Legislation. A review of these documents provides additional information. For more information or additional copies of these documents go to CSBA's website at:

<http://www.csba.org/LegislationAndLegal/Legal/ELAUpdates.aspx> under "Legal Resources"

or email Carol Cox at ccox@csba.org and Dick Hamilton at (916) 669-3270, e-mail rhamilton@csba.org.

PLEASE NOTE:

A copy of the Waiver is attached to this notice. The original Waiver (separately enclosed) should be signed and mailed, using the enclosed self-addressed envelope to:

Dick Hamilton, Associate General Counsel and Director
Education Legal Alliance
California School Boards Association
3100 Beacon Blvd.
West Sacramento, CA 95691

The signed Waiver must reach Mr. Hamilton on or before **February 28, 2009**.

In doing so you are indicating support for the Settlement and approval of the Waiver.

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WAIVER

This Waiver is entered into on _____[DATE] by
_____[NAME OF LEA], hereinafter "LEA,"
to fulfill one of the terms of the Settlement and Release Agreement for the Behavioral
Intervention Plans Mandated Cost Claim ("Agreement").

A. Known Claims

With respect to section 56523 of the California Education Code and the California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and section 3052 as those sections read on or before July 1, 2008, (collectively "the Hughes Bill Statute and Regulations"), LEA hereby knowingly and voluntarily waives the rights set forth under article XIII B, section 6, of the California Constitution, sections 17500 through 17630 of the California Government Code, and sections 1181 through 1189.11 of Title 2 of the California Code of Regulations. By signing this Waiver, LEA hereby acknowledges that LEA forever gives up its right to file any mandated cost claim regarding the Hughes Bill Statute and Regulations, and/or to pursue any filed claim regarding that statute and regulations, and/or to benefit from such a claim, including any claim regarding the following programs and services:

1. Special education local plan area plan requirements pursuant to California Code of Regulations, title 2, sections 3001, subdivision (c), and 3052, subdivision (j), as these sections read on July 1, 2008;
2. Development and implementation of behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c), (d), (e), and (f), and 3052, subdivisions (a), (c), (d), (e), and (f), as these sections read on July 1, 2008;
3. Functional analysis assessments pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (d) and (f), and 3052, subdivisions (b), (c), and (f), as these sections read on July 1, 2008;
4. Modifications and contingent behavioral intervention plans pursuant to California Code of Regulations, title 2, section 3052, subdivisions (g) and (h), as these sections read on July 1, 2008;
5. Development and implementation of emergency interventions pursuant to California Code of Regulations, title 2, sections 3001, subdivisions (c) and (d), and 3052, subdivision (i), as these sections read on July 1, 2008;

6. Prohibited behavioral intervention plans pursuant to California Code of Regulations, title 2, sections 3001, subdivision (d), and 3052, subdivision (l), as these sections read on July 1, 2008; and
7. Due process hearings pursuant to California Code of Regulations, title 2, section 3052, subdivision (m), as this section read on July 1, 2008.

LEA further acknowledges and concedes that the amount that is required to be appropriated for the purpose of satisfying the STATE's minimum funding obligation to LEAs pursuant to article XVI, section 8, of the California Constitution shall not be required to be increased, to any extent, by payment of the retrospective amounts described in Paragraph II.B. of the Agreement, and by signing this Waiver LEA forever gives up its right to contend otherwise.

B. Unknown Claims

1. LEA expressly waives the application of California Civil Code section 1542 regarding mandated cost claims under California Education Code section 56523 and California Code of Regulations, title 5, sections 3001, subdivisions (c), (d), (e), (f), and (aa), and 3052 as those sections read on or before July 1, 2008.
2. LEA certifies that it has read the following provisions of California Civil Code Section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. LEA understands that it is agreeing that California Civil Code section 1542 does not apply to this Waiver. LEA understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is:
 - a. LEA may have additional claims arising or occurring up to the date of this Waiver of which it is not now aware;
 - b. LEA may not make a further demand for any such claims;
 - c. LEA may not receive any benefit(s) from any such claims that may be filed by other claimants; and
 - d. LEA extends its waiver to include now unknown and/or later discovered claims.

C. Exemptions

LEA signs this Waiver with the understanding that it does not prohibit LEAs from filing mandated cost claims to the extent that the Hughes Bill Statute and Regulations are amended or added or changed in any way after July 1, 2008.

D. Advice of Attorney

LEA warrants and represents that it has reviewed and understands the Notice to LEAs Re: Pending Settlement of the Behavioral Intervention Plans Mandated Cost Claim ("the Notice") and this Waiver, and that it has been advised to seek legal advice from the attorney of its choice regarding the Notice and this Waiver. LEA acknowledges and represents either that it relied upon legal advice from its attorney in executing this Waiver or that it chose not to rely upon legal advice from its attorney in executing this Waiver. LEA further acknowledges and represents that, in executing this Waiver, it has not relied on any inducements, promises, or representations other than those stated in the Notice and Waiver.

E. Contingency of Waiver

LEA understands that this Waiver is binding only if the preconditions to the full implementation of the Settlement Agreement are satisfied. Those preconditions are set out in Section C of the Notice and Section II.A. of the Agreement, and are, in brief: (1) at least 85% of all LEAs sign this Waiver, including school districts and county offices of education who served student populations accounting for 92% of the P-2 2007-08 ADA; (2) the parties seek a superior court ruling that the settlement is final and binding on all LEAs; and (3) legislation is enacted appropriating the necessary funding and placing ongoing funding in statute.

Dated: _____

Signed: _____

Print or Type Name Above

Authorized Agent for: _____
Name of LEA

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