

Business and Noninstructional Operations

CLAIMS AND ACTIONS AGAINST THE DISTRICT

The Governing Board intends that the district's operations minimize risk, protect district resources, and promote the safety of students, staff, and the public. Any and all claims for money or damages against the district shall be presented to and acted upon in accordance with Board policy and administrative regulation.

(cf. 3530 - Risk Management/Insurance)
(cf. 5143 - Insurance)

Claims for money or damages not governed by the Government Claims Act (Government Code 810-996.6) or accepted by Government Code 905 shall be presented consistent with the manner and time limitations in the Government Claims Act, unless a procedure for processing such claims is otherwise provided by state or federal law. Such compliance is a prerequisite to any court action consistent with the provisions of Government Code 945.4.

This policy is intended to apply retroactively to any existing causes of action and/or claims for money and/or damages.

Roster of Public Agencies

The Superintendent or designee shall file the information required for the Roster of Public Agencies with the Secretary of State and the County Clerk. Any changes to such information shall be filed within 10 days after the change has occurred. (Government Code 53051)

This information shall include the name of the school district, the mailing address of the Board, and the names and addresses of the Board presiding officer, the Board clerk or secretary, and other members of the Board. (Government Code 53051)

Legal Reference (next page)

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Legal Reference:

EDUCATION CODE

35200 *Liability for debts and contracts*

35202 *Claims against districts; applicability of Government Code*

CODE OF CIVIL PROCEDURE

340.1 *Damages suffered as result of childhood sexual abuse*

GOVERNMENT CODE

800 *Cost in civil actions*

810-996.6 *Claims and actions against public entities*

53051 *Information filed with secretary of state and county clerk*

PENAL CODE

72 *Fraudulent claims*

COURT DECISIONS

City of Stockton v. Superior Court, (2007) 42 Cal. 4th 730

Connelly v. County of Fresno, (2006) 146 Cal.App. 4th 29

CSEA v. South Orange Community College District, (2004) 123 Cal.App.4th 574

CSEA v. Azusa Unified School District, (1984) 152 Cal.App.3d 580

Management Resources:

WEB SITES

California Secretary of State's Office: <http://www.sos.ca.gov>

Policy
adopted: April 14, 1997
revised: October 18, 2005
revised: June 9, 2009

VISALIA UNIFIED SCHOOL DISTRICT
Visalia, California

Business and Noninstructional Operations

CLAIMS AND ACTIONS AGAINST THE DISTRICT

Time Limitations

The following time limitations apply to claims against the district:

1. Claims for money or damages relating to a cause of action for death or for injury to person, personal property, or growing crops shall be presented to the Governing Board not later than six months after the accrual of the cause of action. (Government Code 905, 911.2)
2. Claims for money or damages as authorized in Government Code 905 and not included in item #1 above, including claims for damages to real property, shall be filed not later than one year after the accrual of the cause of action. (Government Code 905, 911.2)

Late Claims

Any person presenting a claim under item #1 above later than six months after the accrual of the cause of action shall present, along with the claim, an application to file a late claim. Such claim and application to file a late claim shall be filed not later than one year after the accrual of the cause of action. (Government Code 911.4)

If a claim under item #1 is filed late and is not accompanied by an application to file a late claim, the Board or Superintendent shall, within 45 days, give written notice that the claim was not filed timely and that it is being returned without further action.

The Board or Superintendent shall grant or deny the application to file a late claim within 45 days after it is presented. This 45-day period may be extended by written agreement of the claimant and the Board or Superintendent provided that such agreement is made before the expiration of the 45-day period. (Government Code 911.6)

The Board or Superintendent shall grant the application to file a late claim under any one of the following circumstances: (Government Code 911.6)

1. The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect and the district was not prejudiced in its defense of the claim by the failure to present the claim within the time limit.
2. The person who sustained the alleged injury, damage, or loss was a minor during all of the time specified for presentation of the claim.

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

3. The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time specified for presentation of the claim and the disability was the reason he/she failed to present the claim.
4. The person who sustained the alleged injury, damage, or loss died before the expiration of the time specified for the presentation of the claim.

If the application to present a late claim is denied, the claimant shall be given notice in the form set forth in Government Code 911.8. (Government Code 911.8)

If the Board or Superintendent does not take action on the application to file a late claim within 45 days, the application shall be deemed to have been denied on the 45th day unless the time period has been extended, in which case it shall be denied on the last day of the period specified in the extension agreement. (Government Code 911.6)

Delivery of Claims

A claim, any amendment thereto, or an application to present a late claim shall be deemed presented and received when delivered to the office of the Superintendent or deposited in a post office, subpost office, substation, or mail chute or other like facility maintained by the U.S. Government, in a sealed envelope properly addressed to the district office with postage paid or when otherwise actually received in the district office or by the Board secretary or clerk. (Government Code 915, 915.2)

Claim Form

Claims shall be submitted on the district claim form. The Board or Superintendent may return a claim not using the district's claim form and the claim may be resubmitted using the district's form. (Government Code 910.4)

Notice of Claim Insufficiency

The Superintendent shall review all claims for sufficiency of information.

If the claim is found insufficient or found not to satisfy the form requirements under Government Code 910.4, the Board or Superintendent may, within 20 days of receipt of the claim, either personally deliver or mail to the claimant, at the address stated in the claim or application, a notice stating with particularity the defects or omission in the claim. (Government Code 910.8, 915.4)

The Superintendent or Board shall not act upon the claim until at least 15 days after such notice is given. (Government Code 910.8)

CLAIMS AND ACTIONS AGAINST THE DISTRICT (continued)

Amendment to Claims

Claims may be amended within the time limits provided under the section entitled "Time Limitations" above or prior to final action by the Board, whichever is later, if the claim, as amended, relates to the same transaction or occurrence which gave rise to the original claim. (Government Code 910.6)

Action on Claims

Within 45 days after the presentation or amendment of a claim, the Board shall take action on the claim. This time limit may be extended by written agreement before the expiration of the 45-day period. If the 45-day period has expired, the time limit may be extended if legal action has not been commenced or barred by legal limitations. (Government Code 912.4)

The Board may act on the claim in one of the following ways: (Government Code 912.6)

1. If the Board finds that the claim is not a proper charge against the district, the claim shall be rejected.
2. If the Board finds that the claim is a proper charge against the district and is for an amount justly due, the claim shall be allowed.
3. If the Board finds that the claim is a proper charge against the district but is for an amount greater than is justly due, the Board shall either reject the claim or allow it in the amount justly due and reject it as to the balance.
4. If legal liability of the district or the amount justly due is disputed, the Board may reject or compromise the claim.

If the Board allows the claim in whole, or in part, or compromises the claim and the claimant accepts the amount allowed or offered to settle the claim, the Board may require the claimant to accept it in settlement of the entire claim. (Government Code 912.6)

The Superintendent or designee shall transmit to the claimant written notice of action taken or of inaction which is deemed rejection. The notice shall be in the form set forth in Government Code 913 and shall either be personally delivered or mailed to the address stated in the claim or application. (Government Code 913, 915.4)

Regulation **VISALIA UNIFIED SCHOOL DISTRICT**
approved: April 14, 1997
revised: September 19, 2005 – Board Policy Committee
revised: May 18, 2009 – Board Policy Committee

Visalia, California

JPA MEMBER DATE STAMP WHEN RECEIVED: _____

VISALIA UNIFIED SCHOOL DISTRICT

1. NAME OF CLAIMANT: _____ AGE: _____

2. RESPONSIBLE PARENT/GUARDIAN: _____

NAME OF OTHER PERSON FOR LEGAL NOTIFICATION: _____

LEGAL MAILING ADDRESS: _____

TELEPHONE NO. () _____

3. RESIDENCE ADDRESS OF CLAIMANT: _____

4. DATE OF ACCIDENT OR LOSS: _____ TIME OF DAY: _____

5. LOCATION OF ACCIDENT: _____

6. PLEASE DESCRIBE WHAT HAPPENED AND WHY YOU FEEL THE SCHOOL IS RESPONSIBLE: _____

(Use additional sheets if necessary)

7. THE NAME(S) OF PERSON(S) CAUSING THE ACCIDENT OR LOSS (IF ANY): _____

8. AMOUNT YOU ARE CLAIMING:

\$ _____ Medical Expense _____

\$ _____ Property Loss _____

\$ _____ Other _____

\$ _____ TOTAL CLAIM

9. NAMES AND ADDRESSES OF WITNESSES: _____

I declare under penalty of perjury that the above statements are true and correct.

Signature of Claimant or Representative

Date

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS: Every person who with intent to defraud, presents for allowance or payment any false or fraudulent claim against a public entity may be guilty of a felony. (See California Penal Code 72)

9/19/05
Exhibit 2

**NOTICE OF FAILURE TO USE DISTRICT'S CLAIM FORM
Government Code Section 910.4**

***Note: The following form should be modified to reflect district practice. Districts are strongly encouraged to consult district legal counsel in developing this form. ***

TO: [Claimant]
[Address]

RE: Claim Filed [date]

The claim you presented to the Superintendent or designee on [date] is being returned because it was not presented on the district's claim form as required by Government Code Section 910.4 and in accordance with Board policy and administrative regulation. Because the claim was not presented on the district's form, no action was taken on the claim.

You may resubmit your claim using the district's claim form, which may be obtained at the district office. Note that your claim must still comply with the time limits in the Government Code specified for filing of such claims. For further information, call [phone number].

September 19, 2005

Exhibit 3

**NOTICE OF INSUFFICIENCY
Government Code Section 910.8**

***Note: The following form should be modified to reflect district practice. Districts are strongly encouraged to consult district legal counsel in developing this form. ***

TO: [Claimant]
[Address]

RE: Claim Filed [date]

The claim presented by you on [date] fails to comply substantially with the requirements of Government Code Sections 910 and 910.2 or with the requirements of the district's claim form provided under Government Code Section 910.4. Specifically, your claim is insufficient because of the following defects or omissions:

Therefore, the claim is being returned to you without further action or consideration. If you wish to pursue this further, you should consult the Government Code or legal counsel.

The Governing Board will not take any action on the claim for a period of fifteen (15) days from the date of this notice.

Dated: _____

Signature

Typed Title of Officer

September 19, 2005

Exhibit 4

NOTICE OF FAILURE TO FILE IN A TIMELY MANNER
Government Code Section 911.3

TO: [Claimant]
[Address]

RE: Claim Filed [date]

***Note: Government Code 911.3 requires the following language. Districts should consult legal counsel before modifying this form. ***

The claim you presented to the Superintendent or designee on [date] is being returned because it was not presented within six months after the event or occurrence as required by law. See Sections 901 and 911.2 of the Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time is to apply without delay to [district name] for leave to present a late claim. See Sections 911.4 to 912.2, inclusive, and Section 946.6 of the Government Code. Under some circumstances, leave to present a late claim will be granted. See Section 911.6 of the Government Code.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

September 19, 2005

Exhibit 5

**DENIAL OF APPLICATION TO FILE A LATE CLAIM
Government Code Section 911.8**

TO: [Claimant]
[Address]

RE: Claim Filed [date]

Note: The following paragraph should be modified to reflect district practice.

Your application to file a late claim presented on [date] has been denied. The Governing Board has determined that your claim does not satisfy one of the four conditions listed in Government Code Section 911.6.

Note: Government Code 911.8 requires the following language. Districts should consult legal counsel before modifying this language.

WARNING

If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (claims presentation requirement). See Government Code Section 945.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

September 19, 2005

Business and Noninstructional Operations

CLAIMS AND ACTIONS AGAINST THE DISTRICT

**NOTICE OF ACTION TAKEN ON CLAIM
Government Code Section 913**

Note: Government Code 913 requires districts to provide written notice of action taken or of inaction deemed rejection on any claim for money or damages against the district. Government Code 913 requires that the following language be used in the notice. Districts should consult legal counsel before modifying this language.

Dear _____:

Notice is hereby given that the claim you presented to the [district name] on [date] was [rejected, allowed, allowed in the amount of \$ _____ and rejected to the balance, rejected by operation of law or other appropriate language, whichever is applicable] on [date of action or rejection by operation of law].

Note: If the claim is rejected either in whole or in part, Government Code 913 requires that the following warning be included.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this letter was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Dated: _____

Signature

Printed Name and Title of Officer

Approved: September 19, 2005

Revised: May 18, 2009

Exhibit 7

NOTICE OF REJECTION BY OPERATION OF LAW

(To be forwarded on governmental entity letterhead)

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Date:

To:

Re:

NOTICE IS HEREBY GIVEN that the related claim presented to the _____ was REJECTED BY OPERATION OF LAW on _____.

WARNING

Subject to certain exceptions, you have only (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. (See Government Code 945.6).

Please also be advised that, pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedure, the District will seek to recover all costs of defense in the event an action is filed in the matter and it is determined that the action was not brought in good faith and with reasonable cause.

Let it be known that the claim has been turned over

Sincerely,

September 19, 2005

Exhibit 8

NOTICE OF REJECTION OF CLAIM

(To be forwarded on governmental entity letterhead)

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Date: _____, ____, 2005

To:

Re: Claim of

NOTICE IS HEREBY GIVEN that the claim which was presented to the Visalia Unified School District on _____ was REJECTED on _____.

WARNING

Subject to certain exceptions, you have only (6) months from the date this notice was personally delivered or deposited in the mail to file a state court action on this claim. (See Government Code 945.6).

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Please also be advised that, pursuant to Sections 128.5 and 1038 of the California Code of Civil Procedure, the District will seek to recover all costs of defense in the event an action is filed in the matter and it is determined that the action was not brought in good faith and with reasonable cause.

Let it be known that the claim has been turned over to the District's claims administrator,

Sincerely,

September 19, 2005