

SixTen and Associates

Mandate Reimbursement Services

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April 30, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

MAY 04 2004

COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-51
Riverside Unified School District
California Public Records Act (K-14)

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 24, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The comments of CCC do not comply with this essential requirement¹. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be

¹ In fact, the comments of CCC were transmitted by an e-mail message which bore only the initials of the writer.

included in the Staff's analysis.

B. History of Response

The test claim was filed on June 23, 2003. By letter dated July 14, 2003, the Commission requested comments from public agencies.

By letter dated March 11, 2004², CCC advised the Commission that the Department of Finance had exercised some unexplained executive privilege on this mandate and had instructed CCC not to respond. A copy of that letter is attached hereto as Exhibit "A."

By e-mail transmission dated March 24, 2004, CCC advised the Commission that "[U]pon further reflection and discussion", its prior statement was "not accurate." Its comments went on to say:

"The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all governmental entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance."

C. These Comments Must Be Disregarded

The comment that the statute in question applies equally to all governmental entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code Section 17556. Therefore, it must be disregarded.

If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. As explained in City of Sacramento v. State of California (1990) 50 Cal.3d 51, the California Supreme Court explained:

"Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable in this respect from private employers.'" (Opinion, at page 67)

² The letter was actually transmitted by e-mail on March 16, 2004.

Therefore, a law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

A handwritten signature in black ink, appearing to read "KB Petersen". The signature is written in a cursive, flowing style.

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: California Public Records Act (K-14) 02-TC-51
CLAIMANT: Riverside Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 30, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

- | | |
|--|---|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> |
| <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____(Describe)</p> | <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/30/04, at San Diego, California.



Diane Bramwell

Commission on State Mandates

Original List Date: 7/14/2003 Mailing Information: Other
Last Updated:
List Print Date: 10/17/2003 **Mailing List**
Claim Number: 02-TC-51
Issue: California Public Records Act (K-14)

TO ALL PARTIES AND INTERESTED PARTIES:

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

Mr. Keith B. Petersen SixTen & Associates 5252 Balboa Avenue, Suite 807 San Diego, CA 92117	Claimant Representative Tel: (858) 514-8605 Fax: (858) 514-8645
Mr. Michael H. Fine Riverside Unified School District 3380 14th Street Riverside, CA 92501	Claimant Tel: (909) 788-1020 Fax:
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Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586	Tel: (909) 672-9964 Fax: (909) 672-9963

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EXHIBIT "A"
LETTER DATED MARCH 11, 2004

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE

1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
[HTTP://WWW.CCCCO.EDU](http://www.cccco.edu)



March 11, 2004

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Test Claim: California Public Records Act (K-14), 02-TC-51

Dear Ms. Higashi:

The Department of Finance has exercised privilege on this mandate and has instructed us not to respond.

Sincerely,

A handwritten signature in cursive script that reads "Frederick E. Harris".

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning