Exhibit D

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
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March 16, 2004

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MAR 16 2004

COMMISSION ON
STATE MANDATES

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

Re: CSM 02-TC-25
Los Rios Community College District, Claimant
Education Code sections 66281.5, 66721.5
Title 5, California Code of Regulations, sections 51006, 54626, 54805, 55005, 55202, 55530, 55534, 55750, 55752, 55753, 55758, 55759, 55760, 55761, 55762, 55764, 55765, 55800, 58102, 58104, 59404, 59410

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above Test Claim in light of the following questions addressing key issues before the Commission:

I. Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIIIB of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

II. Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

Claimant alleges that reimbursable mandated costs arise through two Education Code sections and twenty-two regulations adopted by the Board of Governors of the California Community Colleges. The basis of the claim is that these statutes and regulations require community college districts to "prepare, publish, and implement various policies, procedures and notices to students." The claimant also alleges that no "statutes, codes or regulations" required "the specific notices to students set forth in this test claim" prior to January 1, 1975.

We believe that the Claim should be rejected in its entirety.

Education Code section 66281.5

Claimant asserts that Education Code section 66281.5(b) requires community college districts to have and implement a written policy on sexual harassment; subsection (c) requires the written policy to indicate how to report sexual harassment; subsection (d) requires the written policy to be displayed. Claimant asserts that subsections (e), (f), and (g) require districts to provide the written policy to students and employees, and include it in publications that set forth institutional rules.

We note that although Claimant summarizes its Claim as involving notices to students, by including a description of subsection (f), it appears that Claimant also wishes reimbursement for providing copies of the sexual harassment policy to employees.

Claimant asserts that Education Code section 66281.5 was added to the Education Code by Statutes 1998. We agree that section 66281.5 was added by Statutes 1998. However, the Education Code previously included comparable requirements. We will not trace the rather convoluted history because the lineage will still commence after January 1, 1975.

The requirements of Education Code section 66281.5 substantially reflect the requirements of Title IX and Title VII, two federal laws that prohibit sex discrimination and sexual harassment by the districts. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Additionally, the requirements substantially reflect the requirements of California Government Code section 12950 that apply to California employers with 15 or more employees, including the District.

Title IX

Title IX of the Education Amendments of 1972 "is designed to eliminate . . . discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. . . ." (34 CFR § 106.1.) Community college districts generally choose to receive federal financial assistance and are therefore subject to the requirements of Title IX and its implementing regulations.

These implementing regulations appear at title 34, Code of Federal Regulations, part 106, sections 106.1 through 106.71. The Office for Civil Rights ("OCR") within the U.S. Department of Education enforces Title IX and the implementing regulations.

Title IX requires community college districts that receive federal financial assistance to adopt and to publish policies prohibiting sex discrimination. Districts must also "adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part." (34 C.F.R. §§106.8(b), 106.9.)

Sexual harassment is a form of sex discrimination that is prohibited by Title IX. In January, 2001, the OCR published its Title IX "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." As interpreted by the OCR, if a district's required sex discrimination policy does not specifically address sexual harassment, its policy and procedures will not be considered effective. (*Id.*, pp. 19-20.) The failure to have a policy and procedure prohibiting sex discrimination, including sexual harassment, violates the Title IX regulations even if no discrimination or harassment occurs. (*Id.*, p. 19.)

The sexual harassment policy and procedures must be distributed.

> "Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination." (*Id.*, at p. 14.)

OCR examines certain elements in determining whether a district's grievance procedures are prompt and equitable. One element is that students and employees are notified of the procedure, "including where complaints may be filed." (*Id.*, at p. 20.) The OCR notes that schools may ensure notice to students of their rights under Title IX by having copies of the procedures "available at various locations throughout the school or campus" and by "including a summary of the procedures in major publications issued by the school." (*Id.*, at p. 20.)

Based on the foregoing, by accepting federal financial assistance, community college districts obligate themselves to develop and disseminate sexual harassment policies, notify students and employees of the district as to how to file charges, and disseminate information concerning the prohibition to sexual harassment in major district publications.

Title VII

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. Title VII applies to community college districts in their role as employers. Title VII is implemented by regulations adopted by the federal Equal Employment Opportunity Commission ("EEOC"). Since 1980, the regulations have confirmed that sexual harassment violates Title VII. (Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.11.)

Sexual harassment is a violation of Title VII. "An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned." (29 C.F.R. § 1604.11(f).)

Government Code section 12950

Section 12950 is part of the Fair Employment and Housing Act ("FEHA"), and it covers virtually all California employers with 15 or more employees. Accordingly, section 12950 applies to Claimant independent of its status as a local government agency.

Section 12950 requires the Claimant to ensure a workplace free of sexual harassment, to display a poster that includes information on sexual harassment in a prominent and accessible location in the workplace (subdivision (a)), to distribute to employees an information sheet on sexual harassment that includes the definition and the internal complaint process (subdivision (b)), and such distribution is to be delivered in a manner that ensures distribution to each employee (subdivision (c)).

The FEHA has general application to nearly all California employers and does not impose unique requirements on local government agencies such as community college districts. Accordingly, the requirements to ensure a workplace free of sexual harassment, to have a sexual harassment complaint process, and to disseminate information concerning sexual harassment to employees already exist. Because the Claimant is already required by general law to do these things, these actions cannot be the basis of a claim for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Education Code section 66281.5 applies only to a community college district that "receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid." (Ed. Code, § 66270.)

The California Supreme Court recently addressed the circumstances that will give rise to a mandate for purposes of reimbursement. (*Department of Finance v. Commission on State Mandates (Kern High School)* (2003) 30 Cal.4th 727, hereinafter referred to as "*Kern High School.*") In that case, the Kern High School District sought reimbursement from the state for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that no mandates exist where a district voluntarily participates in a program.

The requirements of Chapter 4.5, of which section 66281.5 is a part, apply only when a postsecondary institution, including a community college district, accepts state financial assistance. The "burden" of compliance with section 66281.5 results from choosing the "benefit" of receiving state financial assistance. If Claimant accepted state financial assistance, it voluntarily accepted the attendant obligations under section 66281.5. Under *Kern High School* reimbursement is not available.

The Claimant has a number of obstacles with respect to section 66281.5. All or portions of the obligations described in section 66281.5 already apply to Claimant under Title IX or Title VII. Portions of the obligations described in section 66281.5 already apply to Claimant as a California employer under Government Code section 12950. Finally, if Claimant chose to accept state financial assistance, it is required to comply with Education Code section 66281.5. However, the

discretionary nature of this choice removes Claimant's ability to establish a mandate and the corresponding ability to obtain reimbursement for the costs of complying with section 66281.5.

Education Code section 66721.5

Claimant asserts that section 66721.5 requires its governing board to provide copies of the transfer core curriculum to students, and to publish the transfer core curriculum in the published class schedule each term or by alternative means.

Claimant asserts that section 66721.5 was added to the Education Code by Statutes 2000. We agree that section 66721.5 was added as alleged by Claimant.

The question under section 66721.5 is whether the section resulted in a new program or higher level of service within an existing program. Affected "programs" are those that "carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state." *(County of Los Angeles v. State of California, supra*, 43 Cal.3d at p. 56, emphasis added.)

There is no question but that public education is a program under the Constitution and mandate statutes. The question is whether publication of information about public education is a "program" under these provisions. In *County of Los Angeles v. Department of Industrial Relations*, the county claimed reimbursement for the costs of complying with elevator safety regulations in county buildings. In assessing whether a "program" was at issue, the Court found that:

> "In determining whether these [safety] regulations are a program, the critical question is whether the *mandated program* carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not 'a governmental function of providing services to the public.'" (*County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546, italics in original, emphasis added.)

The Court found that the government functions were operated in various buildings that were owned or leased by the County. The various government functions in the buildings were the programs; the elevators merely assisted people in getting to the programs, but they were not the programs themselves.

Similarly, while public education is a program of which transfer principles are a part, the means by which students learn of the transfer core curriculum is not the educational program. The notices to students required by Education Code section 66721.5 are more akin to the elevators that provide a means of obtaining the program services. Under *County of Los Angeles*, we submit that the notices do not constitute a program or increased services within an existing program and that there is no basis for reimbursement.

We also note that *Kern High School* pointed out that even if costs are incurred, costs may be modest and may be permissibly payable from funds that have already been obtained from the state. (*Department of Finance v. Commission on State Mandates (Kern High School), supra,* 30 Cal.4th at p. 747.) In this regard, Education Code section 66721.5 requires publication of the class schedule and permits numerous alternative means of distributing copies of the transfer core curriculum, with various attendant costs. Assuming that Claimant receives state assistance, we find nothing that prevents Claimant from using some of the funds it has already received from the state to satisfy the costs of publishing the transfer core curriculum and distributing the information to students.

In summary, we submit that the publication of information and the distribution of information to students is not a "program" under applicable case law. Even if a program is established, compliance costs appear to be minimal and payable from moneys already received from the state.

Based upon district end of the year expenditure information reported for the 2001-02 and 2002-03 fiscal years the district maintained a 6.66% and 5.31% reserve. A district's reserve is determined by dividing the unrestricted general fund ending balance by the unrestricted general fund expenditures. The reserve amount identified for each respective year is larger than the 5% prudent reserve recommended by the Chancellor's Office. The amount greater than the prudent reserve requirement could have been applied to fund these activities.

Regulations of the Board of Governors

Claimant identifies twenty-two regulations of the Board of Governors that it claims create mandates subject to cost reimbursements. Related issues are presented by a number of the regulations, which we discuss here by way of introduction.

1. Minimum Standards Created Pursuant to a Legislative Direction That Preceded 1975 Do Not Create New Programs or Higher Levels of Service

Many of the regulations identified by Claimant reflect minimum standards that have been adopted by the Board of Governors. A recent California Attorney General opinion is instructive on the interplay of minimum standard regulations and mandated costs.

The question posed to the Attorney General concerned minimum standards for juvenile justice facilities. The Attorney General concluded that where a statute enacted prior to 1975 required a body to establish minimum standards, revising those standards does not constitute a new program or increased level of an existing program.

The Attorney General considered a county's claim for reimbursement for bringing a juvenile justice facility into compliance with the minimum standards established by the Board of Corrections. The Attorney General concluded that the Board of Corrections had been required to set minimum standards for suitable juvenile facilities since at least 1915. Therefore, regulations adopted as minimum standards did not constitute a new program because

> "Counties have been required to maintain a 'suitable' place for the detention of minors since at least 1915. [Citations omitted.] Setting the minimum standards for what is 'suitable' does not create a 'higher' level of service--it has long been the level of service required of local agencies. [Citations omitted.]" (83 Ops.Cal.Atty.Gen. 111 (2000).)

The Attorney General considered the language of Welfare and Institutions Code section 210, which provides: "The Board of Corrections shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors." The term "suitable" is not part of the charge to the Board of Corrections in setting minimum standards. The term is implied.

Many regulations challenged in this Claim reflect Board of Governors' minimum standards. Based on the premise established by the Attorney General, the minimum standards of the Board of Governors do not constitute either a new program or a higher level of service if the Board of Governors was obligated to set minimum standards in these areas prior to 1975.

Pre-1975 Requirements

The Board of Governors' regulations are generally adopted pursuant to statutes that appear in the Education Code. Because the Education Code has been reorganized several times, it is important to trace statutory requirements to their original sources. This is not always an easy undertaking where the Education Code is concerned: "Entry into the Education Code is painful." (*Haase v. San Diego Community College District* (1980) 113 Cal.App.3d 913, 917.)

Most statutes that concerned public schools were first assembled in the School Code in 1929. Prior to that time, such statutes appeared in various codes. The School Code became the Education Code in 1943. The Education Code was reorganized in 1959 and again in 1976. Some sections that appear in today's Education Code show that they were added in 1976 - which date incorrectly suggests that they came into being after January 1, 1975, a critical date for purposes of finding a state mandate. However, for many sections, the 1976 date merely reflects the 1976 comprehensive reorganization of the Education Code. That date does not represent the date of initial legislative pronouncement. Accordingly, in analyzing a number of the cited regulations, we will demonstrate that the Legislature required the Board of Governors to establish minimum standards in the subject areas prior to 1975.

Under the theory articulated by the Attorney General in his 2000 opinion, no new programs or higher level of services are established by Board of Governors' regulations that set minimum standards if the Legislature required the adoption of minimum standards prior to 1975. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Education Code section 66700

Section 66700 requires the Board of Governors to prescribe minimum standards for the operation of the community colleges. Section 66700 was preceded by section 22650, that was enacted in 1960, when the State Board of Education had jurisdiction over the junior colleges in California.

(Stats. 1960, 1st Ex. Sess., ch. 49, p. 396.) Section 22650 required the State Board of Education to adopt minimum standards for the operation of the junior colleges. As the community college system developed, the obligation to adopt minimum standards was assigned to the Board of Governors and junior colleges were redesignated community colleges. (The Legislature created the Board of Governors of the California Community Colleges in 1967 by Statutes 1967, chapter 1549. It also vested in the Board of Governors the "duties, powers, purposes, responsibilities, and jurisdiction" previously vested with the State Board of Education. See Education Code section 71024, previously section 197.) Accordingly, since at least 1960, the Legislature has required the state agency having oversight responsibility to adopt minimum standards for the operation of community college districts. It has vested that responsibility in the Board of Governors since 1967.

Education Code section 70901(b)(6)

Section 70901(b)(6) requires the Board of Governors to adopt minimum standards entitling districts to receive state aid for support of community colleges. Section 70901(b)(6) was added by Statutes 1988. However, section 70901(b)(6) was preceded by section 71025 that was enacted by Statutes 1976. Former section 71025 provided that "the Board of Governors of the California Community Colleges shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." Section 71025 was preceded by section 25510 that was added by Statutes 1963. (Stats. 1963, ch. 100, p. 760.) A 1970 amendment substituted "community college" for "junior college" and an amendment by Statutes 1974 substituted the Board of Governors of the California Community Colleges for the State Board of Education; thus the section read, "The Board of Governors of the California Community College shall adopt rules and regulations fixing minimum standards entitling districts to receive state aid for the support of community colleges." (The 1974 amendment merely conformed the Board of Governors' authority to that previously assigned by the Legislature in 1967.)

Accordingly, since at least 1963[1], the Legislature has required the state agency having oversight responsibility to adopt minimum standards enabling community college districts to receive state aid. As noted above, since 1967, that responsibility has rested with the Board of Governors.

In addition to the general requirement to adopt minimum standards, (current Ed. Code, § 66700), and the requirement to adopt minimum standards for the receipt of state aid (current Ed. Code, § 70901(b)(6)), the Board of Governors has also been required to establish minimum standards in numerous specific areas, and districts have been required to comply with those minimum standards.

The Board of Governors of the California Community Colleges has long been charged with establishing minimum student academic standards. Current Education Code section 70901(b)(1)(A) requires the Board of Governors to adopt "[m]inimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies."

[1] In some cases, the statutes cited herein may have existed earlier under different section numbers. However, given our resource limitations, we are not able to explore the full extent of possible previous enactments.

Prior to the placement of this requirement in section 70901(b)(1)(A), it existed in section 71066 that required the Board of Governors to adopt "minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies." Section 71066 was enacted by Statutes 1976, but it merely replaced predecessor section 200.7 that was added by Statutes 1969, and that provided: "The board of governors shall establish minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies."

Accordingly, there have been no gaps in the requirement that the Board of Governors set minimum academic standards between 1969 and the present.

In turn, community college districts have long been charged with establishing "academic standards" that are consistent with Board of Governors' minimum standards. Current Education Code section 70902(b)(3) requires district boards to, "Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors." Prior to section 70902(b)(3), Education Code section 72285 required district governing boards to "establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors." (Enacted by Stats. 1976, ch. 1010.) Before section 72285, the requirement existed in section 1010.6, added by Statutes 1969, that provided: "The district governing board shall establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors."

Thus, there have been no gaps in the requirement that districts establish academic standards consistent with Board of Governors' minimum academic standards between 1969 and the present.

The obligation of the Board of Governors to adopt minimum academic standards and the correlated obligation of districts to establish academic standards that comply with state minimum standards long preceded 1975. As such, these academic standards are not new. As noted in the 2000 Attorney General Opinion cited above, no higher level of service is created under these circumstances. Since before 1975, districts were required to adhere to the minimum academic standards set by the Board of Governors, and that has not changed. (83 Ops.Cal.Atty.Gen. 111 (2000).)

2. Optional Programs Do Not Constitute Mandates

In assessing Education Code section 66281.5, above, we noted that some requirements apply only to a community college district that receives state financial assistance. We described *Kern High School, supra,* 30 Cal.4th 727, a recent California Supreme Court decision that stands for the proposition that if districts choose to offer programs, but are not compelled to do so, costs associated with those optional programs are not mandated for purposes of reimbursement.

A number of the regulations with student notice requirements raised by Claimant reflect minimum standards for the receipt of state aid. It is only if districts desire to receive state aid that they must meet the minimum standards – i.e., only in exchange for state aid are they required to notify students of various matters. Although nearly all districts receive state aid, usually in the form of apportionment, there is no mandate that they do so. Accordingly, if Claimant chooses to receive state aid, it opts to comply with the minimum standards for doing so, and cannot claim that a mandate exists. We will identify those regulations that constitute minimum standards for the receipt of state aid and affirm that under *Kern High School, supra,* 30 Cal.4th 727, no mandate exists.

3. Notice Requirements Do Not Create Mandates

Claimants identify regulations that require districts to publish fundamental information about educational programs and services so that students and members of the public can be informed of educational opportunities. There are two bases for rejecting the costs of publishing various items in the catalogs or providing notification to students as mandated costs.

First, the threshold question is whether any program is at issue. There is no question but that public education is a program under the Constitution and statutes. The publication of information or notices, however, is not the same as public education.

As noted above, we believe the principles of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, apply here. To the extent that publishing information about courses or programs enables the public to understand or access those courses or programs, we believe the publications and notices are reasonably compared to the elevator services described above. The elevators assisted the public in accessing the programs, but were not themselves programs or part of a program. Assuming this analogy has merit, we suggest that "programs" are not at stake with respect to notices, and that the Claim for such matters be rejected.

Second, the California Supreme Court addressed similar public "notice" vehicles, i.e., Brown Act notices and agendas, in *Kern High School, supra,* 30 Cal.4th 727, (discussed above). For one of the programs, the Supreme Court did not decide whether the program was mandated; however, it noted:

> "[W]e nevertheless conclude that under the circumstances here presented, the costs necessarily incurred in complying with the notice and agenda requirements under that funded program do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda related expenses. . . . [¶] [W]e have found nothing to suggest that a school district is precluded from using a portion of the funds obtained from the state for the implementation of the underlying funded program to pay the associated notice and agenda costs. . . . [E]ven if we assume for purposes of analysis that school districts have been legally compelled to participate in the funded Chacon-Moscone Bilingual-Bicultural Education program, we view the

> state's provision of program funding as satisfying, in advance, any reimbursement requirement. . . . [¶] . . . [¶] We therefore conclude that because claimants are and have been free to use funds form the Chacon-Moscone Bilingual-Bicultural Education program to pay required program expenses (including the notice and agenda costs here at issue), claimants are not entitled under article XIII B, section 6, to reimbursement from the state for such expenses." (*Kern High School, supra,* 30 Cal.4th 727, at pp. 746-748, emphasis added.)

We take the foregoing to mean that if Claimant received state funding that it may use to pay for notices to students, then it is not entitled to further reimbursement for the costs.

Turning to the individual regulations cited by Claimant, we will abbreviate the theories described above.

California Code of Regulations, title 5, section 51006

Claimant asserts that section 51006 requires community college districts to adopt a policy that classes must be open to persons admitted to the college and that the statement of this open course policy must be published in catalogs and class schedules.[2]

Claimant asserts that section 51006 was added in 1983 and last amended in 1994. We cannot verify that information at the present time.

The resources of our legal office have been severely curtailed at the same time that its workload has increased. It may be that previous versions of some of the regulations at issue in this Claim existed prior to the dates cited by Claimant because renumbering of sections occurred at various times. That renumbering can give the appearance that a section has been newly adopted when it has simply been assigned a new section number.

In the early times after the Board of Governors was established, the Office of Administrative Law retained the primary regulatory files, and we are unable to expeditiously identify whether earlier versions of current regulations existed.

We cite to multiple bases for denying the claims under the challenged regulations; it may be that the issue of earlier provisions is a moot point if other bases exist for the rejection of the claims. However, in those instances where the Claim is not disallowed on any basis and where we have been unable to verify the historic development of a regulation, we suggest that the Commission thoroughly review the regulatory history, and we will gladly lend our support to the extent we are able.

Education Code section 5754 (added by Stats 1965, ch. 842) provided in part: "No class for adults shall be maintained by any district: . . . (2) if such classes are not open to the general public. . . ." This requirement for open courses was replaced by section 84500.1 (added by Stats.

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[2] All subsequent section numbers are to the sections in title 5 of the California Code of Regulations unless otherwise specified. Our statements of Claimant's assertions are summaries only and do not purport to fully describe Claimant's statement of the regulatory requirements.

1978, ch. 909) that required in pertinent part that "[n]o community college shall report for attendance or average daily attendance to the board of governors for apportionment any classes: . . . if such classes are not located in facilities clearly identified in such a manner, and established by procedures, to insure that attendance in such classes is open to the general public. . . ." Section 84500.1 was in effect until January 1, 1991.

Based on the foregoing, the requirement for open classes for adults has been continuous since before 1975 through to the present. "Classes for adults" generally means noncredit classes. We have not located a similar pre-1975 requirement that credit courses be open, but given the public nature of the entire system, and the origination of the system within the public school system, we contend that open courses has always been the standard. We therefore assume that the Claim only raises the issue of publication of the open course standard.

Section 51006 is a minimum standard adopted by the Board of Governors pursuant to Education Code sections 66700 and 70901. As noted above, both section 66700 and section 70901 originated prior to 1975. Based on the above Attorney General analysis of minimum standards that are adopted pursuant to legislative directive given prior to 1975, costs for section 51006 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 51006 is also a minimum standard for the receipt of state aid. Claimant is not required to apply for state aid, but having done so, must comply with attendance requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notice of the open nature of classes is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

Finally, under *Kern High School, supra,* 30 Cal.4th 727, the Claimant has not indicated why state money it already receives cannot be used to pay for including the statement concerning open courses in its catalog and class schedules.

<u>California Code of Regulations, title 5, section 54626</u>

Claimant asserts that section 54626(a) requires community college districts to adopt a policy that identifies categories of directory information that may be released, that subsection 54626 allows the release of directory information if annual public notice is given of the categories of directory information and the potential recipients. Claimant asserts that the notice must also specify the period of time within which students may notify the district of categories of directory information they do not want released.

Claimant asserts that section 54626 was added in 1976 and last amended in 1983. We agree.

Section 54626 restates federal law that becomes applicable if Claimant accepts federal financial assistance. The handling of student records is addressed comprehensively in the Family

Educational Rights and Privacy Act of 1974 (FERPA) and its related federal regulations. (20 U.S.C. § 1232g and 34 C.F.R, part 99.)

FERPA provides in part that:

> "Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent." (20 U.S.C. § 1232g(a)(5)(B).)

Districts that accept federal financial assistance must annually notify students of their rights under FERPA. (34 C.F.R. § 99.7.) If districts plan on releasing student directory information, they must give public notice of the types of information the district considers to be directory information, the student's right to refuse to allow the release of directory information, and the period of time during which the student must notify the district that he/she does not want directory information released. (34 C.F.R. § 99.37.)

Claimant undoubtedly receives federal funds and is therefore bound by FERPA and its implementing regulations. Therefore, section 54626 does not create any new or increased obligations. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Additionally, under *Kern High School, supra,* 30 Cal.4th 727, Claimant cannot choose to accept federal funds and then be reimbursed for costs that result from that choice.

It should be noted the district does receive federal funds for the Temporary Assistance for Needy Families (TANF), and the Vocational Technical Education Act. In the 2001-02 fiscal year the district received roughly $3.7 million and for the 2002-03 fiscal year the district received $1.7 million in federal funds.

<u>California Code of Regulations, title 5, section 54805</u>

Claimants assert that section 54805 mandates districts to provide students with specified information concerning the student representation fee.

Claimant asserts that section 54805 was added in 1988 and last amended in 1991; we agree with those dates.

Section 54805 implements section 76060.5 of the Education Code. That section authorizes a student representation fee if certain conditions are met. The claimed "mandate" of section 54805 is only a requirement if (1) a district authorizes the students to organize a student body organization, (2) the student body organization proposes a student body organization fee, and (3) the district's students vote to approve a student representation fee. None of these actions are

mandated by the Legislature or by Board of Governors' regulations – all of these actions are permissive and rest exclusively with the local district and its students. If all of the permissive actions occur locally, then the requirements of section 54805 apply. However, inasmuch as all actions leading to the fee are based on local choice and action, under *Kern High School, supra,* 30 Cal.4th 727, there is no state mandate.

Additionally, where the permissive actions have occurred and a student representation fee is authorized, the subject district is authorized to retain up to 7 percent of the student representation fees "equal to the actual cost of administering these fees. . . ." (Ed. Code, § 76060.5.) To the extent that Claimant incurs expenses in notifying students as provided by section 54805, Claimant is authorized to cover that expense with up to 7 percent of the amount collected. Government Code section 17556(d) provides that no mandated cost will be found where the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

California Code of Regulations, title 5, section 55005

Claimant asserts that section 55005 requires community colleges to make college publications available to students and to inform students concerning pertinent information about the courses.

Claimant asserts that section 55005 was added in 1981 and last amended in 1991. We cannot verify those dates at this time.

In 1969, the Board of Governors submitted regulations to the Office of Administrative Procedure for publication in title 5. Time and resource limitations of our office have permitted only a cursory review of such historic documents. The 1969 submission of the Board of Governors included regulation 51001 that allowed districts to offer courses on a credit-no credit basis, and if they did so, required them to publish that information in their catalogs. In the same 1969 submission, section 51002 required districts to establish curriculum to permit the "realization of the objectives and functions" of the college, and to adopt regulations consistent with section 51002 and to publish their standards of scholarship in their catalogs. Section 51003 required districts to describe graded courses in grades 13 and 14 in the college catalog or supplement thereto and to have a course outline available at the college. We believe that this is a sufficient showing of earlier and on-going obligations in this area that predated 1975. If the Commission does not reject reimbursement for the requirements of section 55005 on the grounds that follow, we recommend a full review of the history of this provision.

Section 55005 is part of the chapter that addresses curriculum and instruction. The chapter is embraced under section 51021which is a minimum standard for curriculum, citing Education Code sections 66700 and 70901, both of which require the Board of Governors to adopt minimum standards for community colleges. As noted above, the predecessor sections to 66700 and to 70901 both predated 1975. Based on the above Attorney General analysis of minimum standards that are adopted pursuant to legislative directive prior to 1975, costs for section 55005 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 51021 and any incorporated sections are minimum standards for the receipt of state aid. Claimant is not required to accept state aid, but having done so, must comply with curriculum requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate.

Assuming that Claimant receives state assistance, we find nothing that prevents Claimant from using some of the funds it has already received from the state to satisfy the costs of publishing course information.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notice concerning courses is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 55202

Claimant notes that section 55202 requires that prerequisites, corequisites, and advisories on recommended preparation be identified in college publications as well as in the outline of record for the courses to which they pertain.

Claimant asserts that section 55202 was added in 1993. We agree.

Section 55202 addresses the establishment of prerequisites, corequisites, and advisories on recommended preparation. The initial phrase of section 55201(a) confirms the permissive nature of establishing prerequisites, corequisites, and advisories on recommended preparation. The section provides in pertinent part: "The governing board of a community college district may establish prerequisites, corequisites, and advisories on recommended preparation, but must do so in accordance with the provisions of this Article." (Emphasis added.) Thus, districts are not required to establish such matters; but if they do, they must comply with the requirements of the article, including the requirements of section 55202.

All actions leading to the establishment of prerequisites, corequisites, and advisories on recommended preparation are based on local choice and action. The obligations of section 55202 are adopted voluntarily by districts when and if they decide to establish course prerequisites, etc., so pursuant to *Kern High School, supra,* 30 Cal.4th 727, there is no state mandate.

Furthermore, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, notices of the existence of prerequisites, corequisites, or advisories on recommended preparation are not "programs" but merely mechanisms related to accessing educational programs. On either basis, the costs are not reimbursable.

California Code of Regulations, title 5, section 55530

Claimant notes that section 55530 requires districts to ensure that students have information regarding their rights and responsibilities under the chapter on curriculum and instruction.

Claimant asserts that section 55530 was added in 1990 and last amended in 1993; we agree.

Claimant's assertion highlights a drafting construction error in section 55530. The section refers to rights and responsibilities under this "Chapter," but the context and history of the section confirm that the term "chapter" should be "subchapter." The Subchapter in question is Subchapter 6. Subchapter 6 deals only with matriculation programs as opposed to all of curriculum and instruction.

The "Nomenclature Cross-Reference" chart for title 5 verifies that effective April 1, 1990, the term "subchapter" would replace "chapter." The matriculation regulations, of which section 55530 is a part, were in the final stages of adoption by the Board of Governors when the nomenclature change occurred, and the change was not incorporated consistently throughout the regulations. While the reference to "chapter" rather than "subchapter" is a drafting flaw in the regulation, the Chancellor's Office has never applied the matriculation notice to all items covered by the entire curriculum and instruction chapter.

Matriculation obligations are directly tied to participation in matriculation funding. Education Code section 78218 verifies that the statutory obligations the regulations implement are only operative if funds are specifically appropriated for matriculation purposes. Moreover, Education Code section 78211.5(b) provides in part that "any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article." Accordingly, Claimant's acceptance of matriculation funding is the source of any obligations.

The choice to participate in the matriculation program carries certain obligations so long as the funding is provided. Because participation is discretionary as to districts, under *Kern High School, supra,* 30 Cal.4th 727, the requirements of section 55530 carry no state mandate.

Districts that do apply for and accept matriculation funding are required to match each dollar of matriculation funding with three dollars of other district resources. (§ 55518.) Some of that matching money is likely other state funding dollars. Nothing in statute or regulation prohibits districts from spending matriculation funding or the matching money from other state resources to satisfy the requirements of section 55530; accordingly, the state should not have to pay again for actions Claimant may already pay for from state resources.

Furthermore, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, notices to students of their matriculation rights are not "programs" but are merely mechanisms related to accessing matriculation services. On that basis, the costs are not reimbursable.

<u>California Code of Regulations , title 5, section 55534</u>

Claimant notes that section 55534 requires districts to investigate and attempt to resolve any alleged violations of the matriculation subchapter. Claimant asserts that section 55534 was added in 1990 and last amended in 1994; we agree.

As noted above, the obligations of the matriculation subchapter fall only to districts that choose to participate in the program by accepting matriculation funding. The same considerations defeat the claim for reimbursement under section 55534. That is, Claimant's participation is discretionary; funding is already provided that Claimant may use for purposes of section 55534. Therefore, for the same reasons noted above for section 55530, the requirements of section 55534 carry no state mandate.

California Code of Regulations, title 5, section 55750

Claimant asserts that section 55750 requires districts to adopt and implement regulations addressing standards of scholarship and to publish those regulations in the college catalog.

Claimant asserts that section 55750 was added in 1983 and last amended in 1991. We cannot verify those dates at this time.

As noted above, our review of a 1969 regulation submission revealed section 51002, which required districts to adopt regulations establishing standards of scholarship and to publish their standards of scholarship in their catalogs. If the Commission does not reject reimbursement for the requirements of section 55750 on other grounds, we recommend a full review of the history of this provision.

Section 55750 was originally adopted under the authority of former Education Code section 72285 (enacted by Stats 1976, ch. 1010) and its predecessor section 1010.6 (enacted by Stats. 1969). Section 1010.6 required district governing boards to "establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors." Thus, we believe that the various mandates of the subchapter on standards of scholarship were embraced by 1010.6, all predated 1975, and have existed continuously since section 1010.6 took effect.

Section 55750 is established as a minimum standard by the Board of Governors. (See § 51002.) Both section 55750 and section 51002 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55760 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55750 is a minimum standard for the receipt of state aid by virtue of section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state aid to satisfy the requirements of section 55750; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the publication of standards of scholarship is not a "program" but

merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55752

Claimant notes that section 55752 requires districts that offer credit-no credit grading options to specify in its catalog into which category each course falls. Claimant asserts that section 55752 was added in 1983 and last amended in 1991. We cannot verify those dates at this time.

As noted above, the 1969 submission of the Board of Governors included regulation 51001 that provided:

"(a) The governing board may by regulation offer courses in either or both of the following categories, and shall specify in its catalog the category or categories in which the course falls: (In the absence of such regulation a course will be presumed to be offered on a letter-grade basis.)
(1) Courses wherein all students are evaluated on a 'credit-no credit' basis.
(2) Courses wherein each student may elect on registration, or within a reasonable time thereafter, whether the basis of his evaluation is to be a 'credit-no credit' or a letter grade.
(3) All units earned on a 'credit-no credit' basis in California institutions of higher education or equivalent out-of-state institutions shall be counted in satisfaction of community college curriculum requirements, but such courses shall be disregarded in determining a student's grade point average for all purposes for which a grade point average is required.
(4) The governing board may authorize a student who has received credit for a course taken on a 'credit-no credit' basis within the district to convert his grade to a letter grade by taking an appropriate examination."

It is clear that former section 51001, which we believe was adopted in 1969, included requirements that now appear in section 55752, sufficient to reject a claim for reimbursement.

Additionally, the initial sentence of section 55752(a) verifies that districts may choose to provide credit-no credit grading options: "The governing board of a district maintaining a community college may by resolution offer courses in either or both of the following categories. . . ." (Emphasis added.) As with various other sections raised by Claimant, the obligation to include information in the catalog results from an optional decision by the governing board. Accordingly, under *Kern High School, supra,* 30 Cal.4th 727, no state mandate is fairly presented.

Section 55752 is also established as a minimum standard by the Board of Governors. (See § 51002.) If Claimant chooses to offer a credit-no credit option, it must comply with the standard. Both section 55752 and section 51002 are adopted under the authority of section Education Code section 70901, a predecessor to which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55752 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55752 is a minimum standard for the receipt of state aid by virtue of section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55752; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the publication of grading options is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55753

Claimant asserts that section 55753 requires districts to adopt and publish procedures and regulations related to credit by examination in the college catalog. Claimant asserts that section 55753 was added in 1983 and last amended in 2002; we agree.

Districts have long had statutory authority to grant credit by examination. Thus, section 25518.6, enacted by Statutes 1965, chapter 1669, provided: "To the extent and subject to such requirements as the State Board of Education may, by regulation prescribe, the governing board of a district maintaining a junior college may grant credit to any student based on examinations approved and conducted by proper authorities of the college."

When the Education Code was reorganized, section 25518.6 was replaced by section 78207 (enacted by Stats. 1976, ch. 1010) that provided "To the extent and subject to such requirements as the Board of Governors of the California Community Colleges may, by regulation prescribe, the governing board of a community college district may grant credit to any student based on examinations approved and conducted by proper authorities of the college." Section 78207 was repealed in 1990; it was unnecessary because it was merely permissive and included no mandates. By 1990, the Board had already adopted section 55753. Therefore, either statutory or regulatory authority has continuously addressed credit by examination since at least 1965.

Section 55753(b) confirms that districts are authorized, but not required, to allow for credit by examination. Accordingly, under *Kern High School, supra,* 30 Cal.4th 727, Claimant may not be reimbursed for an optional activity.

Moreover, the Chancellor's Office has determined that because credit by examination is optional, an optional service fee may be imposed on students who pursue credit by examination. The cost of adopting or publishing applicable regulations would be a cost that could be included in assessing how much the service is worth to students. Government Code section 17556(d) provides that no mandated cost will be found where the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Accordingly, because Claimant can charge for this service, it cannot secure reimbursement.

California Code of Regulations , title 5, section 55758

Claimant asserts that section 55758 requires districts to publish point equivalencies of grades. Claimant asserts that section 55758 was added in 1983 and last amended in 2000. We cannot verify that information at this point.

The 1969 regulations we discussed above included section 51002 that provided for minimum standards of scholarship and that required that point equivalents to grades and grading standards be published in the college catalog. Section 51002(e)(1) included a table of grades and corresponding grade points, e.g., "A-4 grade points," the grade status for probation, and the grade status for dismissal. Accordingly, it appears at least some of the requirements existed long before 1975. If the Commission does not reject reimbursement for the requirements of section 55758 on other grounds, we request that it research the complete history of this provision.

Section 55758 is also established as a minimum standard by the Board of Governors. (See § 51002.) Both section 55758 and section 51002 are adopted under the authority of Education Code section 70901, a predecessor to which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55758 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55758 is a minimum standard for the receipt of state aid via section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55758; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the publication of standards of scholarship such as point equivalencies for letter grades is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations , title 5, section 55759

Claimant asserts that section 55759 requires colleges to make reasonable efforts to notify students of probation or dismissal, to make an effort to provide counseling to students on probation, to notify students of their removal from probation or reinstatement after dismissal and to publish related policies and procedures in the catalog. Claimant asserts that section 55759 was added in 1983 and last amended in 1991. We cannot verify that information at this point.

The 1969 regulations we discussed above included section 51002 that provided for minimum standards of scholarship and that required that the standards be published in the college catalog. Section 51002(e)(1) required districts to notify students placed on probation that their

performance was deficient and that dismissal could occur in accordance with that section. Section 51002(h)(3) called for counseling for each student on probation. Accordingly, it appears that substantial portions of current 55759 predated 1975. If the Commission does not reject reimbursement for the requirements of section 55759 on other grounds, we recommend a complete review of the history of this provision.

To the extent that section 55759 merely requires districts to make "reasonable efforts" for student notifications, no quantifiable mandates are included.

Section 55759 is established as a minimum standard by the Board of Governors. (See § 51002). Both section 55759 and section 51002 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55759 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

In addition to the general directive to adopt minimum standards, the Legislature has long required the Board to specifically adopt minimum academic standards relating to student probation, dismissal, and readmission. (Ed. Code, § 70901(b)(1)(A).) This directive was initially added by Statutes 1969, as Education Code section 1010.6, and has been in place without lapse to the present. Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55759 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55759 is a minimum standard for the receipt of state aid via section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55759; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students that they are on probation or removed from probation is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

<u>California Code of Regulations , title 5, section 55760</u>

Claimant asserts that section 55760(b) requires districts to adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded. Claimant asserts that section 55760(b) was added in 1983 and last amended in 1991; we agree.

Sections 55760, 55761, 55762, 55764, and 55765 (which are all included in this Claim) must be read together for purposes of analysis. Taken together, it is clear that districts are not required to allow for the repetition of courses. Section 55761 requires districts to adopt and publish

procedures or regulations pertaining to course repetition; sections 55760, 55762, 55764, and 55765 establish certain parameters for course repetition. However, section 55761 merely permits repetition; it does not require it: "The procedures or regulations may allow such courses [those for which a substandard grade has been recorded] to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages." (Emphasis and parenthetic comment added.)

If districts allow such repetition, certain requirements must be met. Under *Kern High School, supra,* 30 Cal.4th 727, no mandate is present where actions are merely permissive.

Even if the sections are read as requiring districts to permit course repetition, section 55760(b) represents a Board of Governors minimum standard of scholarship. (See § 51002.). Both section 55760 and section 51002 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards. Thus, if Claimant decides to allow for course repetition, it must follow the regulatory minimum standards.

In addition to the general directive to adopt minimum standards, since 1969, the Legislature has required the Board to specifically adopt minimum academic standards. (Ed. Code, § 70901(b)(1)(A) and former § 1010.6.) Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55760 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55760 also a minimum standard for the receipt of state aid via section 51002. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55760; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning course repetition is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 55761

Claimant asserts that section 55761 requires districts to adopt and publish procedures or regulations pertaining to repeating of courses for which substandard work has been recorded. Claimant asserts that section 55761 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

California Code of Regulations, title 5, section 55762

Claimant asserts that section 55762(c) requires colleges to indicate any specific courses or categories of courses that cannot be repeated after substandard academic performance. Claimant asserts that section 55762(d) requires colleges to indicate any courses that were repeated on the student's academic record, that 55762(e) requires colleges to publish procedures for implementing the section, and that 55762(g) requires districts to record course repetition actions. Claimant asserts that section 55762 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

In addition, the actions of maintaining a student's academic record and otherwise recording course repetitions are customary actions that are foundational to district operations. We believe they are subsumed in the basic authority to maintain a college. To assert a claim on the basis of having to maintain student records is akin to asserting a claim for having to open the doors to buildings to allow students to enter.

California Code of Regulations, title 5, section 55764

Claimant asserts that section 55764 requires colleges to adopt and publish procedures or regulations for alleviating previously recorded substandard academic performance if that work does not reflect a student's demonstrated ability. Claimant asserts that section 55764 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

California Code of Regulations, title 5, section 55765

Claimant asserts that section 55765(c) requires districts to adopt and publish procedures related to academic renewal. Claimant asserts that section 55765 was added in 1983 and last amended in 1991; we agree.

The analysis for section 55760 applies equally to this section, and we incorporate it here by reference.

California Code of Regulations, title 5, section 55800

Claimant asserts that section 55800 requires districts to adopt policies on degrees and certificates and publish the policies. Claimant asserts that section 55800 was added in 1983 and last amended in 1991. We cannot verify that information at this time.

The 1969 regulations we discussed above included section 51005 that addressed the requirements for degrees and certificates, including requirements for the associate in arts degree

and the associate in science degree, the awarding of diplomas, and the issuing of certificates of achievement. Accordingly, it appears that substantial portions of current 55800 predated 1975. If the Commission does not reject reimbursement for the requirements of section 55800 on other grounds, we recommend a thorough review of the history of this provision.

Section 55800 represents a Board of Governors minimum standard. (See § 51004.) Both section 55800 and section 51004 are adopted under the authority of Education Code sections 66700 and 70901, both of which predated 1975 in requiring the Board of Governors to adopt minimum standards.

In addition to the general directive to adopt minimum standards, since 1969, the Legislature has required the Board to specifically adopt minimum academic standards relating to graduation requirements. (Ed. Code, § 70901(b)(1)(A) and former § 1010.6.) Based on the above Attorney General analysis that minimum standards adopted pursuant to legislative directive that predated 1975 do not constitute mandates, costs for section 55800 are not reimbursable. (83 Ops.Cal.Atty.Gen. 111 (2000).)

Section 55800 is also a minimum standard for the receipt of state aid via section 51004. Claimant is not required to accept state aid, but having done so, must comply with standards of scholarship requirements. Because the receipt of state aid is not compulsory, under *Kern High School, supra,* 30 Cal.4th 727, this section does not create a mandate. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 55800; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning degrees and certificates is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 58102

Claimant asserts that section 58102 requires the description of courses to be included in catalogs and be clear. Claimant asserts that section 58102 was added in 1982 and last amended in 1993. We cannot verify that information at the present time.

The 1969 regulations we discussed above included section 51003 that addressed graded courses. Subsection (c)(2) provided in pertinent part that "it must be offered as described in the college catalog or a supplement thereto which provides an appropriate title, number, and accurate description of course content. A course outline is available at the college." Accordingly, it appears that substantial portions of current 58102 predated 1975. If the Commission does not reject reimbursement for the requirements of section 58102 on other grounds, we recommend a thorough review of the history of this provision.

Districts are not required to report classes for apportionment; however, if they wish to collect apportionment, they must abide by the requirements of section 58102. (See § 58050.) Under

Kern High School, supra, 30 Cal.4th 727, section 58102 creates no mandate because districts may opt not to collect apportionment. Nothing prohibits Claimant from spending state resources it already receives to satisfy the requirements of section 58102; accordingly, the state should not have to pay for actions Claimant may already pay for from state resources.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning courses is not a "program" but merely a mechanism related to accessing the program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 58104

Claimant asserts that section 58104 requires courses to be described in the official catalog, schedule, or be reasonably well publicized if they are established after the publication of these materials.

Claimant asserts that section 58104 was added in 1982 and last amended in 1993. We cannot verify that information at the present time and we incorporate here our above response regarding section 58102.

California Code of Regulations, title 5, section 59404

Claimant asserts that section 59404 requires governing boards that make their students provide instructional materials for classes to adopt policies and specify the conditions for required materials. The policies must be published in the catalog.

Claimant asserts that section 59404 was added in 1985 and last amended in 1994; we agree.

Section 58400 clearly provides that districts may require students to provide instructional materials. The entire chapter applies only if districts choose to require instructional materials; if so, they must then adopt and publish policies. Under *Kern High School, supra,* 30 Cal.4th 727, no mandate is created because of the permissive nature of the program.

Additionally, prior Education Code section 1010.4(e), adopted by Statutes 1969, chapter 1026, required districts to "establish policies for, and approve, procedures for the adoption of instructional materials." That section was renumbered to section 72283 by Statutes 1976, chapter 1010, and remained in effect until 1990, by which time the subject regulation had taken effect. Any requirement for a policy predated 1975 and has continued without lapse.

Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning instructional materials is not a "program" but merely a mechanism related to accessing the educational program. On that basis, the cost is not reimbursable.

California Code of Regulations, title 5, section 59410

Claimant asserts that section 59410 permits districts to provide that grades, transcripts, diplomas, and registration privileges will be withheld from students who are notified that they failed to pay a financial obligation.

Claimant asserts that section 59410 was added in 1991 and last amended in 1994; we agree.

Section 59410 contains no mandate unless Claimant chooses to implement a policy of withholding items from students who owe money. Because the mechanism is a purely optional one for Claimant, under *Kern High School, supra,* 30 Cal.4th 727, the optional nature of the action precludes reimbursement.

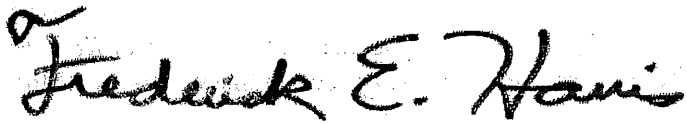
Additionally, under the authority of *County of Los Angeles v. Department of Industrial Relations, supra,* 214 Cal.App.3d 1538, the notification to students concerning debt remedies is not a "program" but merely a tangential fiscal remedy unrelated to the educational program. On that basis, the cost is not reimbursable.

Further based upon the districts higher reserve level than recommended by the State, the district did have State money to pay for these costs.

Conclusion

For the reasons stated above, we believe there is no basis for reimbursement and we recommend rejection of the Claim.

Sincerely,



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College Finance and Facilities Planning