



DEPARTMENT OF  
**FINANCE**

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Exhibit J

November 9, 2007

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

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**COMMISSION ON  
STATE MANDATES**

Dear Ms. Higashi:

The Department of Finance has completed its review of Test Claim No. 02-TC-25, Notice to Students, submitted by the Los Rios Community College District (LRCCD). Based on our review of the claim, as well as relevant statutes and regulations, we assert that the procedures, definitions, and general instructions provided in this claim do not constitute a reimbursable state mandated activity on local community college districts.

The claimant alleges that there are reimbursable mandated costs that arise through the creation of two Education Code sections and 22 regulations adopted by the Board of Governors of the California Community Colleges. Claimants assert that prior to January 1, 1975, there were no statutes, codes, or regulations requiring specific notices to students. As a result, these new statutes and regulations require community college districts to "prepare, publish, and implement various policies, procedures, and notices to students" above and beyond what was required prior to their enactment.

#### **Education Code Section 66281.5**

The purpose of this Education Code Section 66281.5 is to "provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies." More specifically, this section requires that each postsecondary educational institution have a written policy on sexual harassment. This policy is required to be displayed in a prominent location, and a copy of that policy "shall be provided as a part of any orientation program conducted for new students." The code section also requires that a copy of this written policy be provided to each faculty member, all members of the administrative staff, and all members of support staff. Finally, the written policy is required to be published in any work that sets forth comprehensive rules, regulations, procedures and standards of conduct for the institution.

We concur with the Chancellor's Office of the California Community Colleges (COCCC) that the new requirements are not substantially different than those already prescribed by federal law. Title IX and Title VII both prohibit sex discrimination and sexual harassment within the workplace, which includes community college districts. Any mandated costs that could result from these federal laws are precluded from state reimbursement by Government Code Section 17556 (c). This section states there cannot be a finding of a reimbursable mandate where a federal mandate results in the claimed costs. Both Title IX and Title VII are pre-existing federal laws that require the community college districts to undertake the same activities required by Education Code Section 66281.5.

Title IX, enacted in 1972, was created to "eliminate...discrimination on the basis of sex in any education program or activity receiving Federal financial assistance..." (34 CFR § 106.1). We would note that according to the COCCC's Fiscal Data Abstract, Summary of General Fund Revenues Fiscal Year 2005-06, every community college district chose to receive federal financial assistance and are therefore subject to the requirements of Title IX. Under Title IX, districts must "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 CFR §§106.8(b), 106.9).

Title IX also specifically addresses the issue of sexual harassment. The Office of Civil Rights (OCR), which is charged with the enforcement of Title IX, requires districts to have an effective sexual harassment policy which addresses the issue. Failure to implement such a policy violates Title IX regulations. Among the required policies is the distribution of sexual harassment policy and procedures. In January 2001 the OCR published its Title IX "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties" which outlined the requirements, as follows:

"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 14).

One facet of "prompt and equitable" resolutions is the requirement that students and employees are notified of the procedure, "including where complaints may be filed" (*Id.* at 20).

Title VII of the Civil Rights Act of 1964 also imposes notice requirements on community college districts. Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin. Inclusive within Title VII rules requirements is the following language:

"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 CFR § 1604.11(f)).

In light of these two federal requirements governing the activities of community college districts and Government Code 17756 (c), Education Code Section 66281.5 does not impose costs mandated by the state, and therefore does not create a reimbursable state mandate.

#### **Education Code Section 66721.5**

Education Code Section 66721.5 requires the governing board of each community college district to provide each of their students with a copy of the current transfer core curriculum. This is defined as lower-division, general education transfer curriculum that is fully articulated between the California Community Colleges and the California State University and the University of California.

The claimant posits that this section creates a reimbursable state mandate by requiring that the text of the transfer core curriculum be included in the published class schedule for each academic term. We note that any costs that may be incurred from this code section are relatively minor, and fall well within the established purposes of each community college districts current general purpose funding provided in Schedule (1) of Item 6870-101-0001 of the annual Budget Act, pursuant to Chapter 5, of Part 50, of Division 7, of Title 3 of the Education Code.

## Regulations of the Board of Governors of the California Community Colleges

The claimant has identified 22 regulations adopted by the Board that allegedly create state mandates. These regulations require community college districts to perform a wide ranging degree of functions, which include:

- Publishing information about educational programs and services to students and members of the public
- Adopting by the community college districts of an open policy in regards to enrollment
- Identifying categories of directory information to be released to the student body
- Providing information concerning student representation fees
- Ensuring the availability of college publications to students
- Identifying the prerequisites, corequisites, and advisories on recommended preparation
- Adopting and implementing regulations addressing standards of scholarship
- Categorizing credit and non-credit classes
- Publishing information on regulations related to credit by examination
- Publishing point equivalencies of grades
- Making reasonable efforts to notify students of probation or dismissal and to provide counseling to those students
- Establishing procedures and regulations pertaining to repetition of courses and completion of courses with substandard scores
- Creating policies on degrees and certificates
- Providing clear description of courses
- Creating requirements for instructional materials for classes
- Adopting a policy to withhold grades, transcripts, diplomas, and registration privileges for students who fail to fulfill financial obligations.

One common theme that runs through all these regulations are that they require community college districts to give some form of notice regarding various aspects of their programs. Notice requirements, however, do not in and of themselves create mandates. This is discussed in *Department of Finance v. Commission on State Mandates (Kern High School (2003) 30 Cal.4<sup>th</sup> 727*. In *Kern*, the California Supreme Court found that the "notice" requirements set forth by the Brown Act did not create a mandated program "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."

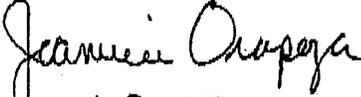
Community college districts receive general purpose funding from the state to support broad instructional services and programs of study for their students. As such, this source of funding is available and appropriate to support any costs of implementing the requirements set forth by the regulations. As in *Kern*, these are "reasonable" expenses that can be incurred. We further contend that the activities outlined in these notice regulations are more than just a general framework. These regulations provide a guideline for fundamental activities that are integral to providing instructional services and operating instructional programs, and in our view are fully supported by general purpose apportionment funding allocated annually to community colleges in Schedule (1) Apportionments, of Item 6870-101-0001 of the annual Budget Act pursuant to the aforementioned Chapter 5.

In light of the fact that the additions to the Education Code and California Code of Regulations do not create costs mandated by the state, we believe this claim should be denied in its entirety.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your April 17, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Thomas Todd, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



Jeannie Oropeza  
Program Budget Manager

Attachment

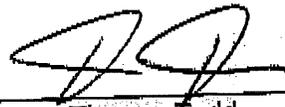
Attachment A  
DECLARATION OF THOMAS TODD  
DEPARTMENT OF FINANCE  
CLAIM NO. 02-TC-25

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

11-09-07

at Sacramento, CA



Thomas Todd

**PROOF OF SERVICE**

Test Claim Name: Notice to Students  
Test Claim Number: 02-TC-25

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On November 9, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance (A-15)  
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Mr. Erik Skinner  
California Community Colleges  
Chancellor's Office (G-01)  
1102 Q Street, Suite 300  
Sacramento, CA 95814-6549

Mr. Jon Sharpe  
Los Rios Community College District  
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Mr. Steve Smith  
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Mr. Robert Miyashiro  
Education Mandated Cost Network  
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Mr. Steve Shields  
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Mr. Arthur Palkowitz  
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Ms. Beth Hunter  
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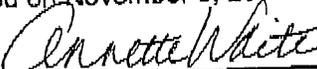
Mr. David E. Scribner  
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Ms. Ginny Brummels  
State Controller's Office (-08)  
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Ms. Carol Bingham  
California Department of Education (E-08)  
Fiscal Policy Division  
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Ms. Jeannie Oropeza  
Department of Finance (A-15)  
Education Systems Unit  
915 L Street, 7th Floor  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 9, 2007 at Sacramento, California.

  
\_\_\_\_\_  
Annette Waite

ICC: OROPEZA, PODESTO, TODD, LEE, FEREBEE, GEANACOU, FILE