STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

COMMISSION ON STATE MANDATES
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EXHIBIT N

April 21, 2008

Mr. Erik Skinner
California Community Colleges
Chancellor's Office
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

And Interested Parties and Affected State Agencies

Re: Request for Comments
Minimum Conditions for State Aid (02-TC-25 and 02-TC-31)
(See attachment for a complete pleadings list)
Los Rios Community College District and
Santa Monica Community College District,
West Kern Community College District, Co-claimants

Dear Mr. Skinner and Ms. Oropeza:

Staff has reviewed the administrative record of this test claim and determined that the following information is needed to complete an analysis of the claim. Pursuant to the Commission's regulations, all assertions or representations of fact must be supported by documentary evidence, and copies of any law cited and relied upon (with the exception of state mandates statutes and case law) must be included in the comments (Cal. Code Regs., tit. 2, § 1183.02). As a result, staff requests the following:

1. Page 3 of the California Community Colleges, Chancellor's Office comments regarding test claim number 02-TC-31, dated March 11, 2004, provides "Although most community college districts seek state aid in the form of apportionment, districts are not required to do so, and some districts do not receive apportionment."
    a. Please provide a breakdown of what "state aid" consists of. Specifically, what forms of state aid are there other than apportionment?
    b. Beginning in the 2001-2002 fiscal year, provide which community college districts <u>have not</u> sought state aid in the form of apportionment.
    c. Did the districts that did not seek state aid in the form of apportionment receive state aid in any other form of state aid?
    d. If so, what are the sources of the state aid?

e. How much did each of these districts receive for each fiscal year since 2001-2002 from these sources?

f. Beginning in the 2001-2002 fiscal year, provide which community college districts have sought state aid in the form of apportionment.

g. For each fiscal year beginning with 2001-2002, please provide a break down of how much each district has received in state aid in the form of apportionment.

h. For each fiscal year beginning with 2001-2002, please provide a break down of how much each district has received in state aid that was in a form other than apportionment.

2. Page 12 of the March 11, 2004 comments provides that "Claimant is not required to seek funding from the Employment Opportunity Fund."

   a. Are there any districts that do not seek funding from the Employment Opportunity Fund? If so which districts?

   b. For each fiscal year beginning in 2001-2002, how much funding has each district received from the Employment Opportunity Fund? What is the total amount of funding for all districts each fiscal year?

3. Page 18 of the March 11, 2004 comments provides that "Matriculation obligations are directly tied to participation in matriculation funding."

   a. For each fiscal year beginning in 2001-2002, how much is appropriated for matriculation funding?

   b. Please cite to a specific line item and schedule which contains funding for the matriculation obligations in the budget acts for each fiscal year beginning in 2001-2002.

   c. Which districts do not receive matriculation funding?

   d. Which districts receive matriculation funding?

   e. For each fiscal year since 2001-2002, how much has each district received?

4. In regard to "Full-time/Part-time Faculty," page 19 of the March 11, 2004 comments provides, "Amounts were added to the base of the community college districts as Program Improvement monies after the 1989-90 fiscal year."

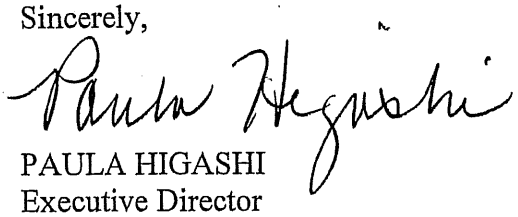
   a. What was the amount added?

   b. How much did each district receive?

   c. If possible, please cite to a specific line item and schedule which indicates this increase in the 1989-1990 budget act.

Please submit this information as soon as possible, but **not later than May 2, 2008.** If you have any questions please contact Kenny Louie at (916) 323-2611.

Sincerely,



PAULA HIGASHI
Executive Director

Attachments: California Community Colleges, Chancellor's Office Comments on Test Claim 02-TC-31, dated March 11, 2004, and Mailing List

STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE
1102 Q STREET
SACRAMENTO, CA 95814-6511
(916) 445-8752
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March 11, 2004

RECEIVED

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-31
Santa Monica Community College District, Claimant
Minimum Conditions for State Aid

Dear Ms. Higashi:

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

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?

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?

Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

This test claim ("Claim") alleges mandated costs reimbursable by the state for community college district activities related to complying with minimum conditions that are necessary for the receipt of state aid. Test Claimant Santa Monica Community College District ("Claimant") alleges that reimbursable mandated costs arise from a variety of Education Code sections and regulations that appear in title 5 of the California Code of Regulations.

Given the number of statutes and regulations that are invoked by Claimant, and the severe cutbacks suffered by this office, we are unable to provide a thorough response to this Claim. It is regrettable that the lack of funding to support mandate claim reviews could conceivably result in the payment of unwarranted claims. We can offer analytical assistance and provide some historic documentation, but regrettably, we must leave a comprehensive review of the issues to the Commission.

There are several bases for rejecting the Claim in its entirety, and various challenged sections raise other specific defenses to reimbursement.

1. If Claimant Has Complied With The Challenged Provisions In Order To Receive State Aid And Has Received State Aid, Claimant Has Already Been Compensated For Compliance, And No Further Reimbursement Is Warranted.

The provisions raised by Claimant are incorporated into a number of regulations that have been adopted by the Board of Governors for the California Community Colleges as minimum conditions for the receipt of state aid. The Board has long been legislatively required to promulgate such regulations.

If Claimant has not complied with the regulations, Claimant cannot raise an issue of reimbursement because Claimant has not taken action in response to a claimed mandate. If Claimant has complied with the regulations so as to collect state aid, Claimant is not eligible for further reimbursement. That is, funds have already been appropriated and paid for any required actions set out in the Claim.

The California Supreme Court recently addressed the conditions for reimbursement of claimed state mandates. (*Department of Finance v. Commission on State Mandates (Kern High School)* (2003) 30 Cal.4th 727, hereinafter referred to as "*Kern High School.*") The primary focus of the Court's analysis was that districts cannot voluntarily participate in programs, and then claim reimbursement for mandates. This is because there is no mandate under the law if a district has the option of not participating in a program or activity.

Kern High School pointed out that even if costs are incurred, they may be permissibly payable from funds that have already been obtained from the state. (*Id.*, at 747.) For the year 2001-2002, Claimant received state assistance in excess of $133,000. Claimant can use the funds it has already received from the state to satisfy any costs of complying with the regulations that are the subject of this Claim. Claimant is supposed to satisfy the regulations in order to be eligible to collect state funding.

Because Claimant has already received state funding for the purposes of complying with the subject provisions, the Claim should be rejected in its entirety. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

2. Claimant Is Not Required To Collect State Aid. To The Extent Claimant Chooses To Do So, That Choice Negates The Finding Of A State Mandate For Activities That Are Necessary To Make Claimant Eligible For State Aid.

As noted above, the California Supreme Court recently confirmed that reimbursement is not authorized where the Claimant voluntarily undertakes an activity. (See *Kern High School, supra.)* In *Kern High School*, the 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 the District chose to participate in the programs, and therefore the costs of the programs were also voluntarily assumed. No mandates exist where a district voluntarily participates in a program.

Although most community college districts seek state aid in the form of apportionment, districts are not required to do so, and some districts do not receive apportionment. To the extent Claimant complies with the regulations cited herein in order to obtain the state aid that results from compliance, Claimant voluntarily accepts the obligations.

Under *Kern High School,* Claimant's choice to receive state funding for the purposes of complying with the subject provisions renders the conduct optional. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

3. Minimum Standards Are Not Eligible For Reimbursement If They Were Required By Legislative Action That Predated January 1, 1975.

The regulations identified by Claimant reflect minimum standards that have been adopted by the Board of Governors.

A recent California Attorney General opinion concluded that reimbursement is often unavailable for minimum standard regulations. 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 state 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.

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 statutorily obligated to set minimum standards in these areas prior to 1975.

Pre-1975 Requirements

The Board of Governors' minimum conditions regulations are generally adopted pursuant to statutes that appear in the Education Code (in a few isolated instances, regulations are also supported by statutes in other codes). 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.

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 1976 date does not represent the date of initial legislative pronouncement. In many instances, 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. Based on the Attorney General's analysis, such minimum standards cannot be the basis for a mandate claim. Virtually all of the minimum conditions regulations challenged herein are based on legislative directives to the Board of Governors that preceded January 1, 1975. On that basis, none of the minimum conditions regulations support a claim for reimbursement, and the Claim may be rejected in its entirety. We will not raise this general defense for each of the regulations assessed below, but by setting out the defense as to all minimum conditions, we incorporate this defense into each of the following analyses.

4. Many Of The Regulations That Are The Subject Of This Claim Existed Prior To January 1, 1975, Under Different Section Numbers. To The Extent Any Mandates Predated January 1, 1975 They Are Not Eligible For Reimbursement.

A number of the regulations that are the subject of this Claim were originally adopted in 1969 or 1971 and later renumbered. In 1983, numerous regulations were renumbered through the process of repealing prior regulations and adding the regulations back into the code of regulations under new numbers. The Commission will note that Claimant alleges that a number of the regulations that are claimed as creating mandates came into existence in 1983. In many cases, that 1983 date represents a reorganization of title 5 and does not reflect the creation of new regulatory requirements.

"Costs mandated by the state" do not include costs associated with statutes that were enacted prior to January 1, 1975. (Government Code section 17514.) Regulatory requirements that existed before January 1, 1975, cannot be the basis for reimbursement.

5. A Number Of The Regulations Address Areas That Are Already Required By Federal Laws That Claimant Must Follow.

California community colleges are subject to a variety of federal mandates that require certain activities. In some of these cases, the mandates are imposed as a condition of the receipt of federal financial assistance. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

6. A Number Of The Regulations Address Areas Of General Law That Are Not Based On Claimant's Status As A Local Governmental Body.

Claimant is a California employer. Claimant is also a California business enterprise. As such, Claimant is required to follow general laws that apply to all such employers and enterprises. To the extent that a general law already requires Claimant to take certain actions, Claimant cannot be reimbursed for duplicative actions that are required under the challenged regulations. Actions required by general law cannot be the basis of a claim for reimbursement. (*County of Los*

[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.

Angeles v. State of California (1987) 43 Cal.3d 46, 56.) Only if Claimant is able to determine that the regulations include specific additional mandates is reimbursement a possibility.

Regulatory Background. In the early times after the Board of Governors was established, the Office of Administrative Law, rather than this office, retained the primary regulatory files. Given our current resource restrictions, we are unable to fully explore the earlier versions of current regulations for purposes of this review.

We are attaching copies of the early regulation packages that remain in our files, and we encourage the Commission's thorough review of the early provisions. These packages verify that many of the issues addressed in the regulations cited by Claimant preexisted January 1, 1975. (See enclosed Attachment 1, regulation packet approved for filing August 26, 1969; Attachment 2, regulation packet approved for filing July 1, 1971; Attachment 3, regulation packet approved for filing October 1, 1971; Attachment 4, regulation packet approved for filing June 28, 1971.)

Condition 1, California Code of Regulations, title 5, section 51002 (Standards of Scholarship) Claimant asserts that this section mandates costs of adopting and complying with standards of scholarship for students. Claimant alleges that section 51002 was added in 1983 and amended in 1994.

In August 1969, the Board of Governors filed regulations with the Secretary of State that included section 51002 as a minimum standard entitling districts to receive state aid. (Attachment 1.) Section 51002(e) addressed standards of scholarship. It required districts to adopt regulations consistent with the state regulation and to publish the district standards in the college catalog under appropriate headings.

Section 51002(e) addressed grading, "credit-no credit" grades, when students should be on probation, and standards for dismissal. Section 51005, the text of which is set out in full below in our response to "condition 2," included subsections (e) and (f) that provided for credit by examination, which currently appears as section 55753.

In July, 1971, the Board of Governors filed additional regulations related to standards of scholarship. (Attachment 2.) These 1971 regulations addressed credit and no credit courses, standards for probation (section 51303 that led to present section 55754), standards for dismissal (section 51304 that led to present section 55756), a definition of "units attempted" (section 51305 which led to present section 55757), and grade point averages. Section 51300 required district governing boards to adopt regulations consistent with the regulations of the Board of Governors and to publish the regulations in the college catalog.

We lack the resources to fully correlate all these regulations, but it is clear that current regulatory provisions addressing standards of scholarship existed prior to January 1, 1975, and are not eligible for reimbursement.

Any Claim under this section must be rejected for the general reasons discussed above and because most if not all of the provisions predated January 1, 1975.

Condition 2. California Code of Regulations, title 5, section 51004 (Degrees and Certificates). Claimant asserts that this section requires districts to adopt and comply with regulations for awarding degrees and certificates. Claimant alleges the section was added in 1983 and amended in 1994.

Regulations that were filed by the Board of Governors in 1969 established minimum standards for degrees and certificates as follows. (See Attachment 1.) Those provisions led to numerous regulations that currently appear at sections 55800-55810. We have indicated some of the current related provisions in bold in the following.

> "51005. Requirements for Degrees and Certificates. (a) The governing board of a district maintaining a community college shall confer the degree of associate in arts upon the satisfactory completion in grades 13 and 14 of from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes the requirements listed in (1) through (5), provided that 12 of the required credit hours were secured in residence at that community college. **(See current section 55806.)** (The governing board may make exceptions to the residence requirement in any instance in which the governing board determines that an injustice or hardship would otherwise be placed upon an individual student.) "Satisfactory completion" means either credit earned on a "credit-no credit" basis or a grade point average of 2.0 (grade C on a five point scale with zero for an F grade) or better in 13th and 14th year graded courses in the curriculum upon which the degree is based. **(See current section 55801.)**
>
> (1) A major consisting of at least 20 semester hours in a specified field of study; **(See current section 55806(a).)**
>
> (2) Three semester hours in the Constitution of the United States, and in American history, including the study of American institutions and ideals, and of the principles of state and local government established under the Constitution of this State, and the satisfactory passing of an examination on said courses;
>
> (3) Two semester hours of community and personal hygiene; except that a community college student, who is a minor whose parents or guardian state in writing that the course in community and personal hygiene is contrary to the religious beliefs of the student, or if the student is not a minor if he so states in writing, may be excused from such course and permitted to substitute a two-hour course in a field or fields specifically designated by the governing board of the district in lieu of the required two-hour course in community and personal hygiene.
>
> (4) Two semester hours in physical education earned at the rate of one-half credit per semester for a minimum of 120 minutes per week in directed physical education activities, except as a student may be exempted in accordance with Section 8162, Education Code; and
>
> (5) Such requirements in oral and written English as the governing board of the school district may establish.
>
> (b) The governing board of a district maintaining a community college may confer the degree of associate in science upon the satisfactory completion in grades 13 and 14 of a minimum of 60 semester hours of work which shall satisfy all the requirements for an associate in arts degree, and which work shall include

a major of at least 20 semester hours in any of the following fields: engineering, physical and biological science, vocational-technical curriculums.

(c) The governing board of a district maintaining a community college shall award the appropriate diploma or degree whenever a student shall have completed all requirements of a full curriculum of the community college without regard to the length of time actually taken by the student to complete such requirements. **(See current section 55809.)** The governing board shall grant to any student who satisfactorily completes the requirements of any course of study in less than the prescribed time the full number of semester hours scheduled for such course.

(d) The governing board of a district maintaining a community college shall issue a certificate of achievement (as determined by the governing board and specified in the catalog) to any student who successfully completes any course of study or curriculum in length less than the full number of years and grades maintained by the community college. **(See current section 55808.)**

(e) The governing board of a district maintaining a community college may grant credit (but it shall not count toward the 12 semester hours of credit in residence required in (a) to any student who satisfactorily passes an examination approved and conducted by proper authorities of the college. Such credit may be granted only:

(1) To a student who is registered at the college and in good standing.

(2) For a course listed in the catalog of a California public community college. **(See current section 55753.)**

(f) The examination shall be made at the expense of the person being examined.

(g) Information contained in the physician's report is confidential, and the contents of the report shall not be divulged by an official or employee who has access to the report except to the Board of Governors of the California Community Colleges, the Teachers Retirement Board, any county superintendent of schools, the representatives of any of them, or to the governing board of a district which has requested such information.

(h) The person shall file with the governing board of any district employing him as a substitute instructor the notice, or a photostatic copy or certified copy of the notice, from the county superintendent, stating that the person has passed the physical examination prescribed by the Board of Governors."

The foregoing language verifies that many of the current regulations identified by Claimant existed in 1969 regulations.

In September 1971, the Board of Governors filed additional regulations that addressed degrees and certificates. (Attachment 3.) It is clear that the 1971 regulations are forerunners to current regulations. For example, former section 51622 (definitions) is current section 55801 and former section 51623 (Associate in arts degree) led to current section 55806.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that a number of the provisions predated January 1, 1975, making them ineligible for reimbursement.

Condition 3. California Code of Regulations, title 5, section 51006 (Open Courses)
Claimant alleges that section 51006 was added in 1983 and amended in 1994.

Claimant alleges that section 51006 incorporates the requirements of other sections, including sections 58102, 58104, and 58106 that require that classes be described in catalogs and/or class schedules.

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. . . ." (Emphasis added.) This requirement for open courses was replaced by section 84500.1 (added by Stats. 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. . . ." (Emphasis added.) Section 84500.1 was in effect until January 1, 1991. Accordingly, the open course requirement has been in effect in statute or regulation since 1965.

In August 1969, the Board of Governors filed a number of regulations, including section 51003. (See Attachment 1.) Subsection 51003(c) provided that courses that counted towards the associate degree, that were part of an occupational course of study beyond high school, or that were approved for transfer must be described in the college catalog or supplement thereto.

In July 1971, the Board of Governors adopted a number of regulations concerning standards of scholarship. (See Attachment 2.) Section 51102 required districts to describe all of their courses in college publications. Publication of courses in the public catalogs, that was required by both the 1969 and 1971 regulations, is a core element of open courses that presently resides in sections 58100 and 58102. The existence of these 1969 and 1971 regulations that required publication of course information verify the open nature of courses prior to January 1, 1975.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that open course and publication requirements predated January 1, 1975, making them ineligible for reimbursement.

Condition 4. California Code of Regulations, title 5, section 51008 (Comprehensive Plans).
Claimant asserts that section 51008 was added in 1983 and amended in 1994. The section requires districts to adopt academic master plans and master plans for facilities.

The requirement for district academic master plans and facilities master plans preexisted January 1, 1975, and continued without lapse such that reimbursement should be denied. The requirement originally appeared in the Education Code and was later transferred to title 5 pursuant to the requirement that the Board of Governors establish minimum conditions for the receipt of state aid. Our limited resources prevent a thorough review or tracing of all the provisions, but we offer the following:

Section 200.6 was added to the Education Code by stats. 1969 and was replaced by section 199 (added to the Education Code by stats. 1970). Section 199 provided:

"The board of governors shall review and approve academic master plans and

master plans for facilities for each community college district. Such plans shall be submitted to the board of governors by the local governing board of each community college district. Master plans for facilities submitted pursuant to Chapter 19 (commencing with Section 20050) of Division 14 shall satisfy the requirements of this section in relation to master plans for facilities. Each district shall annually submit changes in its approved academic master plan for approval by the board of governors." (Emphasis added.)

Section 1010.3 was added to the Education Code through stats. 1969, c. 1026; it was renumbered to section 25427 and amended by stats. 1970, c. 870 until it was renumbered to section 72231.5 by stats. 1976, c. 1010. In 1970, section 25427 provided:

"The district governing board shall:
(a) Establish policies for, and approve, current and long-range educational plans and programs and promote orderly growth and development of the community colleges within the district.
(b) Establish policies for, and approve, academic master plans and long-range master plans for facilities. The district governing board shall submit such master plans to the board of governors for review and approval." (Emphasis added.)

The foregoing confirmed the obligation of districts to establish academic and facility master plans well in advance of January 1, 1975.

The Board of Governors also adopted regulations concerning educational master plans well before January 1, 1975. (See Attachment 4.) Sections 55400 through 55405 required districts to "establish policies for, and approve, current and long range educational plans and programs for each Community College which it maintains and for the district as a whole." (Cal. Code Regs., tit. 4, § 55401.) These sections have remained in effect, with some intervening amendments, to the present.

Any Claim under this section must be rejected for the general reasons discussed above and because the requirement for academic master plans and for master plans for facilities predated January 1, 1975, making them ineligible for reimbursement.

Condition 5. California Code of Regulations, title 5, section 51010 (Equal Employment Opportunity).
Claimant asserts that section 51010, regulations that are incorporated by reference under section 51010, and Education Code sections 87100 et seq. require Claimant to provide equal employment opportunity.

Claimant is subject to a number of federal constitutional and statutory requirements that are designed to ensure equal employment opportunity. These include the federal Equal Protection Clause of the Fourteenth Amendment, Title VII, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. These federal laws prohibit discrimination and apply to Claimant because of Claimant's status as a public entity or as an employer, or Claimant's receipt of federal funds. We have determined that Claimant receives federal Vocational and Applied Technology Education Act (VATEA) funding, and it may receive other federal financial support. (Claimant's tentative VATEA allocation for the 2003-04 fiscal year alone is $687,436.00)

Accordingly, Claimant is subject to any obligations that attach to the receipt of such federal funding. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Equal Protection Clause. The federal Equal Protection Clause is a general constitutional guarantee that requires to Claimant afford equal treatment to all employees. Discrimination on the basis of race, ethnicity, and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged as a federal constitutional violation.

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 Claimant in its role as an employer. Title VII is implemented by regulations adopted by the federal Equal Employment Opportunity Commission ("EEOC"). The regulations that appear at 29 C.F.R. 1607 et seq., include a number of obligations to ensure against unlawful discrimination, and the regulations invoked in this Claim frequently reflect the federal provisions.

Americans with Disabilities Act and Section 504 of the Rehabilitation Act. These federal laws require Claimant to ensure that persons with disabilities are not subjected to unlawful discrimination in their employment.

To the extent that the foregoing or other federal laws require activities to ensure equal employment opportunity without discrimination, Government Code section 17556(c) precludes the finding of a reimbursable mandate.

Claimant is also subject to a number of general laws that do not depend on Claimant's status as a local governmental body.

Government Code section 12940. Section 12940 is part of the California Fair Employment and Housing Act ("FEHA"), and it covers virtually all California employers with 15 or more employees. Accordingly, section 12940 applies to Claimant independent of its status as a local government agency.

Section 12940 requires the Claimant to ensure a workplace free of discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. Section 12950 requires Claimant to maintain an employment environment free of sexual harassment.

The FEHA is enforced by the Fair Employment and Housing Commission which has adopted a number of regulations. The Commission has adopted the Uniform Guidelines for Selection Procedures that has been promulgated by the EEOC under Title VII. (See Cal. Code of Regs., tit.2, § 7287.4.) Even if Claimant were not directly subject to Title VII and EEOC regulations, it is subject to the Commission's regulations, and those regulations incorporate the EEOC regulations. As a result, to the extent that the challenged regulations reflect general law requirements that apply to Claimant as a California employer, they cannot be the basis for reimbursement. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Claimant raises issues under Education Code section 87100, et seq. Section 87102 provides that the activities described in the article are conditions to receipt of funds that are provided by the

Employment Opportunity Fund that is described in section 87107. Therefore, Claimant is not entitled to reimbursement for the activities described in section 87100 et seq. for two reasons.

First, Claimant is not required to seek funding from the Employment Opportunity Fund. If Claimant seeks such funding, it voluntarily assumes the obligations that attach to such funding. Pursuant to *Kern High School*, noted above, such voluntary actions are not reimbursable.

Second, the Employment Opportunity Fund is available for the payment of any documented costs, and reimbursement under this process would be double recovery.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that federal law or general California law may require the challenged actions, and because Claimant has chosen to proceed under Education Code provisions that carry their own funding.

Condition 6. California Code of Regulations, title 5, section 51012 (Student Fees).
Claimant alleges that this regulation requires it to establish and implement policies and procedures to ensure that student fees comply with the law.

The obligation contained in title 5, section 51012 existed prior to January 1, 1975, and has continued to apply to Claimant without lapse to the present. Education Code section 1010.10 was added to the Education Code by stats. 1969, c. 1026. It was renumbered to section 72289 by stats 1976, c. 1010. Both sections provided:

> "The district governing board may establish such student fees as it is authorized to establish by law."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the obligation predated January 1, 1975.

Condition 7. California Code of Regulations, title 5, section 51014 (Approval of New Colleges & Educational Centers)
Claimant asserts that section 51014 was added in 1983 and amended in 1994, and that it requires districts that are planning new colleges or educational centers to obtain the approval of the Board of Governors prior to the commencement of classes.

Claimant does not allege that it has ever been affected by section 51014. Nothing in the Claim suggests that Claimant has ever sought the Board's approval under section 51014 for a new college or a new educational center, and Claimant alleges no costs arising from complying with section 51014.

Any Claim under this section must be rejected for the general reasons discussed above and because this is a special provision that mandates actions only under special and limited conditions. Claimant does not allege that it ever took those actions. For these reasons, any Claim under this section should be rejected.

Condition 8. California Code of Regulations, title 5, section 51016 (Accreditation)
Claimant asserts that section 51016 was added in 1983 and that the section requires it to establish and implement policies and procedures to ensure compliance with the accreditation standards of

the Accrediting Commission for Community and Junior Colleges ("AACJAC") and to pay the costs of the accreditation process. Claimant alleges that prior to the addition of section 51016, colleges were not specifically required to comply with AACJAC standards and that they were permitted, but not required to pay the costs of the accreditation process.

The expectation that colleges would be accredited predated January 1, 1975. Through stats. of 1967, c. 1562 (amended by stats. 1970, c. 102 and stats. 1974, c. 989), Education Code section 25522 specifically authorized the costs of accreditation of the colleges within a district by "the regional accrediting association serving California." Section 25522 was renumbered to section 78050 by stats. 1976, c. 1010.

Claimant may be correct that no specific statute or regulation required it to pay the costs of accreditation. Our resources do not permit a thorough review of this issue. However, since before January 1, 1975, Claimant was expected to be accredited, and it could not be accredited unless it paid the costs of accreditation.

Accreditation is a condition of eligibility for participation in certain federal programs, including federal funding for higher education resources and student assistance. (See, e.g., 20 U.S.C. § 1058.) To the extent that Claimant chooses to participate in federal programs, it also chooses to participate in the accreditation process. Given Claimant's choice, it cannot claim reimbursement for the costs associated with that choice.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that federal law may require accreditation, because Claimant has chosen to secure federal funding that requires accreditation, and because the expectation of accredited status predated January 1, 1975.

Condition 9. California Code of Regulations, title 5, section 51018. (Counseling)
Claimant asserts that this section requires districts to adopt regulations and procedures regarding counseling programs, to provide the programs to students, and to publicize the counseling programs. Claimant alleges that section 51018 was added in 1983 and amended in 1994.

The obligation for Claimant to have a counseling program preceded January 1, 1975. In August, 1969, the Board of Governors filed regulations with the Secretary of State that included section 51002 as a minimum standard entitling districts to receive state aid. (See Attachment 1.) Section 51001(h) provided as follows:

> Counseling Services. The community college shall have an adequate counseling staff, both in training and experience, and shall have established procedures, to provide, and shall provide, the following counseling services:
> (1) Assisting each student in the college
> (A) To determine his educational goal,
> (B) To make a self-appraisal toward progress toward his goals.
> (2) Providing each first-time freshman described in (A) or (B) below who is enrolled in more than six units special individual or group counseling and guidance, arranging a study load suitable to his needs, and keeping an appropriate record of the student.
>
> (A) He is a high school graduate, his scores on a qualifying test or tests

were below an acceptable minimum for the college of attendance, and his grade point average in the last three years in high school was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science; or

(B) He is not a high school graduate, and his scores on a qualifying test or tests were below an acceptable minimum for the college of attendance and his grade point average in the years of high school attendance was less than 2.0 (grade C on a five point scale with zero for an F grade), excluding only physical education and military science.

(3) Providing to each student who is on probation individual counseling and guidance service, including regulation of his program according to aptitude and his achievements."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that counseling services were required prior to January 1, 1975.

Condition 10. California Code of Regulations, title 5, section 51020 (Objectives). Claimant asserts that this section was added in 1983 and amended in 1991, and that it requires Claimant to adopt objectives for its instructional programs and other district functions.

This regulation was first adopted in 1969 as section 51002(a). (See Attachment 1.) Its provisions have remained the same to the present. It provided:

"51002(a) Objectives. The community college shall have stated objectives of its instructional program and the functions which it undertakes to perform."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that objectives were required prior to January 1, 1975.

Condition 11. California Code of Regulations, title 5, section 51021. (Curriculum). Claimant alleges that this section was added in 1983 and amended in 1994. Claimant alleges that it requires each community college to establish educational programs and courses that will further the objectives and functions of the college and that all courses must be approved by the State Chancellor.

As noted under Condition 4, above, section 1010.3 was added to the Education Code through stats. 1969, c. 1026; it was renumbered to section 25427 and amended by stats. 1970, c. 870 until it was renumbered to section 72231.5 by stats. 1976, c. 1010. Section 25427 required district governing boards to establish policies for and approve, current and long-range educational plans and programs. It can fairly be assumed that such long-range education plans and programs addressed curriculum.

Education Code section 200.9 was added by stats. 1969, c. 1026 and amended by stats. 1970, c. 102. It provided:

"The board of governors shall establish criteria and standards for graded and nongraded classes in community colleges."

Additionally, the curriculum regulation was first adopted in 1969 as section 51002(b) which essentially tracked the language of current section 51021, as follows:

> "51002(b) Curriculum. The community college shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college. Such courses shall be submitted to the Chancellor of the California Community Colleges for prior approval on forms provided by the Chancellor. The Chancellor shall report to the Board of Governors at a fall and a spring meeting the actions which he has taken in approving the courses."

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the curriculum requirement predated January 1, 1975.

Condition 12. California Code of Regulations, title 5, section 51022 (a) (Instructional Programs).
Claimant asserts that section 50122(a) mandates certain responsibilities regarding instructional programs, including vocational or occupational training program review.

Section 51022(a) provides that districts must develop and file with the Chancellor policies for the establishment, modification, and discontinuance of courses or programs.

Districts have long been required to develop and submit to the state their academic master plans which must, of necessity, address instructional programs. (See Ed. Code, § 199, added by stats. 1970, c. 870, and section 1010.3, added by stats. 1969, c. 1026 (renumbered to 25427 by stats. 1970, c. 870) that required district governing boards to "establish policies for, and approve, current and long-range educational plans and programs" and to "establish policies for, and approve, academic master plans. . ." District governing boards have also been required to "establish policies for, and approve, the total educational program of the community college or colleges in the district. . . . approve all classes for adults and shall submit such classes as are eligible for state apportionments to the board of governors for approval." (See Ed. Code, § 1010.4, added by stats. 1969, c. 1026, amended by stats. 1970, c. 102, stats. 1970, c. 870.)

The very reason for Claimant to exist is to offer educational programs and services. The public community colleges were established to "offer instruction through but not beyond the 14th grade level." Their programs could include, but were not limited to "(1) standard collegiate courses for transfer to higher institutions; (b) vocational and technical fields leading to employment; and (3) general or liberal arts courses." (Ed. Code, § 22651, added by stats. 1960, 1st Ex. Sess, c. 49.)

Section 22651 was amended, and ultimately renumbered to section 66701 by stats. 1976, c. 1010. In light of the basic mission of community colleges, the required education master plans, and obligations to establish curriculum (as noted above regarding "Condition 11"), districts would necessarily have developed policies for the establishment, modification, and discontinuance of educational programs and courses apart from the regulation at issue here.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that numerous duties related to instructional

programs and courses existed prior to January 1, 1975.

Condition 13. California Code of Regulations, title 5, section 51022(b) (Course Articulation-Local)
Claimant asserts that section 51022(b) requires it to develop and implement policies and procedures for the articulation of its courses with proximate four-year colleges and high schools.

Through stats. 1969, c. 1026, Education Code section 200.13 was enacted to require the Board of Governors to "facilitate articulation with other segments of higher education and with secondary education." Section 200.13 was renumbered to section 71071 by stats. 1976, c. 1010. Therefore, the Board of Governors has been statutorily required to act in this specific area since before January 1, 1975. This regulation is a necessary part of carrying out this requirement.

Moreover, the community colleges have always been a part of the California public school system. (E.g., see former Ed. Code, § 22650, as amended by stats. 1970, c. 102: "The public community colleges are secondary schools and shall continue to be a part of the public school system of this state.") Being part of a system necessarily involves a level of articulation with other segments of the system.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that articulation with other segments was required prior to January 1, 1975.

Condition 14. California Code of Regulations, title 5, section 51023(a) (Academic Freedom).
Claimant asserts that this section was added in 1984 and amended in 1994, and that it requires districts to adopt and implement a policy statement on academic freedom.

Academic freedom includes the opportunity to express opinions. The requirements of the current regulations grew out of legislative direction to the Board of Governors to establish minimum procedures to insure faculty have the opportunity to express their opinions. Education Code section 200.22 was added by stats. 1969 and provided:

> "The board of governors shall establish minimum procedures to be used by district governing boards to insure to faculty and students the opportunity to express their opinions at the campus level and to insure that these opinions are given every reasonable consideration."

Through stats. 1969, c. 1026, Education Code section 1010.13 required community college districts to "establish procedures not inconsistent with those established by the board of governors to insure faculty and students the opportunity to express their opinions at the campus level." Section 1010.13 was renumbered to section 72292 by stats. 1976. Section 72292 was the original statutory underpinning for the language concerning academic freedom. Section 72292 existed as section 1010.13 well before January 1, 1975.

Any Claim under this section must be rejected for the general reasons discussed above and because the Commission will be able to confirm that the basis for the academic freedom language predated January 1, 1975.

Condition 15. California Code of Regulations, title 5, sections 51023, 51023.5, and 51023.7.

(Shared Governance: Faculty, Staff, Students)
Claimant references the regulations that require shared governance for faculty (§ 51023), staff (§ 51023.5), and students (§ 51023.7).

Faculty. The requirements of section 51023 and sections that are incorporated into section 51023 largely preceded January 1, 1975. The role of academic senates or faculty councils in academic and professional matters was established in 1969 (see Attachment 1) under section 51004 as follows:

> 51004. Academic Senates or Faculty Councils.
> (a) For the purposes of this section:
> (1) "Faculty" means those certificated persons who teach full time in a community college or other full-time certificated persons who do not perform any services for the college that require an administrative or supervisory credential.
> (2) "Academic senate" or "faculty council" means an organization formed in accordance with this section whose primary function is, as the representative of the faculty, to make recommendations to the administration and the governing board of a district with respect to academic and professional matters.
> (b) In order that the faculty may have a formal and effective procedure for participating in the formation of district policies on academic and professional matters described in (a)(2), the faculty first must decide by secret ballot to have an "academic senate" or "faculty council," in which case the governing board of each district shall establish such an "academic senate" or "faculty council" in each community college by authorizing the faculty to:
> (1) Fix, and amend, by vote of the faculty, the composition, structure, and procedures of the academic senate or faculty council.
> (2) Select, in accordance with accepted democratic election procedures, the members of the academic senate or faculty council.
> (c) After consultation with the administration, the academic senate or faculty council may present its written views and recommendations to the governing board. The governing board shall consider and respond to such views and recommendations.
> (d) Upon the request of the academic senate or faculty council and subject to Government Code Sections 54950 ff. (The Brown Act), when applicable, the governing board, or such board members or administrative officers as it may designate, shall meet and confer with representatives of the academic senate or faculty council with respect to recommendations made or proposed to be made by the senate or council. The designation of board members or administrative officers as provided herein shall not preclude the representatives of an academic senate or a faculty council from meeting with, or appearing before, the governing board with respect to the views, recommendations, or proposals of the senate or council at a regular or special meeting of the board.
> (e) The academic senates or faculty councils may assume such responsibilities and perform such functions as may be requested of it by the administration or board of trustees."

Students. Through stats. 1969, c. 1026, Education Code section 1010.13 required community

college districts to "establish procedures not inconsistent with those established by the board of governors to insure . . . students the opportunity to express their opinions at the campus level." Section 1010.13 was renumbered to section 72292 by stats. 1976.

Staff: The specific details of section 51023.5 appear to have developed recently. However, because they reflect minimum standards, and the Board of Governors has been required to establish minimum standards since before January 1, 1975, the Attorney General has determined that a reimbursable mandate has not been created.

Any Claim under this section must be rejected for the general reasons discussed above. For academic senates or faculty counsels under section 53023, the Commission will be able to confirm that responsibilities predated January 1, 1975. For students, the Commission will also be able to confirm that Claimant was required to provide students with the opportunity to express their opinions prior to January 1, 1975.

Condition 16. California Code of Regulations, title 5, section 51024 (Matriculation Services).
Claimant asserts that the Seymour-Campbell Matriculation Act of 1986 requires certain conduct. Claimant asserts that Education Code sections 78210-78218, and title 5, sections 51024 and 55500-55534 describe these requirements.

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 the Education Code and title 5 sections related to matriculation carry no state mandates.

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.

Any Claim under this section must be rejected for the general reasons discussed above, because participation is optional, and because funding for participation is already available.

Condition 17. California Code of Regulations, title 5, section 51025 (Full-time/Part-time Faculty).
Claimant asserts that this section creates mandated costs to reach a full-time/part-time faculty

ratio of 75%/25%. Claimant acknowledges that this provision was adopted in response to Education Code section 87482.6.

Education Code section 87482.6 was added by stats. 1988, c. 973. SEC 70(b)(2) provided that during phase II of the reforms described by AB 1725,

> "the new educational environment created under Phase I, including such reforms as innovative training programs, evaluation procedures, and minimum qualifications, may be utilized to the fullest extent in hiring new full-time faculty. The Legislature finds that this latter step is a major component of successful reform and the eventual attainment of the highest possible quality in the educational programs of the California Community Colleges. It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state-mandate created pursuant to this section."

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review and because funding has been provided.

Amounts were added to the base of community college districts as Program Improvement monies after the 1989-90 fiscal year.

Condition 18. California Code of Regulations, title 5, section 51026 (Student Equity). Claimant asserts that this section requires it to develop policies and procedures for student equity. Although student equity is approached by reference to section 51026, Claimant also identifies a number of state statutory provisions that prohibit discrimination and harassment against students on a variety of bases. For example, Claimant notes that Education Code section 72011 requires it to provide access to its services, classes, and programs without regard to race, religious creed, color, national origin, ancestry, handicap, or sex.

California nondiscrimination laws concerning students frequently reflect the requirements of federal constitutional and statutory requirements, including the federal Equal Protection Clause of the Fourteenth Amendment, Title VI, Title IX, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. These provisions generally prohibit discrimination and harassment by districts as a matter of constitutional principle or as a condition that attaches to the acceptance of federal funds. As noted above, we have determined that Claimant receives federal Vocational and Applied Technology Education Act funding, and it may receive other federal financial support. Accordingly, Claimant is subject to any obligations that attach to the receipt of such federal funding. Government Code section 17556(c) precludes the finding of a reimbursable mandate where a federal mandate results in the claimed costs.

Equal Protection Clause. The federal Equal Protection Clause is a general constitutional guarantee that requires Claimant to treat students equally. Discrimination on the basis of race, ethnicity, and national origin is particularly suspect, but other bases for discriminatory treatment, such as gender, may also be challenged as a federal constitutional violation.

Title VI. Title VI protects students from discrimination under programs that receive federal funding. It provides that "[n]o person . . . shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under

any program or activity receiving Federal financial assistance." (42 U.S.C. § 2000d.) Title VI guarantees equity and nondiscrimination in admissions, services, programs and activities.

It is likely that Claimant receives federal funds and is therefore federally mandated to provide student equity and to prohibit discrimination based on race, color or national origin.

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.) Claimant is therefore subject to the requirements of Title IX and its implementing regulations if Claimant accepts federal education financial assistance. The 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.

Americans with Disabilities Act (ADA). The ADA applies to all public (and private) postsecondary educational institutions, and it generally prohibits discrimination against students with disabilities.

Section 504 of the Rehabilitation Act (Section 504). Section 504 applies to those postsecondary educational institutions that receive or benefit from federal financial assistance. Section 504 generally prohibits discrimination against students with disabilities.

Age Discrimination Act of 1975. Public (and private) institutions that receive federal funds must comply with the Age Discrimination Act (42 U.S.C. § 6101 et seq.) that prohibits unreasonable discrimination on the basis of age in programs or activities that receive federal funds. To the extent that Claimant receives federal funds, student equity or nondiscrimination on the basis of age is not a reimbursable state mandate.

There is a second basis for rejecting a Claim based on equity and nondiscrimination requirements. If Claimant is already required by general law to ensure student equity and nondiscrimination, the statutes and regulations cited by Claimant that require nondiscrimination on the same bases do not create reimbursable mandates. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

Civil Code, section 51 (Unruh Act). The Unruh Act prohibits discrimination in business establishments. Public school districts have been found to be business establishments subject to the Unruh Act. For example, the Act ensures student freedom from racial harassment and from sex discrimination in the California public school districts. (*Davison ex rel. Sims v. Santa Barbara High School Dist.*, C.D. Cal.1998, 48 F. Supp.2d 1225; *Nicole M. By and Through Jacqueline M. v. Martinez Unified School Dist.*, N.D.Cal.1997, 964 F. Supp. 1369.)

The Unruh Act has general application to all California businesses and does not impose unique requirements on local government agencies such as community college districts. Accordingly, the requirements to ensure student equity and an educational environment free of discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, or medical condition already exist apart from the Education Code provisions or title 5 regulations noted by Claimant. 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.)

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review, because mandates may replicate existing federal requirements, and because general law imposes some of the same requirements.

Condition 19. California Code of Regulations, title 5, section 51027 (Transfer Centers)
Claimant asserts that section 51027 requires each community college district to recognize transfer as one of its primary missions and to develop and adopt a transfer center plan.

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review.

Condition 20. California Code of Regulations, title 5, sections 51100 and 51102 (Compliance Enforcement)

Claimant asserts that sections 51100 and 51102 were added in 1983 and amended in 1984.

Claimant asserts that section 51100 requires the State Chancellor to review each college to determine whether it has met the minimum conditions established by title 5, sections 51000-51027. Section 51102 requires the State Chancellor to notify districts of areas of noncompliance to which districts must respond.

As noted at the beginning of this review, since at least the mid-1960's the Board of Governors has been required to adopt minimum standards entitling districts to receive state aid for support of community colleges. Education Code section 1010.2 was added by stats. 1969, c. 1026 that required Claimant to "establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district. . . ." This section was renumbered to section 72282 through stats. 1976, c. 1010. Accordingly, Claimant has been required to comply with state requirements since well before January 1, 1975. Implicit in the requirement to comply with state requirements is the obligation to demonstrate compliance and to take necessary actions to come into compliance where noncompliance is found.

Any Claim under this section must be rejected for the general reasons stated at the beginning of this review and because the obligation to comply with the rules and regulations of the state Board of Governors predated January 1, 1975, and is therefore not reimbursable under this process.

We hope the foregoing information is useful to you.

Sincerely,

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

Commission on State Mandates

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Last Updated: 4/26/2007
List Print Date: 04/21/2008
Claim Number: 02-TC-31
Issue: Minimum Conditions for State Aid

Mailing Information: Other

Mailing List

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.)

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