

# CALIFORNIA STUDENT AID COMMISSION

Office of the Executive Director

December 11, 2008

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

Re: *California Student Aid Commission Response to Draft Staff Analysis  
Cal Grants; 02-TC-28*  
Long Beach Community College District, Claimant  
Statutes 2000, Chapter 403, et al.

Dear Ms. Higashi:

On November 24, 2008, the California Student Aid Commission ("CSAC") received the "Draft Staff Analysis and Hearing Date" (hereinafter *Draft Staff Analysis*) on the above-referenced Test Claim. CSAC is providing the following in response to the *Draft Staff Analysis*.

### **CSAC Response to Issue 1.A.**

CSAC concurs with the findings in the *Draft Staff Analysis* set forth in Issue 1.A. (Pages 11-13) and agrees with the *Draft Staff Analysis* that Education Code Sections 69433, 69433.7, 69434, 69434.5, 69435, 69435.5, 69436, 69436.5, 69437, 69437.3, 69439, 69440, and Title 5, California Code of Regulations Section 30002, as pled in the Test Claim referenced above, do not impose a program, or new program or higher level of service subject to article XIII B, section 6 of the California Constitution or impose costs mandated by the state as established by Government Code Sections 17514 and 17556.

### **CSAC Response to Issue 1.B.**

CSAC incorporates by reference its original response dated October 14, 2003 and its response to the Request for Additional Information dated March 21, 2008 with respect to the finding in the *Draft Staff Analysis* that partially approved this issue in *Cal Grants* Test Claim 02-TC-28.

Specifically, CSAC does not agree with the *Draft Staff Analysis* with respect to the finding that Education Code Section 69432.9 and Sections 30007, 30023(a) and 30026 of CSAC's regulations<sup>1</sup>, which require community colleges to calculate a college or community college grade point average and certify under penalty of perjury that to the best knowledge of the official filing the report that the grade point average is accurately reported (Pages 13-16), constitutes a state-mandated new program or higher level of services on community colleges. In addition, CSAC does not agree with the *Draft Staff Analysis* in regards to the finding that Section 30023(d) of CSAC's regulations, which allows an applicant or school official to

<sup>1</sup> Title 5, California Code of Regulations Section 30000 et seq.

resubmit a grade point average within 10 days after notice by the Student Aid Commission that the original, timely filed grade point average was incomplete or incorrect, constitutes a state-mandated new program or higher level of services on community colleges.

As noted in the original response, and as thoroughly discussed by staff in the *Draft Staff Analysis* on pages 18-22, the Cal Grant program is an entirely voluntary program and community colleges are not legally compelled to participate. Those community college districts that chose to participate in the program execute the "Cal Grant Program Institutional Participation Agreement (IPA)." This agreement establishes the roles and responsibilities of the institution electing to participate and the Commission. Among the provisions relevant to the determination of whether the act of calculating a college or community college grade point average is a new state mandate is Article III, Paragraph J. Article III, Paragraph J provides:

J. The Institution agrees that it is subject to and must comply with all current and applicable federal and state law and regulations in its implementation of the terms of this Agreement. The Institution agrees that noncompliance with any of the provisions may result in the termination of this Agreement and the privileges that are afforded under it.

As a result of this language, an institution participating in the Cal Grant Program is required to comply with all state laws and regulations in its implementation of the Cal Grant program. Failure to comply can result in the termination of the Institutional Participation Agreement. If CSAC were to terminate the IPA for Long Beach Community College District, Long Beach Community College District would not be required to undertake the activities relating to calculating a college or community college grade point average and would not be required to certify under penalty of perjury that it has done so correctly. Of course, termination of the IPA would make all students at that particular institution unable to attend that institution and receive Cal Grant awards.

In addition, each of the community college districts participating in the Cal Grant program electronically submit grade point averages through the Commission's Webgrants program, and therefore do not fill out the paper form and certification outlined in Education Code section 69432.9(d) and also do not have to complete or correct the form as set forth in section 30023(d) of the Commission's regulation. Although specific numbers were not available, the number of college or community college grade point averages being submitted in a paper-format instead of electronically is *de minimis*, constituting less than 1% of all grade point averages being received by CSAC from the community college districts.

### **CSAC Response to Issue 1.C.**

CSAC concurs with the findings in the *Draft Staff Analysis* set forth in Issue 1.C. (Pages 18-22) and agrees with the *Draft Staff Analysis* that Education Code Sections 69432.8, 69433.5(h), 69433.6(a), and Section 30032 of the CSAC's regulations, as pled in the Test Claim referenced above, do not impose a program, or new program or higher level of service subject to article XIII B, section 6 of the California Constitution or impose costs mandated by the state as established by Government Code Sections 17514 and 17556.

**CSAC Response to Issue 2**

CSAC concurs with the findings in the *Draft Staff Analysis* set forth in Issue 2 (Pages 22-23) and agrees with the *Draft Staff Analysis* that Education Code Section 69514.5, as pled in the Test Claim referenced above, does not impose a program, or new program or higher level of service subject to article XIII B, section 6 of the California Constitution or impose costs mandated by the state as established by Government Code Sections 17514 and 17556.

**CSAC Response to Issue 3**

CSAC does not agree with the *Draft Staff Analysis* with respect to the finding on Issue 3 that there are costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the activities outlined in Education Code Section 69432.9 and sections 30007, 30023(a) and 30026 of CSAC's regulations. CSAC incorporates by reference its response to Issue 1.B., above, its original response dated October 14, 2003 and its response to the Request for Additional Information dated March 21, 2008.

The *Draft Staff Analysis* does not take into account the largely electronic method by which the activities outlined in Education Code Section 69432.9 and sections 30007, 30023(a) and 30026 of CSAC's regulations are accomplished. As noted above, CSAC receives a *de minimis* number of paper grade point average forms from the community college districts. The overwhelming manner for transmission of grade point averages from the community college districts to CSAC is electronic. Thus, for example, the certification under penalty of perjury of the accurate report of the grade point average is not occurring in the manner outlined in Education Code Section 69432.9(b)(3)(C) and Section 30007 and 30026 of CSAC's regulations since the grade point average information is being transmitted electronically and subject to the Information Security requirements of the IPA and not being sent on a form requiring a certification.

**CONCLUSION**

For the reasons stated above, CSAC maintains that the requirements set forth in Education Code Sections 69432.8, 69432.9, 69433, 69433.5, 69433.6, 69433.7, 69434, 69434.5, 69435.3, 69436, 69436.5, 69437, 69437.3, 69437.6, 69439, 69440, and 69514.5 and California Code of Regulations, Title 5, Sections 30002, 30007, 30023, 30026, 30027, and 30032 do not create a "new program" or "higher levels of service" as those terms have been applied and interpreted. In addition, any costs associated with these sections can only be considered *de minimis* or incidental as has been outlined above and therefore not subject to reimbursement.

CSAC requests that the Commission reject the *Draft Staff Analysis* pertaining to Issues 1.B. and 3 and do not approve Test Claim 02-TC-28 in its entirety.

**DECLARATION**

I am currently employed by, and authorized to make this declaration on behalf of, the California Student Aid Commission. I declare under penalty of perjury under the laws of the State of California that the facts set forth in the foregoing are true and correct of my own knowledge except to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Dated: December 11, 2008



Keri Fasel Tippins  
General Counsel  
California Student Aid Commission

### DECLARATION OF SERVICE

I Keri Tippins, I declare that I am employed in the County of Sacramento, State of California, that I am over the age of 18 years and am not a party to the within action, that my business address is 10811 International Drive, Rancho Cordova, California 95741, that on December 11, 2008, I served the item(s) described in number 1, below, by the method described in number 2, below, to the person(s) and at the address(es) indicated in number 3, below.

**1. ITEM(S) SERVED:**

**LETTER TO PAULA HIGASHI (dated December 11, 2008)**

**2. METHOD OF SERVICE:**

**First Class Mail.** I declare that I placed a true copy of the item(s) in a sealed envelope, that I am readily familiar with this agency's practice for the collection and processing of correspondence for mailing with the United States Postal Service, that, pursuant to this agency's ordinary course of business, correspondence will be deposited with the United States Postal Service the same day that mail is placed for collection and mailing, and that, following ordinary business practices, I deposited the envelope(s) in the place 10811 International Drive, Rancho Cordova, California for collection and mailing.

**Certified Mail, Return Receipt Requested.** I declare that I placed a true copy of the item(s) in a sealed envelope with the designation "Certified Mail, Return Receipt Requested," that I am readily familiar with this agency's practice for the collection and processing of correspondence for mailing with the United States Postal Service, that, pursuant to this agency's ordinary course of business, correspondence will be deposited with the United States Postal Service the same day that mail is placed for collection and mailing, and that, following ordinary business practices, I deposited the envelope(s) in the place at 10811 International Drive, Rancho Cordova, California for collection and mailing.

**Facsimile Transmittal.** I declare that on the date shown above at \_\_\_\_\_am/pm, I sent by facsimile machine a true copy of the item(s) to the person(s) and at the facsimile machine number(s) indicated in number 3, below, that the telephone number of the sending machine is (916)\_\_\_\_\_, that the transmission was reported as complete and without error, and that the transmission report was properly issued by the sending machine. A true copy of the transmission report is attached to this declaration.

**Personal Service.** I declare that I handed a true copy of the item(s) to each person indicated in number 3, below.

**Overnight Mail.** I declare that I caused a true copy of the items, enclosed in a sealed envelope, with delivery charges pre-paid, addressed as indicated in number 3, below, to be delivered to UPS for delivery by next day air.

**3. PERSON(S) SERVED:**

See Attached Mailing List

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 at Rancho Cordova, California.

DATED: 12-11-2008

SIGNED: 

Reference: Commission on State Mandates  
Cal Grants; 02-TC-28  
Long Beach Community College District, Claimant  
Statutes 2000, Chapter 403, et al.

### MAILING LIST

---

Keith B. Petersen  
Sixten & Associates  
3841 North Freeway Blvd., Suite 170  
Sacramento, CA 95834

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

Mr. Douglas R. Brinkley  
State Center Community College District  
1525 East Weldon  
Fresno, CA 93704-6398

Ms. Harmeet Barkschat  
Mandate Resource Services  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Ms. Sandy Reynolds  
Reynolds Consulting Group  
P.O. Box 894059  
Temecula, CA 92589

Mr. Steve Smith  
Steve Smith Enterprises, Inc.  
3323 Watt Avenue #291  
Sacramento, CA 95821

Mr. Arthur Palkowitz  
San Diego Unified School District  
Office of Resource Development  
4100 Normal Street, Room 3209  
San Diego, CA 92103-8363

Mr. Robert Miyashiro  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Mr. Steve Shields  
Shields Consulting Group  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Mr. Eric 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, 7<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. David E. Scribner  
Scribner & Smith, Inc.  
2200 Sunrise Boulevard, Suite 220  
Gold River, CA 95670

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Ms. Carol Bingham  
California Department of Education (E-08)  
Fiscal Policy Division  
1430 N Street, Suite 5602  
Sacramento, CA 95814

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Mr. J. Bradley Burgess  
Public Resource Management Group  
895 La Sierra Drive  
Sacramento, CA 95864