

COMMISSION ON STATE MANDATES

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March 10, 2009

Mr. Keith Peterson
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: Final Staff Analysis and Hearing Date

Cal Grants, 02-TC-28

Long Beach Community College District, Claimant

Education Code Sections 69432.8, 69432.9, 69433, 69433.5, 69433.6, 69433.7, 69434, 69434.5, 69435, 69435.3, 69436, 69436.5, 69437, 69437.3, 69437.6, 69439, 69440, and 69514.5

Statutes 2000, Chapter 403 (SB 1644); Statutes 2001, Chapters 8 (SB 176) and 159 (SB 662)

California Code of Regulations, Title 5, Sections 30002, 30007, 30023, 30026, 30027 and 30032

Dear Mr. Peterson:

The final staff analysis for this test claim is enclosed.

Hearing

This test claim is set for hearing on **Friday, March 27, 2009** at 9:30 a.m. in Room 447 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

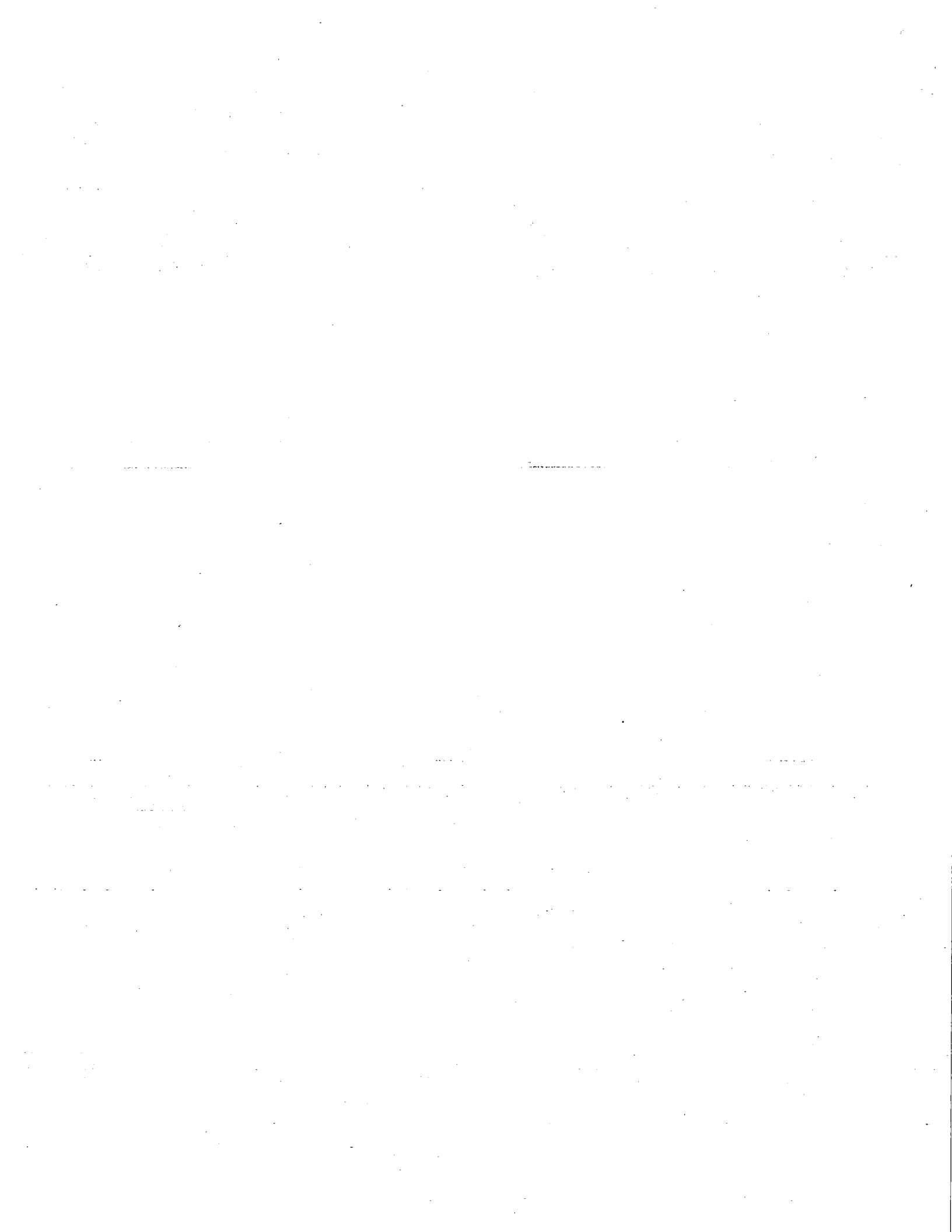
Please contact Camille Shelton at (916) 323-8215 if you have questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure

j:mandates/2002/02tc28/corres/fsatrans



ITEM 5
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 69432.8, 69432.9, 69433, 69433.5, 69433.6, 69433.7, 69434, 69434.5, 69435, 69435.3, 69436, 69436.5, 69437, 69437.3, 69437.6, 69439, 69440, and 69514.5

Statutes 2000, Chapter 403 (SB 1644)
Statutes 2001, Chapters 8 (SB 176) and 159 (SB 662)

California Code of Regulations, Title 5, Sections 30002, 30007, 30023, 30026, 30027 and 30032

Cal Grants
(02-TC-28)

Long Beach Community College District, Claimant

EXECUTIVE SUMMARY

Background

This test claim involves the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program, which was enacted by the Legislature in 2000 to address Cal Grant awards to students beginning in the 2001-2002 academic year. The Cal Grant program provides funding for California residents based on financial need and academic merit for public or private postsecondary education.

In order to complete the Cal Grant application process, the student applicant must submit to the Student Aid Commission the Free Application for Federal Student Aid (FAFSA) and a grade point average certified by a school official.

The intent of the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program is to guarantee a Cal Grant to every California high school student graduating in 2001 or after, who meets the minimum grade point average and eligibility requirements, has financial need, and applies for the Cal Grant by March 2 of the academic year of high school graduation, or by March 2 of the year following graduation. The guarantee also extends to California community college students transferring to a four-year college, who graduated from a California high school after June 2000, were California residents when they graduated, and who meet the Cal Grant requirements when they transfer to a four-year college.

Other students who are eligible for a Cal Grant, but are not high school seniors or recent graduates may compete for Cal Grant A or B Competitive awards. These awards are the same as the Cal Grant Entitlement awards except that they are not guaranteed. A limited number of Competitive awards are available (22,500 awards). Half of the Competitive awards are set aside for students who apply by the March 2 deadline and meet the requirements, and half are for California community college students who meet the requirements and apply by September 2.

The claimant, Long Beach Community College District, contends that the test claim statutes and regulations adopted by the California Student Aid Commission result in a reimbursable state-mandated program for community college districts.

The California Student Aid Commission and the Department of Finance dispute the test claim allegations and contend that "participation by a postsecondary institution is voluntary."

Conclusion

Staff concludes that the following activities required by the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program in Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivisions (a) and (d), and 30026 of the Student Aid Commission's regulations, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007, 30023, subd. (a), and 30026.)
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007 and 30026.)
- Completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct. (Cal. Code Regs., tit. 5, § 30023, subd. (d).)

These activities apply to community colleges only when: (1) a community college student applies for a Cal Grant Transfer Entitlement award for use at a four year college; (2) a community college student competes for a Competitive Cal Grant A to be held in reserve until the student attends a four year college; or (3) a community college student competes for a Competitive Cal Grant B award, which can be used at the community college.

The eligible period of reimbursement for this claim begins July 1, 2001.¹

Staff further concludes that all other statutes and regulations pled in this test claim do not mandate a new program or higher level of service and, thus, are not reimbursable.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

¹ Government Code section 17557, subdivision (e).

STAFF ANALYSIS

Claimant

Long Beach Community College District

Chronology

06/13/03 Claimant files the test claim with the Commission on State Mandates (Commission)

06/27/03 Commission staff issues the completeness review letter and requests comments from state agencies

07/25/03 Department of Finance (DOF) requests an extension of time for filing comments for at least 45 days

07/30/03 Commission staff grants an extension to September 11, 2003

08/21/03 California Community Colleges Chancellor's Office (Chancellor's Office) requests an extension of time for comments

08/28/03 Commission staff grants the extension of time to October 11, 2003

09/10/03 Commission staff issues a request for comments on the test claim from the California Student Aid Commission, due by October 10, 2003

09/11/03 DOF requests an additional extension of time to file comments

09/17/03 Commission staff grants the extension of time until October 14, 2003

10/10/03 Chancellor's Office requests an extension of time for comments

10/15/03 California Student Aid Commission files initial comments on the test claim

10/17/03 Commission staff grants an extension of time to the Chancellor's Office to December 15, 2003

10/31/03 DOF requests an extension of time to file initial comments

11/07/03 Commission staff grants an extension of time to DOF until February 7, 2004

02/18/04 DOF requests an extension of time to file initial comments

02/18/04 Commission staff grants the extension of time to May 18, 2004

06/10/04 DOF requests a 90-day extension of time to file initial comments

06/14/04 Commission staff grants the extension of time to August 9, 2004

09/09/04 DOF requests a 90-day extension of time to file initial comments

09/14/04 Commission staff grants the extension of time to December 9, 2004

12/24/04 DOF requests a 90-day extension of time to file initial comments

12/28/04 Commission staff grants the extension of time to March 9, 2005

03/15/05 DOF requests an extension of time to file initial comments

03/17/05 Commission staff grants the extension of time to June 9, 2005

09/21/05 DOF requests an extension of time to file initial comments

10/03/05 Commission staff grants the extension of time to December 1, 2005

02/03/06 DOF requests an extension of time to file initial comments

02/07/06 Commission staff grants the extension of time to April 3, 2006

11/26/07 Claimant submits a supplement to the test claim filing, with a history of the claimed regulations

02/06/08 Commission staff issues a request for initial comments on the test claim from the Chancellor's Office and DOF, due by February 27, 2008

03/07/08 Commission staff issues a request for additional information from the California Student Aid Commission, due by March 21, 2008

11/21/08 Commission staff issues the draft staff analysis on the test claim

12/11/08 Claimant files comments on draft staff analysis

12/11/08 California Student Aid Commission files comments on draft staff analysis

12/11/08 DOF requests extension of time to file comments and continuance of hearing

12/12/08 Commission staff grants extension of time to February 10, 2009, and continues hearing to March 27, 2009

02/03/09 DOF files comments on draft staff analysis

03/10/09 Commission staff issues final staff analysis

Background

The June 13, 2003 test claim filed by Long Beach Community College District alleges that community college districts have incurred costs mandated by the state, due to the enactment of eighteen Education Code sections by Statutes 2000, chapter 403, and later amendment by Statutes 2001, chapters 8 and 159. The test claim filing also alleges six title 5 regulations, issued by the California Student Aid Commission or its predecessor agency, the State Scholarship Commission.

Existing Law

Since 1977, the Cal Grant program, implemented through Education Code sections 69530 et seq. and the California Code of Regulations, title 5, sections 30000 et seq. (regulations adopted by the California Student Aid Commission), has provided grants to financially needy students to attend college.² Education Code sections 69530 et seq., has a projected sunset date of January 1, 2010, and applies only to students receiving a Cal Grant award on or before December 31, 2000, before the period of reimbursement for this claim.

Under this existing law, four types of Cal Grant awards were available: Cal Grants A, B, C and T, with the maximum award in each category determined in the annual Budget Act. The Cal Grant A award was based on financial need and academic merit, and was available only for

² Statutes 1976, chapter 1010, operative April 30, 1977, derived from former Education Code section 40400 (added by Stats. 1975, ch. 1270).

tuition and fees. Since community colleges do not charge tuition, the student awarded a Cal Grant A award who enrolled in a community college could elect to have the award held in trust by the Student Aid Commission for two academic years until the student transferred to a four-year college or university. (Ed. Code, § 69537.) The Cal Grant B award provided a living allowance, or “subsistence cost,” and sometimes tuition and fees for very low income, disadvantaged students. (Ed. Code, § 69538.) Except for certain five-year educational programs, Cal Grant A and B awards could be renewed by the student for a total of four years of full-time attendance in an undergraduate program, provided that financial need of the student continued to exist. The total number of years of eligibility was based on the student’s educational level, which was designated by the institution of attendance when the student initially received payment for a grant. (Ed. Code, § 69535.1, subd. (a).)

Cal Grant C provided tuition and fee grants, and funds for supplies to students training for vocational careers. (Ed. Code, § 69539.) As of the year 2000, the Cal Grant C program served approximately 3,700 students annually, primarily in community colleges.³ Cal Grant T provided one year grants to students in teacher credential training programs at institutions approved by the Commission on Teacher Credentialing. (Ed. Code, § 69540.)

An eligible applicant for a Cal Grant award is defined in section 30002 of the Student Aid Commission’s regulations as any person who has successfully met the requirements of the Education Code and submitted in proper form and prior to established deadlines the applications, supplements and transcripts of academic record, and financial and other information to the Student Aid Commission. (See also, Cal. Code Regs., tit. 5, § 30020.)⁴ To ensure that funds are available to the recipient of a Cal Grant award at the time the student enrolls, the Student Aid Commission was authorized to make an advance payment per term to “authorized postsecondary educational institutions” for eligible students who have indicated they were attending those institutions. Each “authorized” institution was required to disburse the funds in accordance with the provisions set forth in the “Institutional Agreement” between the Student Aid Commission and the institution. (Ed. Code, § 69535.5.)⁵ Refunds of unused award funds previously paid to a school or college were required to be based on the published regulations of the school or college concerned, as certified to the Student Aid Commission by the school or college. (Cal. Code Regs., tit. 5, § 30032.) In addition, the Student Aid Commission was authorized to provide for reports, accounting, and statements from the award winner and college or university of attendance pertaining to the use of the award. (Ed. Code, § 69535, subd. (j).)

Test Claim Statutes and Regulations

Statutes 2000, chapter 403⁶ created the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program, by adding chapter 1.7 to Part 42 of the Education Code, beginning with Education

³ Senate Third Reading, Senate Bill 1644 as amended August 24, 2000, 1999-2000 Legislative session. (Ex. H.)

⁴ The regulations cited in this section of the Background were first adopted by the Student Aid Commission in 1977 (Register 77, No. 24).

⁵ See, the Cal Grant Program Institutional Participation Agreement for 2008-09 and “Basics of the Institutional Participation Agreement Process for 2007-08 and 2008-09.” (Ex. H.)

⁶ Urgency legislation operative September 12, 2000.

Code section 69430. This Cal Grant program is intended to replace the program established in Education Code sections 69530, et seq., and applies to students receiving Cal Grant awards beginning in the 2001-2002 academic year. The intent of the program is to guarantee a Cal Grant to every California high school student graduating in 2001 or after, who meets the minimum grade point average and eligibility requirements, has financial need, and applies for the Cal Grant by March 2 of the academic year of high school graduation, or by March 2 of the year following graduation.⁷ The guarantee also extends to California community college students transferring to a four-year college, who graduated from a California high school after June 2000, were California residents when they graduated, and who meet the Cal Grant requirements when they transfer to a four-year college. These grants are called "Entitlement" grants and consist of the following:

- Cal Grant A Entitlement awards cover tuition and fees at "qualifying" four-year colleges. Every high school senior graduating in 2001 or after who has at least a 3.0 high school grade point average, meets all the Cal Grant requirements, is a California resident at the time of graduation, and applies by March 2 either the year of graduation or the following year is guaranteed a Cal Grant award. (Ed. Code, § 69434.) A Cal Grant A recipient attending a California community college will not receive any payment, however, because community colleges do not charge tuition. Cal Grant eligible students attending a community college qualify for a Board of Governors fee waiver instead. The Cal Grant A award is held in reserve by the Student Aid Commission for two years (or three years upon request) for use when the student transfers to a tuition charging four-year qualifying institution. (Ed. Code, § 69434.5.)
- Cal Grant B Entitlement awards are for students from disadvantaged or low-income families and generally cover "access costs" such as living expenses, books, supplies, and transportation expenses in the amount of \$1,551 in the first academic year. In subsequent years, the award includes an additional amount to pay for tuition and fees. Every graduating high school senior who has at least a 2.0 high school grade point average, meets all the Cal Grant requirements, is a California resident at the time of graduation, and applies by March 2 either the year of graduation or the following year is guaranteed a Cal Grant B entitlement award. A limited number of first-year students who have exceptional financial need and a high grade point average may receive both the living allowance and the tuition and fee award. (Ed. Code, §§ 69435, 69435.3; Cal. Code Regs., tit. 5, § 30024.)
- Cal Grant Transfer Entitlement awards are for community college students transferring to a four-year college and did not receive a Cal Grant within one year of graduating from high school. To qualify, students must have graduated from a California high school after June 30, 2000, and be a California resident when they graduated. Students must also have a 2.4 community college grade point average (of at least 24 semester units or the equivalent), meet the Cal Grant eligibility requirements, be under 24 years old, and apply by the March 2 deadline before the fall term when they plan to transfer. (Ed. Code, §§ 69436, 69436.5.)

⁷ Statutes 2000, chapter 403 (SB 1644), section 2; see also, Student Aid Commission's publication entitled "Cal Grants." (Ex. H.)

Other students who are eligible for a Cal Grant, but are not high school seniors or recent graduates may compete for Cal Grant A or B Competitive awards. These awards are the same as the Cal Grant Entitlement awards except that they are not guaranteed. A limited number of Competitive awards are available (22,500 awards). Half of the Competitive awards are set aside for students who apply by the March 2 deadline and meet the requirements, and half are for California community college students who meet the requirements and apply by September 2. The eligibility requirements for the Competitive awards are focused on the nontraditional students and take into account grade point average, time out of high school, family income, parent's educational levels, high school performance standards, whether the student comes from a single-parent household or was a foster youth. A student selected for a Cal Grant A Competitive award who enrolls in a California community college has the award for tuition held in reserve until the student transfers to a four-year institution. (Ed. Code, §§ 69437 - 69437.7; Cal. Code Regs., tit. 5, § 30025.)

Except for certain five-year educational programs, Cal Grant A and B awards may be renewed for a total of the equivalent of four years of full-time attendance in an undergraduate program provided that financial need continues to exist. The total number of years of eligibility is based on the student's educational level, which is designated by the institution of attendance when the student initially receives payment for a grant. (Ed. Code, § 69433.6.)

The Cal Grant C and T awards for students in vocational training and teacher credential training are also included in the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program. Except for a supplemental application for Cal Grant C applicants, which is described below, the Cal Grant C and T awards remain unchanged.⁸

To be eligible for a Cal Grant, a student is required to complete and submit a Free Application for Federal Student Aid (FAFSA) and a certified grade point average on or before the statutory deadline. (Ed. Code, §§ 69432.9, 69433; Cal. Code Regs., tit. 5, §§ 30007, 30008.) The FAFSA is mailed or electronically submitted to the U.S. Department of Education's central processor. The central processor sends FAFSA records for California students to the Student Aid Commission. The grade point average is verified by the school (either high school or community college) and submitted by either the student or the school.⁹ Each report of grade point average is required to include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. (Ed. Code, § 69432.9, subd. (c).) The Student Aid Commission may accept the submission of a grade point average from an applicant or reporting school after the statutory deadlines if, in the opinion of the Executive Director, circumstances beyond the control of the applicant delayed or prevented the timely submission of the grade point average. Such circumstances must be shown by a certification from the reporting school and the student applicant. In addition, applicants or officials who submit a timely but incomplete or incorrect grade point average shall have a grace period of ten days after the mailing of notice by the Student Aid Commission to file a corrected or completed grade point average. (Cal. Code Regs., tit. 5, § 30023.)

⁸ See also, Senate Third Reading, Senate Bill 1644 as amended August 24, 2000, 1999-2000 Legislative session, where the analysis states the following: "This bill does not affect the current configuration of the Cal Grant C and T programs." (Ex. H.)

⁹ See also, Cal Grant Manual, chapter 4.1, "The Cal Grant Application Process." (Ex. H.)

With respect to the Cal Grant C award for vocational training, the applicant receives a supplemental application to be completed that requires information about the student's "occupational talents."¹⁰ Section 30027 of the Student Aid Commission's regulations allows an application to establish "occupational talents" by submitting the applicant's work history and/or recommendation from teachers or persons working in the applicant's occupational or technical field.

A Cal Grant Program award may be utilized only at a qualifying institution. (Ed. Code, § 69433.5, subd. (i).) "Qualifying institutions" include public postsecondary educational institutions that complete a Cal Grant "Institutional Participation Agreement" for each participating campus in the district. (Ed. Code, § 69432.7, subd. (1)(3).)¹¹ To ensure that funds are available to the recipient of a Cal Grant award at the time the student enrolls, the Student Aid Commission is authorized to make an advance payment per term to "authorized postsecondary educational institutions" for eligible students who have indicated they are or will be attending those institutions. Each "authorized" institution is required to disburse the funds in accordance with the provisions set forth in the Institutional Participation Agreement between the Student Aid Commission and the institution. (Ed. Code, § 69432.8.) Before disbursing any Cal Grant funds, the qualifying institution "shall be obligated, under the terms of the Institutional Participation Agreement," to resolve any conflicts that may exist in the data the institution possesses relating to the recipient student. (Ed. Code, § 69432.7, subd. (k).) In addition, the Student Aid Commission is authorized to provide for reports, accounting, and statements from the award winner and college or university of attendance pertaining to the use of the award. (Ed. Code, § 69433.5, subd. (h).)

Finally, Statutes 2000, chapter 403 added section 69514.5 to the Education Code, establishing the Community College Student Financial Aid Outreach Program. This program, which is required to be developed and administered by the Student Aid Commission, is to provide workshops regarding "financial aid opportunities available to community college students, with a particular focus on students who plan to transfer to a four-year college or university."

The statutory and regulatory changes to the Cal Grant program, as alleged by the claimant, as well as the new Community College Student Financial Aid Outreach Program, will be analyzed below for the imposition of a reimbursable state-mandated program on community college districts.

Claimant's Position

Long Beach Community College District's June 13, 2003¹² test claim filing alleges the Ortiz-Pacheco-Poohigian-Vasconcellos Cal Grant Program constitutes a reimbursable state-mandated program, and requires community colleges to perform the following activities:¹³

¹⁰ Cal Grant Manual, chapter 4.7, "Cal Grant C Supplement."

¹¹ Cal Grant Manual, chapter 2.1, "Institutional Eligibility."

¹² The potential reimbursement period begins no earlier than July 1, 2001, based upon the filing date for this test claim. (Gov. Code, § 17557.)

¹³ Test Claim Filing, pages 36-41 (Exhibit (Ex.) A).

- enact and implement, and periodically update, policies and procedures to implement the Cal Grant program;
- provide official financial aid and award renewal applications, as well as Cal Grant award forms for each of the entitlement and competitive Cal Grant programs, and assist students who have questions regarding completion of any of the forms, pursuant to Education Code sections 69432.9, subdivision (a), 69433, subdivision (a), 69434, subdivision (b)(1), 69434.5, 69435, 69435.3, 69436, 69437, 69437.3, 69437.6, subdivision (f), 69439, and 69440;
- accept supplemental information and academic transcripts from applicants and submit them to the Student Aid Commission, pursuant to California Code of Regulations, title 5, sections 30002 and 30027;
- certify grade point averages upon student request and submit them to the Student Aid Commission, pursuant to Education Code section 69432.9, subdivision (c), and California Code of Regulations, title 5, sections 30007 and 30023;
- receive, account for, and disburse advance payments of Cal Grant funds from the Student Aid Commission, designate a student's educational level when the student first receives a grant payment, return unused awards, and produce accounting reports and other statements to the Student Aid Commission, as required by district agreement or regulation, pursuant to Education Code 69432.8, 69433.5, subdivision (h), 69433.6, subdivision (a), 69436.5, and California Code of Regulations, title 5, section 30032;
- train community college counselors and student advisors who work with students planning to attend community college or transfer from a community college to a 4-year college or university on financial aid opportunities for such students, and subsequently conduct workshops for students and their families regarding financial aid, pursuant to Education Code section 69514.5.

The claimant acknowledges that “[f]unds may be available for financial aid and student outreach programs. To the extent these funds are appropriated and actually received specifically for the administration of the Cal Grant program, those funds would reduce the costs mandated.”¹⁴

The claimant filed comments on the draft staff analysis as follows (Exhibit E):

- Community colleges are legally required to participate in the Cal Grant program. Education Code section 69432.7, subdivision (l), defines “qualifying institution” to include any California postsecondary educational institution. By statute, there are no additional acts required of community colleges in order to be considered a participant in the Cal Grant program. Although the Cal Grant Manual published by the Student Aid Commission provides that a community college can choose to enter into an Institutional Participation Agreement to be considered a qualifying institution, the Cal Grant Manual has not been adopted as a regulation, does not cite the source of its guidance, and therefore cannot be relied on as a source of law.

¹⁴ Test Claim Filing, page 43 (Ex. A).

- Community colleges are practically compelled to participate in the Cal Grant program because students have a statutory right to the award when they demonstrate financial need and comply with the requirements of the program. According to the California Community Colleges Chancellor's Office, over \$74 million was provided to community college students during the 2006-07 year via Cal Grant B and C awards. This amounts to substantial assistance and places the Cal Grant program as the second largest source of aid for community college students.
- All activities required by the test claim statutes and regulations constitute a new program or higher level of service. The Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant program is a separate and new program, and did not repeal the previous Cal Grant program.

State Agency's Position

California Student Aid Commission

The comments on the test claim filing from the California Student Aid Commission, received October 15, 2003, dispute the test claim allegations (Ex. B). The comments state that the test claim statutes impose requirements on the Student Aid Commission, but "participation by a postsecondary institution is voluntary." The Student Aid Commission cites several parts of the Cal Grant program that "make it clear that participation by a postsecondary institution is voluntary; institutions electing to participate in the Cal Grant program do it to attract financially needy students to their institution while providing a financial benefit to students already in attendance and an incentive to remain at the institution." The provisions in the Education Code cited by the Student Aid Commission in support of its contention are as follows:

- Education Code section 66021.2, subdivision (f), states that "An institution of higher education in this state that participates in the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program shall not reduce its level of per capita need-based institutional financial aid to undergraduate students, excluding loans, below the total level awarded in the 2000-01 academic year." The Student Aid Commission argues that this section "makes clear the policy that Cal Grant Awards supplement rather than replace existing institutional student aid. 'Participates' clearly connotes the voluntary nature of the program for institutions. Any institution which disagrees with the program parameters or requirements need not participate in the program, albeit to the detriment of its students."
- Citing Education Code section 69432.8, the Student Aid Commission states that "[q]ualifying institutions do not automatically receive Cal Grant funds for students with awards attending their institution. They must enter into a contract (Institutional Participation Agreement or IPA) with the Commission before they receive any funds for their students. The IPA is an institutional agreement (entered into with the Commission) that they will comply with the statutory requirements of the program and maintain records for the Commission to audit for program compliance. Any institution not wishing to voluntarily participate in the Cal Grant program for its students will not sign an IPA. The Commission does not disburse funds to an institution that has not signed an IPA even though it is a 'qualifying' institution pursuant to statute and regulation. That institution has elected not to participate in the program even though it could participate.

- Education Code section 69432.7, subdivision (1), defines “qualifying institution.” The Student Aid Commission argues that “[t]he use of the word ‘qualifying’ is intentional and significant. It also demonstrates the voluntary nature of the Cal Grant program for institutions.”

The Student Aid Commission also states that the community colleges receive funds for student aid administration, including a budget augmentation in 2003-04, with a minimum additional allocation of \$50,000 per campus (6870-101-0001) for outreach and support services for “potential and current financial aid applicants.”

On December 11, 2008, the Student Aid Commission filed comments on the draft staff analysis arguing that calculating a grade point average, certifying the grade point average under penalty to perjury, and resubmitting an incomplete or incorrect grade point average to the Student Aid Commission do not mandate a new program or higher level of service or impose costs mandated by the state for the following reasons (Exhibit F):

- The Cal Grant program is an entirely voluntary program. Community colleges that chose to participate in the program execute an Institutional Participation Agreement, establishing the roles and responsibilities of the institution electing to participate and the Student Aid Commission. Article II, paragraph J of the agreement requires the institution to comply with all current and applicable laws and regulations. Noncompliance may result in termination of the agreement. If the Student Aid Commission terminated the contract for a community college district, the community college district would not be required to undertake the activities relating to calculating a grade point average.
- Each of the community college districts participating in the Cal Grant program electronically submit grade point averages through the Student Aid Commission’s Webgrants program. Therefore, community college districts are not required to fill out the paper form and certification outlined in Education Code section 69432.9, subdivision (d), and are not required to correct or complete the GPA form pursuant to section 30023, subdivision (d), of the Student Aid Commission’s regulations. “Although specific numbers are 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 [the Student Aid Commission] from the community college districts.”

Department of Finance

On February 3, 2009, the Department of Finance filed comments on the draft staff analysis, arguing that the test claim should be denied since the program is voluntary (Exhibit G). The Department of Finance further argues that the community college general apportionment funding has increased from approximately \$1.6 billion in 2000-01 to approximately \$3 billion in 2008-09, and that this funding should be used for serving their students, including calculating a grade point average to obtain a Cal Grant award. Finance states that “[w]e believe that calculating a GPA that allows students to further their education is a basic activity that should not be considered a higher level of service since helping students achieve their academic goals strikes at the core mission of community colleges.” Finance also contends that community colleges receive approximately \$50 million annually for student financial aid administration pursuant to the Budget Act (Item 6870-101-0001) and, thus, there should be no costs mandated by the state. Finance states that:

This funding was added to the annual budget act shortly after the implementation of the Ortiz-Pacheco-Poochigian-Vasconsellos Cal Grant program. The legislative intent of this funding is to provide community colleges with additional resources to help students obtain financial aid. Although the Cal Grant Program is not specifically mentioned as part of the intent of this augmentation, it does not mean its related activities are not funded. The lack of specificity with regard to financial aid programs was intentional to allow flexibility at the local level since there are multiple financial aid programs available to community college students.

Finally, Finance argues that any cost to the program is de minimis given the current electronic processes utilized by community colleges. “In fact, we believe the implementation of the [test claim statutes and regulations] is cost neutral considering that community colleges no longer perform activities such as submitting transcripts to the Student Aid Commission as performed under the previous Cal Grant Program. Such activities should be considered a cost reduction against any de minimis costs related to the staff’s findings.”

Discussion

The courts have found that article XIII B, section 6, of the California Constitution¹⁵ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁶ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁷ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁸ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹⁹

¹⁵ Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

¹⁶ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

¹⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁰ To determine if the program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.²¹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”²²

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²³

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁵

Issue 1: Do the test claim statutes and regulations implementing the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program (Ed. Code, § 69430 et seq.) mandate a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?

A. Several test claim statutes and a regulation address requirements imposed on students and the Student Aid Commission, but do not mandate community college districts to perform any activities.

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds.” This constitutional provision was specifically intended to prevent the state from forcing programs on local government that require expenditure

²⁰ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

²¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

²² *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

²³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

²⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

by local governments of their tax revenues.²⁶ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must require a community college district to perform an activity or task. If the statutory language does not mandate community college districts to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

There are several statutes and a regulation pled in this test claim that are helpful in understanding the Cal Grant program, but they do not impose any requirements on community college districts or address any activities performed by community college districts. The statutes and regulation are Education Code sections 69433²⁷, 69433.7²⁸, 69434²⁹, 69434.5³⁰, 69435³¹, 69435.3³², 69436³³, 69436.5³⁴, 69437³⁵, 69437.3³⁶, 69439³⁷, 69440³⁸, and section 30002 of the Student Aid Commission’s regulations.³⁹

²⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

²⁷ Education Code section 69433 states that a Cal Grant award is based on the financial need of the applicant. The statute requires the Student Aid Commission to prescribe the use of a standardized student financial aid application for the Cal Grant program and allows the use of supplemental application information.

²⁸ Education Code section 69433.7 requires the Student Aid Commission to adopt regulations to implement the program.

²⁹ Education Code section 69434 describes the Cal Grant A Entitlement award and the eligibility requirements for the award.

³⁰ Education Code section 69434.5 authorizes a Cal Grant A recipient enrolled in a community college to reserve the award until the recipient transfers to a tuition charging institution. The grant is held in reserve by the Student Aid Commission.

³¹ Education Code section 69435 describes the Cal Grant B Entitlement award.

³² Education Code section 69435.3 describes the eligibility criteria for a Cal Grant B Entitlement award.

³³ Education Code section 69436 addresses the Cal Grant Transfer Entitlement award and the eligibility requirements for the award. The statute further requires to the Student Aid Commission to require the four-year institution where the student is transferring to verify that the recipient meets the requirements.

Although the claimant alleges that these statutes and regulation require community college districts to provide official financial aid and award renewal applications, as well as Cal Grant award forms for each of the entitlement and competitive Cal Grant programs, and assist students who have questions regarding completion of any of the forms, these activities are not required by the plain language of the statutes or regulations pled in the claim. The primary form used for the Cal Grant application process is the Free Application for Federal Student Aid, or FAFSA, which is available to students through the U.S. Department of Education, as well as through the Student Aid Commission. Both the Student Aid Commission and the U.S. Department of Education maintain detailed websites and toll-free phone numbers to assist students with completing financial aid applications.⁴⁰ Awards are then made by the California Student Aid Commission, not by the colleges.

Accordingly, staff finds that Education Code sections 69433, 69433.7, 69434, 69434.5, 69435, 69435.3, 69436, 69436.5, 69437, 69437.3, 69439, 69440, and section 30002 of the Student Aid Commission's regulations do not mandate a new program or higher level of service on community college districts.

B. Activities performed pursuant to the Institutional Participation Agreement

The claimant contends that Education Code sections 69432.8, 69433.5, subdivision (h), 69433.6, subdivision (a), and California Code of Regulations, title 5, section 30032 impose a new state-mandated duty on community college districts to receive, account for, and disburse advance payments of Cal Grant funds from the Student Aid Commission, designate a student's educational level when the student first receives a grant payment, return unused awards, and produce accounting reports and other statements to the Student Aid Commission, as required by district agreement or regulation.

The Student Aid Commission and the Department of Finance assert that these statutes and regulation do not impose a state-mandated program because participation of a college in the Cal Grant program is voluntary.

³⁴ Education Code section 69436.5 requires the four-year institution where students transfer and receive a Cal Grant Transfer Entitlement award to report to the Student Aid Commission the number of students determined to be independent.

³⁵ Education Code section 69437 describes the Cal Grant Competitive awards.

³⁶ Education Code section 69437.3 describes the application and enrollment requirements for the Cal Grant Competitive award.

³⁷ Education Code section 69439 describes the Cal Grant C award for occupational and technical training, and contains the same language as existing law in Education Code section 69539.

³⁸ Education Code section 69440 describes the Cal Grant T award for teacher credential training.

³⁹ Section 30002 of the Student Aid Commission's regulations describes an eligible applicant under the existing Cal Grant program in Education Code sections 69530 et seq. This regulation does not apply to the test claim statutes.

⁴⁰ See, Student Aid Commission's publication "Cal Grants", which refers to <<http://www.calgrants.org>> and <www.fafsa.ed.gov>. (Exhibit H.)

The plain language of the statutes and regulation pled by the claimant require community colleges to perform the following activities:

- Each authorized institution is required to disburse the funds in accordance with the provisions set forth in the Institutional Participation Agreement between the Student Aid Commission and the institution. (Ed. Code, § 69432.8.)
- The Student Aid Commission may require, by the adoption of rules and regulations, the production of reports, accounting, documents, or other necessary statements from the college pertaining to the use or application of the award by a recipient student. (Ed. Code, § 69433.5, subd. (h).)
- When a student recipient initially receives payment for a grant, designate the total number of years of eligibility for grants based on the student's educational level in his or her course of study. (Ed. Code, § 69433.6, subd. (a).)
- Refund unused award funds based on published regulations of the community college, as certified to the Student Aid Commission by the community college. (Cal Code Regs., tit. 5, § 30032.)

The receipt, accounting, and disbursement of Cal Grant funds required by these statutes and regulation apply to community college districts only with respect to community college students receiving Cal Grant B Entitlement awards, Cal Grant B Competitive awards, and Cal Grant C awards for vocational training. As indicated in the background, Cal Grant A awards are held in reserve until the student transfers to a four-year college, and Cal Grant Transfer Entitlement awards are released only by four-year colleges.

For the reasons below, staff finds that community college districts are not legally or practically compelled by the state to comply with these requirements. Rather, each community college is given a choice to participate in the Cal Grant program and administer the award funds to their recipient students. Thus, the activities required that follow the community college's decision to participate in the Cal Grant program are not mandated by the state.

Education Code section 66021.2 addresses the Legislature's long-term Cal Grant policy and refers, in subdivision (f), to "[a]n institution of higher education that *participates* in the Ortiz-Pacheco-Poohigian-Vasconcellos Cal Grant Program." (Emphasis added.) Education Code section 69433.5, subdivision (i), states that a Cal Grant program award may only be utilized at a "qualifying institution." "Qualifying institutions" are defined in Education Code section 69432.7, subdivision (l), to include public postsecondary educational institutions, which includes community college districts. The plain meaning of the words "participates" and "qualifying" in these statutes demonstrates the voluntary nature of a community college's participation in the program. "Participates" is defined as "[t]o join or share or share with others; take part."⁴¹ "Qualify" is defined as "[t]o make eligible or competent for a task or position."⁴²

This conclusion is supported by the Student Aid Commission's Cal Grant Manual. The Student Aid Commission is the state agency required to administer and implement the Cal Grant program

⁴¹ Webster's II New College Dictionary (1999), page 801.

⁴² *Id.* at page 905.

and their Manual describes the Cal Grant process.⁴³ Chapter 2.1 of the Cal Grant Manual states that “qualifying institutions” include public postsecondary educational institutions that complete a Cal Grant “Institutional Participation Agreement” for each participating campus in the district.⁴⁴ Chapter 2.1 further states the following: “To be eligible to release Cal Grant funds to participating students, a school location must be providing instruction in California, complete a Cal Grant *Institutional Participation Agreement*, and be a public postsecondary educational institution.” In addition, “[t]he school must also demonstrate the ability to administer the Cal Grant funds and must meet such other standards as are adopted by regulation by the Commission in consultation with the State Department of Finance.”⁴⁵ A school’s eligibility to participate in the Cal Grant program is approved for the specific locations included in the agreement and does not automatically carry over to branch campuses or other off-site classroom locations. A qualifying institution “shall be deemed disqualified if it no longer possesses all of the requirements for a qualifying institution.”⁴⁶ Chapter 2.1 of the Cal Grant Manual details how an institution can participate in the program as follows:

To initiate institutional participation in the Cal Grant program, a school official must contact the Grant Operations Branch of the Commission, complete, then sign and submit a Cal Grant IPA. This document specifies the requirements for institutional participation in the Cal Grant programs. The IPA is periodically revised to encompass regulatory, policy and processing changes to the Cal Grant programs.

To document eligibility, the Commission reviews institution data from the Postsecondary Education Participants System (PEPS), along with information provided by the school. The following outlines the items that are reviewed. From PEPS data, a copy of:

- the Detailed School Report from the USED [U.S. Department of Education]
- the school’s Eligibility & Certification Approval from USED
- the institution’s state legal accreditation

Sent by the school:

- the school’s existing disbursement and institutional refund policies, as outlined in Chapter 9 [of the Cal Grant Manual]
- audited financial statements (for at least the two most recently completed fiscal years)

⁴³ Education Code sections 69430, et al., 69510, 69514.

⁴⁴ Education Code 69432.7, subdivision (1)(3); Cal Grant Manual, chapter 2.1, “Institutional Eligibility.”

⁴⁵ Cal Grant Manual, chapter 2.1, “Institutional Eligibility.”

⁴⁶ *Ibid.*

- an audited balance sheet showing the financial condition of the institution at the time of application for participation
- the school's final authorization notice of funding for allocation of the federal campus-based student aid programs
- a statement of account from the USED or a general ledger showing that funds are being expended on federal campus-based student aid programs
- the institution's current catalog or resource document describing the course lengths of the institution's program(s).⁴⁷

The claimant urges the Commission to ignore the Manual since it has not been adopted as a regulation and, thus, does not have the force of law. However, the courts have made it clear that the interpretation of the meaning and legal effect of a statute by an agency charged with the administration and implementation of a statute is entitled to consideration, even when the interpretation has not been adopted as a regulation. In *Yamaha Corporation v. State Board of Equalization* (1998) 19 Cal.4th 1, the California Supreme Court determined the legal effect courts must give to annotations relied on by the Board of Equalization in supporting its position in taxpayer litigation. The annotations were not regulations and, therefore, not binding on the taxpayer, the Board, or the court. But the annotations were digests of opinions written by the legal staff of the Board and the administrative interpretation of the Sales and Use Tax Law.⁴⁸ The California Supreme Court reversed the lower court's ruling that the Board's legal interpretation of the tax law in their annotations was entitled to great weight and would not be overturned unless clearly erroneous or unauthorized.⁴⁹ The court held, however, that courts were entitled to consider the Board's annotations in context of the circumstances.

An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to "make law," and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. ...

Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course,

⁴⁷ If a community college participates in the program, the Cal Grant Manual and the Institutional Participation Agreement lay out several requirements, including maintaining standards of administrative capacity and financial responsibility, providing a clear audit trail of fiscal records, maintaining grant funds in a designated account identified as the property of the state, retaining records to document the accuracy of the grant payments for three years, and adopting a refund policy. (Cal Grant Manual, chapters 2, 8, 9.) The claimant has not pled the Cal Grant Manual in this test claim and has not requested reimbursement for these activities.

⁴⁸ *Yamaha Corporation v. State Board of Equalization* (1998) 19 Cal.4th 1, 15.

⁴⁹ *Id.* at page 6.

whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. [Citation omitted.] Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily authoritative. To quote the statement of the Law Revision Commission in a recent report, "The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action." [Citation omitted, emphasis in original.]⁵⁰

The Student Aid Commission's interpretation that participation in the Cal Grant program is voluntary is consistent with the plain meaning of the statutes. Thus, community colleges are not legally compelled to perform the activities required by Education Code sections 69432.8, 69433.5, subdivision (h), 69433.6, subdivision (a), and California Code of Regulations, title 5, section 30032. The decision to participate in the Cal Grant program is made at the local level and is not compelled by the state.⁵¹

Absent such legal compulsion, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The claimant argues that community colleges are practically compelled to participate in the Cal Grant program because students have a statutory right to the award when they demonstrate financial need and comply with the requirements of the program. According to the California Community Colleges Chancellor's Office, over \$74 million was provided to community college students during the 2006-07 year via Cal Grant B and C awards. Thus, the claimant states that this amounts to substantial assistance and places the Cal Grant program as the second largest source of aid for community college students.

The Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern*, the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe ... penalties" such as "double ... taxation" or other "draconian" consequences.⁵²

Here, although students meeting the financial and grade point average criteria may be guaranteed a Cal Grant B Entitlement Award, community colleges are not required to participate in the program. Moreover, there is no evidence in the law or in the record that community colleges that elect not to participate in the Cal Grant program and administer grant funds to their students face certain and severe penalties such as double taxation or other draconian consequences. As acknowledged by the Student Aid Commission, students that need financial aid may be affected by a community college's decision not to participate in the program. However, the Cal Grant

⁵⁰ *Id.* at pages 7-8.

⁵¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 880.

⁵² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 754.

program is intended to supplement and not replace the federal Pell Grant program and other existing institutional student aid. Education Code section 66021.2 specifically states the following:

(f) An institution of higher education in this state that participates in the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program shall not reduce its level of per capita need-based institutional financial aid to undergraduate students, excluding loans, below the total level awarded in the 2000-01 academic year.

[¶]

(h) It is the policy of the State of California that the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program supplement the federal Pell Grant program.

Thus, staff finds that Education Code section 69432.8, 69433.5, subdivision (h), 69433.6, subdivision (a), and California Code of Regulations, title 5, section 30032 do not impose a state-mandated duty on community college districts to receive, account for, and disburse advance payments of Cal Grant funds from the Student Aid Commission, designate a student's educational level when the student first receives a grant payment, return unused awards, and produce accounting reports and other statements to the Student Aid Commission, as required by district agreement or regulation.

Moreover, the activities required of a community college that participates in the Cal Grant program were required before the enactment of the test claim statutes and regulations and, thus, do not constitute a new program or higher level of service. Under the existing Cal Grant program in Education Code section 69530 et seq. for students receiving awards before December 31, 2000, the Student Aid Commission was authorized to make an advance payment per term to "authorized postsecondary educational institutions" for eligible students who indicated they were attending those institutions. Each "authorized" institution was required to disburse the funds in accordance with the provisions set forth in the "Institutional Agreement" between the Student Aid Commission and the institution. (Ed. Code, § 69535.5.) Refunds of unused award funds previously paid to a school or college were required to be based on the published regulations of the school or college concerned, as certified to the Student Aid Commission by the school or college. (Cal. Code Regs., tit. 5, § 30032, enacted in 1977 (Register 77, No. 24).) When a student recipient initially received payment for a grant, the institution of attendance was required to designate the total number of years of eligibility for grants based on the student's educational level in his or her course of study. (Ed. Code, § 69535.1, subd. (a).) In addition, the Student Aid Commission was authorized to provide for reports, accounting, and statements from the award winner and college or university of attendance pertaining to the use of the award. (Ed. Code, § 69535, subd. (j).) Although the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant program may be new, the activities required of institutions participating in the program by Education Code section 69432.8, 69433.5, subdivision (h), 69433.6, subdivision (a), and California Code of Regulations, title 5, section 30032, are not new.⁵³

⁵³ *Lucia Mar Unified School Dist. v. State of California* (1988) 44 Cal.4d 830, 835.

Accordingly, Education Code section 69432.8, 69433.5, subdivision (h), 69433.6, subdivision (a), and California Code of Regulations, title 5, section 30032 do not mandate a new program or higher level of service on community colleges.

C. Calculation, certification, and submittal of grade point averages to the Student Aid Commission

In order to complete the Cal Grant application process, the Student Aid Commission must receive the Free Application for Federal Student Aid (FAFSA) and a certified grade point average.⁵⁴ With respect to the grade point average, the claimant contends that Education Code section 69432.9, and sections 30007, 30023, and 30026 of the Student Aid Commission's regulations require community college districts to:

- Certify, under penalty of perjury, grade point averages upon student request and submit them to the Student Aid Commission.
- Submit facts to the Student Aid Commission showing circumstances beyond the control of the applicant when requesting leave to file the grade point averages after the statutory deadline.
- Resubmit corrected or completed grade point averages within ten days after notice from the Student Aid Commission that the district has submitted a timely, but incomplete or incorrect grade point average.
- Provide a grade point average computed pursuant to section 30007, subdivision (c), of the Student Aid Commission's regulations for at least 16 academic units when requested by a student seeking to reestablish his or her grade point average.

These activities apply to community colleges only when: (1) a community college student applies for a Cal Grant Transfer Entitlement award for use at a four year college; (2) a community college student competes for a Competitive Cal Grant A to be held in reserve until the student attends a four year college; or (3) a community college student competes for a Competitive Cal Grant B award, which can be used at the community college.⁵⁵ For a Cal Grant Transfer Entitlement award, the student must show that he or she has earned a community college grade point average of at least 2.4 on a 4.0 scale and is eligible to transfer to a qualifying institution that offers a baccalaureate degree.⁵⁶ To compete for a Competitive Cal Grant A award, the student may submit a community college or college grade point average of at least 2.4 on a 4.0 scale, in lieu of submitting a high school grade point average.⁵⁷ To compete for a Competitive Cal Grant B award, a student may submit a reestablished or improved grade point average, instead of submitting a high school grade point average, by completing at least 16 cumulative units of credit for academic coursework at an accredited California community college, with at least a 2.0 community college grade point average.^{58, 59}

⁵⁴ Cal Grant Manual, chapter 4.1.

⁵⁵ Cal Grant Manual, chapter 4.1.

⁵⁶ Education Code section 69436, subdivision (b)(3).

⁵⁷ Education Code section 69437.6, subdivision (b).

⁵⁸ Education Code section 69437.6, subdivision (c).

Calculating and certifying the grade point average to the Student Aid Commission

Education Code section 69432.9, subdivision (b)(3)(C), requires the Student Aid Commission to “require that a grade point average be submitted for all Cal Grant A and B applicants”⁶⁰

Section 30023, subdivision (a), similarly states that “[a]ll Cal Grant A and B applicants shall submit a grade point average” Education Code section 69432.9, subdivision (b)(3)(C), further requires the Student Aid Commission to “require that each report of a grade point average include a certification, executed under penalty of perjury by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee.”

Section 30007 of the Student Aid Commission’s regulations provides instructions on how to calculate a “college grade point average” and a “community college grade point average” when applying for a Cal Grant. Both the “college grade point average” and “community college grade point average” are defined in section 30007, subdivision (a)(1), as follows:

... a grade point average calculated on the basis of all college work completed, except for nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree. A college grade point average or a community college grade point average must be computed for a minimum of 24 semester units or its equivalent regardless of the grade received.

The phrase “for all college work completed” includes all coursework for which grades are known to the official reporting the grade point average and that are accepted for credit at the school reporting the grade point average.⁶¹

The definitions of “nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree” differ, however, for a college grade point average and a community college grade point average. For purposes of computing a college grade point average by a postsecondary institution that grants associate degrees, section 30007, subdivision (b)(2), defines “nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree” as “those courses which do not earn credit for an associate degree at the reporting institution.”

For purposes of computing a community college grade point average, section 30007, subdivision (c), defines “nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree” as “all courses except “Associate Degree Credit Courses” as defined by Title 5, Chapter 6, Article 1, Section 55002(a) of the California Code of Regulations.” Section 55002, subdivision (a), defines “degree-applicable credit courses” as a “course which has been designated as appropriate to the associate degree in accordance with the requirements of

⁵⁹ High school grade point averages are required for the Cal Grant A and B Entitlement awards. (Ed. Code, §§ 69434, 69435.3.)

⁶⁰ Statutes 2000, chapter 403.

⁶¹ California Code of Regulations, title 5, section 30007, subdivision (a)(2).

section 55062, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students.”

Section 30007, subdivision (d), requires that the grade point average include a certification under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee.

Section 30026 of the Student Aid Commission’s regulations governs reestablished grade point averages for students competing for a Competitive Cal Grant award. That section provides that an applicant seeking to reestablish his or her grade point average may do so by providing a community college grade point average computed pursuant to section 30007 for at least 16 academic semester units or its equivalent from an accredited California community college.”

Sections 30007, 30023, subdivision (a), and 30026 of the regulations all state the following: “It is the responsibility of the applicant to have a grade point average or test score reported.”

Although these regulations provide that “[i]t is the responsibility of the student applicant to have his or her college or community college report a grade point average,” staff finds that community college districts are required by Education Code section 69432.9 and sections 30007, 30023, subdivision (a), and 30026 of the Student Aid Commission’s regulations to calculate and certify the grade point average under penalty of perjury when requested by a student. When interpreting a statute, the courts will look at the objective to be achieved and the legislative history of the statute if the statutory language is ambiguous. The court will “select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.”⁶² In this case, a certified college or community college grade point average is required in order to be eligible for a Transfer Entitlement or Competitive Cal Grant award. Cal Grant Transfer Entitlement awards are *guaranteed* by the Legislature to students who meet the eligibility requirements.⁶³ Only the community college has access to the records required to calculate the grade point average and the community college official must certify under penalty of perjury that the grade point average is accurately reported.

The Student Aid Commission and the Department of Finance filed comments on the draft staff analysis, arguing that calculating and certifying a grade point average is not mandated by the state since the Cal Grant program is an entirely voluntary program. The Student Aid Commission states that community colleges that choose to participate in the program execute an Institutional Participation Agreement, establishing the roles and responsibilities of the institution electing to participate and the Student Aid Commission. Article II, paragraph J of the agreement requires the institution to comply with all current and applicable laws and regulations. Noncompliance may result in termination of the agreement. If the Student Aid Commission terminated the contract for a community college district, the community college district would not be required to undertake the activities relating to calculating and certifying a grade point average.

⁶² *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.

⁶³ Education Code sections 69436, 69436.5; Statutes 2000, chapter 403 (SB 1644), section 2.

The Student Aid Commission further asserts that each of the community college districts participating in the Cal Grant program electronically submit grade point averages through the Student Aid Commission's Webgrants program. Therefore, community college districts are not required to fill out the paper form and certification outlined in Education Code section 69432.9, subdivision (d).

Staff disagrees with the arguments of the Student Aid Commission and the Department of Finance. There is no indication in the law or evidence in the record that a college's execution of the Institutional Participation Agreement is required before calculating and certifying a grade point average for a student applying for a Cal Grant award. According to Chapter 2.1 of the Cal Grant Manual, a community college's decision to execute the Institutional Participation Agreement and comply with the terms of the agreement triggers the community college's eligibility "to *release* Cal Grant funds to participating students." In this respect, the duties required of participating institutions that sign the Institutional Participation Agreement govern the disbursement, maintenance, accounting, and release of the funds to the students. These duties include maintaining standards of administrative capacity and financial responsibility, providing a clear audit trail of fiscal records, maintaining grant funds in a designated account identified as the property of the state, retaining records to document the accuracy of the grant payments for three years, and adopting a refund policy. The Agreement, in Article II governing General Provisions, does require the institution to comply with all current and applicable laws and regulations, as argued by the Student Aid Commission. But this provision is limited to compliance with the law "in [the college's] implementation of the terms of this Agreement." The terms of the Agreement address the disbursement, maintenance, and accounting of funds that are held in trust by the college for the state until the funds are disbursed to an eligible student.⁶⁴ The remaining General Provisions in Article II of the Agreement address these duties. They require the institution to use and retain program and fiscal records that demonstrate institutional and student eligibility and that document the accuracy of the grant payments, to maintain written policies and procedures governing the administration and processing of Cal Grant funds, and to use the Cal Grant funds transferred to it solely for the purposes specified.

Moreover, the argument of the Student Aid Commission and the Department of Finance, that calculating and certifying a grade point average is required only if a community college executes the Institutional Participation Agreement, does not make sense. As indicated above, if a community college wants to release Cal Grant funds to its own students, the community college is required to execute the Institutional Participation Agreement. Community colleges, however, calculate and certify grade point averages for students that apply for Cal Grant Transfer Entitlement awards and Competitive Cal Grant A awards. These award funds are not used at community colleges, but can only be used and disbursed by qualifying four year colleges.⁶⁵ Thus, even if a community college signs the Institutional Participation Agreement, that agreement has nothing to do with the disbursement of Cal Grant funds by a four year college.

Finally, the assertion that calculating and certifying grade point averages is not mandated by the state because community colleges are electronically submitting grade point averages through the

⁶⁴ Institutional Participation Agreement, Article III, Paragraph D. (Exhibit H.)

⁶⁵ Education Code sections 69436, 69436.5, 69437.6, subdivision (f); Cal Grant Manual, Chapter 3.2.

Student Aid Commission's WebGrants program, is not correct. Chapter 4.4 of the Cal Grant Manual describes the WebGrants program as follows:

The most efficient way to submit GPAs is through the Commission's GPA Collection System via WebGrants. The WebGrants' GPA function provides immediate feedback on the number of GPAs that have been accepted, it also identifies any errors in the school's upload file. Through the online GPA function, GPAs are certified electronically, thus eliminating the need to fax or mail a GPA Verification Form.

Grade point averages are still certified, electronically, when submitted under the Student Aid Commission's WebGrant program. Moreover, colleges may choose to submit batched verified student grade point averages online through the Student Aid Commission's WebGrants program, but they are not required by the state to do so.⁶⁶

Thus, there is nothing in the law, the Cal Grant Manual, or the Institutional Participation Agreement that expressly requires a community college to execute the Institutional Participation Agreement before calculating and certifying a grade point average for students that apply for a Cal Grant award.

Therefore, staff finds that calculating and certifying grade point averages, pursuant to Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivision (a), and 30026 of the Student Aid Commission's regulations, when requested by the student, is mandated by the state.

Staff further finds that these activities impose a new program or higher level of service on community colleges. Under existing law, California Code of Regulations, title 5, section 30020, which implemented Education Code section 69544 under the earlier Cal Grant program, provides that the Student Aid Commission "may require applicants to submit transcripts of high school and college academic records or other evidence of potential." Academic merit under the test claim statutes and regulations is now evaluated by the Student Aid Commission through a certified grade point average, rather than through copies of academic transcripts. Although prior law requires community colleges to average grades on the basis of point equivalencies using a 4.0 scale to determine a student's grade point average, and allows students to receive verified student records, such as a grade point average, from the community college,⁶⁷ prior law does not require or identify specific courses that may not be counted in the calculation of the grade point average and does not require a school official to certify under penalty of perjury that the calculation is accurate. The specific calculation and certification of the grade point average are activities newly required by the test claim statute and regulations.⁶⁸

⁶⁶ Cal Grant Manual, chapter 4.4.

⁶⁷ Education Code sections 76210, subdivision (c), 76220, and 76230; California Code of Regulations, title 5, sections 54610, 55023.

⁶⁸ See also, *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 173, where the court found a higher level of service within the meaning of article XIII B, section 6 in a statute that required specific action to alleviate segregation in schools. Existing law required school districts to take steps to alleviate racial imbalance, but did not require specific action to be taken.

Therefore, staff finds that the following activities required by Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivision (a), and 30026 of the Student Aid Commission's regulations, constitute a state-mandated new program or higher level of service on community colleges:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007.
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee.

Submitting the grade point average to the Student Aid Commission

The activity of the community college submitting the grade point average to the Student Aid Commission is an activity not mandated by the state, however. Rather, the Cal Grant applicant can fill in the top of a one-page verification form from the Student Aid Commission and take it to a school officer (registrar's desk, counselor, etc.) who then fills in the bottom third of the form with a school code, the student's grade point average, contact information for the official, and a signature.⁶⁹ The applicant then returns the form to the Student Aid Commission by the financial aid application deadline. Colleges may choose to submit batched verified student grade point averages online through the Student Aid Commission's "WebGrants grade point average Collection System," but they are not required by the state to do so.⁷⁰ Moreover, the plain language of sections 30007, 30023, subdivision (a), and 30026 provides that "[i]t is the responsibility of the applicant to have a grade point average or test score reported." Thus, the activity of submitting the grade point average to the Student Aid Commission is not a state-mandated requirement.

Grade point averages submitted after the statutory deadline

Section 30023 of the regulations further addresses grade point averages that are submitted to the Student Aid Commission after the statutory deadlines. Section 30023, subdivision (c), states in relevant part the following:

(c) The Commission may, on a case-by-case basis, accept the submission of grade point average(s) from an applicant or reporting institution after the March 2 or September 2 deadline if, in the opinion of the Executive Director, circumstances beyond the control of the applicant delayed or prevented the timely submission of the grade point average(s) by the applicant or reporting institution(s) by the March 2 or September 2 deadline.

(1) Such circumstances must be shown by a certification: (i) from the reporting institution of the circumstances beyond the control of the applicant that delayed or prevented the timely submission of the grade point average by the reporting institution by the March 2 or September 2 deadline; (ii) from the applicant or reporting institution with proof that the grade point average was originally mailed

⁶⁹ See, "Operations Memo, Update of the California Student Aid Commission," GOM 2008-24, dated October 31, 2008, and the attached Cal Grant GPA Verification Form. (Ex. H.)

⁷⁰ Cal Grant Manual, chapter 4.4.

by the applicant or reporting institution before the deadline; or (iii) from the applicant with a written description, under penalty of perjury, of the facts showing that circumstances beyond the control of the applicant delayed or prevented the timely submission of the grade point average.

The claimant argues that section 30023, subdivision (c), mandates community colleges to submit facts to the Student Aid Commission showing circumstances beyond the control of the applicant when requesting leave to file the grade point averages after the statutory deadline.

Staff finds that the state has not mandated community colleges to perform any activities when grade point averages are submitted late. Section 30023, subdivision (c), authorizes the Student Aid Commission to accept late submittals if, in the opinion of the Executive Director, circumstances beyond the control of the applicant delayed or prevented the timely submission of the grade point average by the applicant or reporting institution. However, a certification of the facts from the community college justifying the late submittal is not required by the plain language of section 30023. Rather, the applicant can show the circumstances for the late submittal by submitting proof that the grade point average was originally mailed by the applicant or reporting institution before the deadline; or with a written description, under penalty of perjury, of the facts showing that circumstances beyond the control of the applicant delayed or prevented the timely submission of the grade point average.

Grade point averages submitted incomplete or incorrect

Section 30023 of the regulations also addresses grade point averages that are submitted incomplete or incorrect. Section 30023, subdivision (d), states the following:

Applicants or officials who submit a timely but incomplete or incorrect grade point average shall have a grace period of ten (10) days after the mailing of notice by the Commission to file a corrected or completed grade point average. A corrected or completed submission postmarked within the 10 day period shall be deemed to comply with this requirement.

The claimant contends that section 30023, subdivision (d), requires community colleges to resubmit corrected or completed grade point averages within ten days after notice from the Student Aid Commission that the district has submitted a timely, but incomplete or incorrect grade point average.

Staff finds that community colleges are required to complete or correct a grade point average upon notice that the original submitted grade point average was not complete or correct. As indicated above, only the community college has access to the records required to calculate the college or community college grade point average and the community college official must certify under penalty of perjury that the grade point average is accurately reported. Since grade point averages are newly required to complete the Cal Grant application process, staff finds that completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct, pursuant to section 30023, subdivision (d), constitutes a state-mandated new program or higher level of service.

Issue 2: Does the Community College Student Financial Aid Outreach Program in Education Code section 69514.5 mandate a new program or higher level of service on community colleges districts within the meaning of article XIII B, section 6 of the California Constitution?

The claimant alleges Education Code section 69514.5 mandates a new program or higher level of service by requiring community colleges to train “community college counselors and advisors who work with students ... planning to transfer to a four-year college,” and to conduct “workshops that provide general information about financial aid and technical assistance in completing financial aid forms.”⁷¹

Education Code section 69514.5, as added by Statutes 2000, chapter 403, follows:

a) The Community College Student Financial Aid Outreach Program is hereby established. The commission shall, in consultation with the office of the Chancellor of the California Community Colleges, develop and administer this program for the purpose of providing financial aid training to high school and community college counselors and advisors who work with students planning to attend or attending a community college. This training shall also address the specific needs of all of the following:

(1) Community college students intending to transfer to a four-year institution of higher education.

(2) Foster youth.

(3) Students with disabilities.

(b) The program shall provide specialized information on financial aid opportunities available to community college students, with a particular focus on students who plan to transfer to a four-year college or university. The commission shall work in collaboration with the Chancellor of the California Community Colleges and other segments of higher education to develop and distribute this specialized information to assist community college students who are planning to transfer to a four-year college or university. Each year, the program shall offer financial aid workshops for high school and community college counselors, targeted for students planning to attend a community college or to transfer from a community college to a four-year institution of higher education. The program shall assist community college counselors in conducting student and family workshops that provide general information about financial aid and technical assistance in completing financial aid forms.

(c) The program shall concentrate its efforts on high schools and community colleges that are located in geographic areas that have a high percentage of low-income families.

Staff finds that Education Code section 69514.5 does not mandate the participation of community college counselors, but rather requires that the Student Aid Commission, in conjunction with the Chancellor’s Office, to “offer financial aid workshops” to such counselors,

⁷¹ Test Claim Filing, page 40 (Ex. A).

and “assist community college counselors in conducting ... workshops.” The requirements of Education Code section 69514.5 are consistent with a Student Aid Commission program called “Cash for College.” Through the Cash for College workshop program, the Student Aid Commission provides free training materials and resources for public and private organizations to offer financial aid workshops. Such workshops are then conducted on a voluntary basis as a public service by local high schools, colleges, or community organizations.⁷²

There is no evidence in the law or the record that individual community college districts have been required to provide staff to receive financial aid training, or to offer financial aid workshops to students. Therefore, pursuant to the plain language of the test claim statute, staff finds that Education Code section 69514.5 does not mandate a new program or higher level of service on community college districts.

Issue 3: Do Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivisions (a) and (d), and 30026 of the Student Aid Commission’s regulations impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

As indicated above, staff finds that the following activities required by the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program in Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivisions (a) and (d), and 30026 of the Student Aid Commission’s regulations, constitute a state-mandated new program or higher level of service on community colleges:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007, 30023, subd. (a), and 30026.)
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007 and 30026.)
- Completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct. (Cal. Code Regs., tit. 5, § 30023, subd. (d).)

These activities apply to community colleges only when: (1) a community college student applies for a Cal Grant Transfer Entitlement award for use at a four year college; (2) a community college student competes for a Competitive Cal Grant A to be held in reserve until the student attends a four year college; or (3) a community college student competes for a Competitive Cal Grant B award, which can be used at the community college.

⁷² See, “Frequently Asked Questions” regarding Cash for College workshop registration, issued by the Student Aid Commission. (Ex. H.)

The claimant has submitted a declaration from Toni Du Bois, Dean of Financial Aid and Veteran Affairs for Long Beach Community College District, which estimates increased costs of \$1,000 in staffing and other costs in excess of any funding provided for fiscal year 2001-2002.

The Student Aid Commission and the Department of Finance contend that the community colleges have received funds for student aid administration, including a budget augmentation in 2003-04, with a minimum additional allocation of \$50,000 per campus (6870-101-0001) for outreach and support services for "potential and current financial aid applicants." The Department of Finance further argues that the community college general apportionment funding has increased from approximately \$1.6 billion in 2000-01 to approximately \$3 billion in 2008-09, and that this funding should be used for serving their students, including calculating a grade point average to obtain a Cal Grant award.

Thus, the issue is whether the activities listed above impose costs mandated by the state. Government Code section 17514 defines "costs mandated by the state" as any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute or executive order enacted on or after January 1, 1975, that mandates a new program or higher level of service of an existing program.

Government Code section 17556, subdivision (e), states that there are no costs mandated by the state if the statute, executive order, or an appropriation in a Budget Bill "includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

Although community colleges may have received funds appropriated for the "administration of student financial aid," staff finds that the exception to reimbursement in Government Code section 17556, subdivision (e), does not apply here. The line item identified by the Student Aid Commission (item 6870-101-0001, schedule (5)), is for local assistance to the Board of Governors of the California Community Colleges (Proposition 98) for "Student Financial Aid Administration."⁷³ The funds appropriated are for transfer by the State Controller to Section B of the State School Fund, and can be used on the administration of other student financial aid programs that are not included in this test claim. For example, the funds can be used for expenses incurred under title 5 of the California Code of Regulations, sections 58600 et seq., which have not been pled in this claim, that govern Student Financial Aid grants allocated by the Board of Governors to community college districts for students with financial need. The appropriations made in the Budget Acts do not require community colleges to use the funds specifically for the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program. Thus, the funds appropriated in line item 6870-101-0001 were not specifically intended to fund the costs of the test claim statutes and regulations. In addition, general apportionment funding to community colleges is not specifically intended to fund the Cal Grant program.

Moreover, while the statute that enacted the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program (Stats. 2000, ch. 403, § 10 (SB 1644)) appropriated funds to the Student Aid

⁷³ See Statutes 2001, chapter 106; Statutes 2002, chapter 379; Statutes 2003, chapter 157; Statutes 2004, chapter 208; Statutes 2005, chapter 38; Statutes 2006, chapter 47; Statutes 2007, chapter 171; and Statutes 2008, chapter 269.

Commission for the administration of the program, the test claim statutes did not appropriate any funds to community college districts.

Therefore, staff finds that Government Code section 17556, subdivision (e), does not apply to deny this claim. However, the appropriation in line item 6870-101-0001 of the Budget Act will be identified as potential offsetting revenue, for deduction by community colleges that use that revenue for the activities of calculating and certifying a grade point average and completing and correcting a grade point average pursuant to the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program.

The Department of Finance further argues that any cost to the program is de minimis given the current electronic processes utilized by community colleges. “In fact, we believe the implementation of the [test claim statutes and regulations] is cost neutral considering that community colleges no longer perform activities such as submitting transcripts to the Student Aid Commission as performed under the previous Cal Grant Program. Such activities should be considered a cost reduction against any de minimis costs related to the staff’s findings.”

While the Commission does not disagree that the new activities that result in increased levels of service may be small, there is nothing in Government Code section 17500 and following, or mandates case law to support a denial of this claim based on a finding that the newly mandated activities result in only de minimis costs.

In *San Diego Unified School District*, the Supreme Court addressed a narrowly drawn situation where there was a de minimis increase in the level of service for new activities that were treated by the court as part and parcel of an underlying federal mandate. There, school districts were seeking reimbursement for activities that exceeded federal due process requirements in relation to discretionary school expulsions.⁷⁴ The court denied the claim based on another case, *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, which had found that procedural requirements enacted to comply with a general federal mandate, which were reasonably articulated to make the underlying federal right enforceable and to set forth necessary procedural details, and which did not significantly increase the cost of compliance with the federal mandate, were not reimbursable. The *San Diego Unified* court held that:

[F]or purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law – and whose costs are, in context, de minimis – should be treated as part and parcel of the underlying federal mandate.⁷⁵

Similarly, the Third District Court of Appeal recently held, pursuant to the *San Diego Unified School Dist.* case, that challenged state rules or procedures that are intended to implement ballot measure mandates, and whose costs are, in context, de minimis, should be treated as part and parcel of the underlying ballot measure mandate.⁷⁶

⁷⁴ *San Diego Unified School District v. Commission on State Mandates*, *supra*, 33 Cal.4th 859, 888.

⁷⁵ *Id.* at 890.

⁷⁶ *California School Boards Association et al., v. State of California, et al.* (March 9, 2009, C055700) __ Cal.App.4th __ (p. 51).

Here, the Cal Grant requirements are not intended to implement an existing law and cannot be likened to the *San Diego Unified* circumstances. Thus, neither *San Diego Unified* nor *County of Los Angeles* is applicable.

In addition, Government Code section 17564 sets the minimum amount of costs incurred in order to file a test claim or reimbursement claim at \$1,000. The claimant has filed a declaration estimating increased costs of \$1,000 in staffing and other costs in excess of any funding provided. There is nothing in the record to dispute that estimate. Beyond requiring a claimant to assert a minimum amount for test claims and for actual reimbursement claims, the mandates process does not provide for a denial of a claim based on a de minimis increase in the level of service where the test claim statutes are intended to be treated as part and parcel of an underlying federal law or ballot measure.

Accordingly, staff finds 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 following activities mandated by the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program in Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivisions (a) and (d), and 30026 of the Student Aid Commission's regulations:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007, 30023, subd. (a), and 30026.)
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007 and 30026.)
- Completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct. (Cal. Code Regs., tit. 5, § 30023, subd. (d).)

CONCLUSION

Staff concludes that the following activities required by the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program in Education Code section 69432.9, subdivision (b)(3)(C), and sections 30007, 30023, subdivisions (a) and (d), and 30026 of the Student Aid Commission's regulations, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007. (Ed. Code, § 69432.9, subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007, 30023, subd. (a), and 30026.)
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee. (Ed. Code, § 69432.9,

subd. (b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007 and 30026.)

- Completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct. (Cal. Code Regs., tit. 5, § 30023, subd. (d).)

These activities apply to community colleges only when: (1) a community college student applies for a Cal Grant Transfer Entitlement award for use at a four year college; (2) a community college student competes for a Competitive Cal Grant A to be held in reserve until the student attends a four year college; or (3) a community college student competes for a Competitive Cal Grant B award, which can be used at the community college.

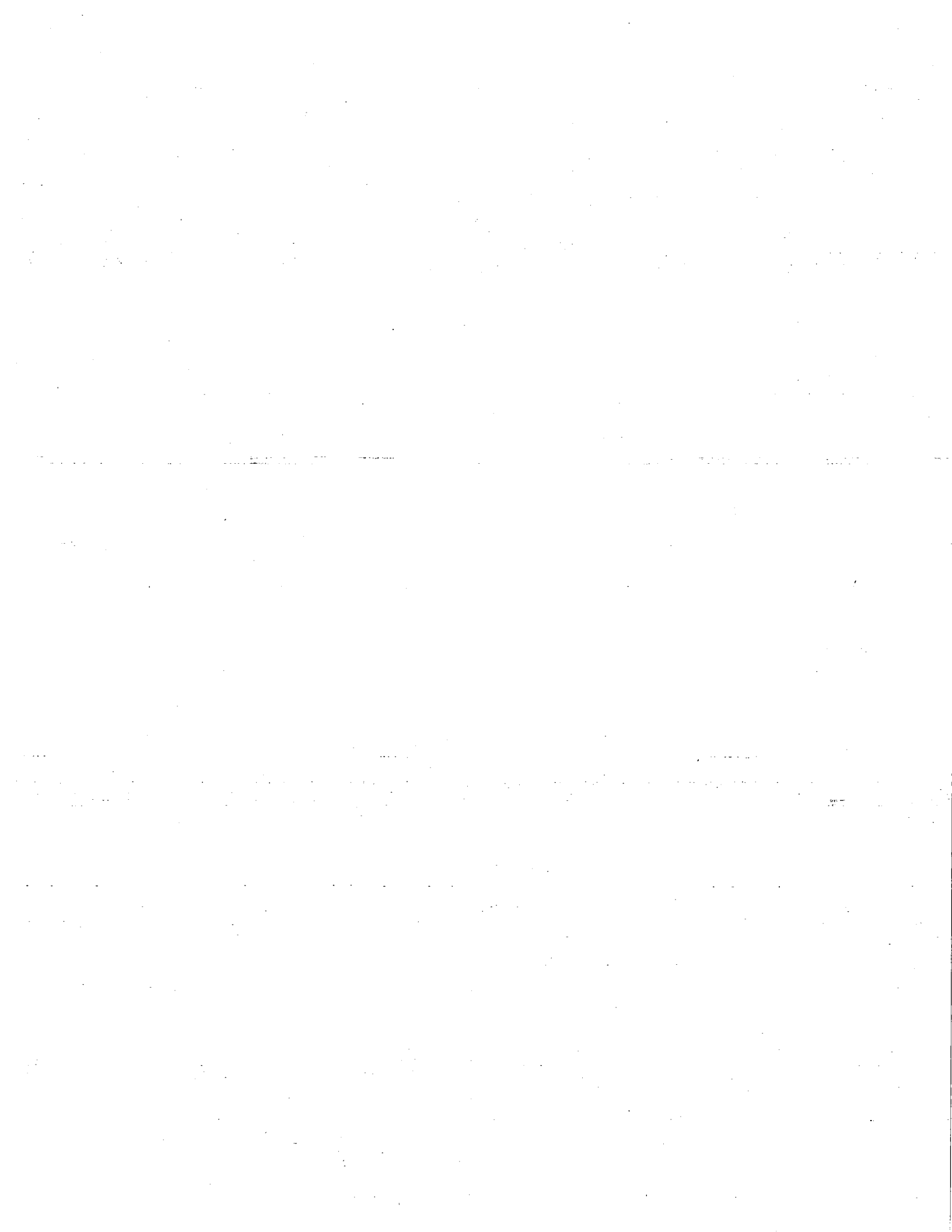
The eligible period of reimbursement for this claim begins July 1, 2001.⁷⁷

Staff further concludes that all other statutes and regulations pled in this test claim do not mandate a new program or higher level of service and, thus, are not reimbursable.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim.

⁷⁷ Government Code section 17557, subdivision (e).



Commission on State Mandates

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Issue: Cal Grants

Mailing Information: Final Staff Analysis

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