

**ITEM 9
TEST CLAIM
FINAL STAFF ANALYSIS**

Education Code Sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656
as amended by Statutes 1984, Chapter 1178; Statutes 1985, Chapter 1586;
Statutes 1990, Chapter 1352; Statutes 1990, Chapter 1455

California Code of Regulations, Title 5, Sections
56200, 56201, 56202, 56204, 56206, 56208, 56210, 56220, 56222, 56224, 56226, 56230, 56232,
56234, 56236, 56238, 56240, 56252, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272,
56274, 56276, 56278, 56280, 56290, 56292, 56293, 56295, 56296, and 56298
(As added or amended by Register 76, No. 41, Register 77, No. 34, Register 79, No. 32,
Register 80, No. 06, Register 81, Nos. 03 & 19, Register 83, No. 18, Register 87, No. 40,
Register 90, No. 49, Register 91, No. 29, and Register 97, No 46

EOPS Implementing Guidelines,
Chancellor of the California Community Colleges (January 2002.)

Extended Opportunities Programs and Services

02-TC-29

West Kern Community College District, Claimant

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EOPS Implementing Guidelines,
Chancellor of the California Community Colleges (January 2002)

Extended Opportunities Programs and Services

02-TC-29

West Kern Community College District, Claimant

EXECUTIVE SUMMARY

This test claim addresses the Community College Extended Opportunity Programs and Services program (EOPS). In 1969, Senate Bill No. (SB) 164 added Article 8 to the Education Code establishing EOPS to "encourage local community colleges to establish and implement programs to identify those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions." (Ed. Code, § 69640.¹)

The community college districts (districts) are encouraged to participate in EOPS by both legislative intent language and state (and potentially federal) funding that is provided specifically for EOPS. In exchange for state funding, the district generally must meet minimum standards that are specified in the test claim statutes and executive orders.²

¹ All statutory references are to the California Education Code, unless otherwise specified.

² The regulations and Guidelines cited are collectively referred to as the test claim executive orders. Staff assumes, arguendo, the Guidelines are executive orders because "they constitute a plan for implementation and administration of the EOPS program, and are administered by the State Community Colleges Chancellor, who serves at the pleasure of the Governor."²

EOPS provides academic and financial support to community college students whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending college. Services are specifically designed for at-risk students and their special needs. Counseling contacts are required and a Student Educational Plan is developed for each student to assist the student in achieving their individual goals. Today, approximately 107,000 community college students are served by EOPS annually. The appropriation in the 2007-2008 state budget for EOPS was \$106.78 million (Prop 98 state funds - local assistance) while the districts contributed \$22.7 million to the program.

Many of the test claim statutes and executive orders require districts to perform a number of activities. However, the requirement to perform those activities is triggered by a district's decision to establish an EOPS program and to request and accept state funding for that program and therefore, those activities are not state-mandated activities. More specifically, pursuant to sections 69649 and 69650, the decisions to establish Extended Opportunities Programs or Extended Opportunities Services are discretionary decisions of the district, which must be approved by the Board of Governors of the California Community Colleges (BOG). Similarly, if the districts decide to establish an EOPS program, they also make a discretionary decision regarding whether to apply to the BOG for a state grant to fund all or a portion of the costs of establishing and operating an EOPS program. (Ed. Code, § 69652.) Because the districts are not compelled to establish an EOPS program or to accept EOPS funding, the activities required by the test claim statutes are not state-mandated and thus are not reimbursable.

With regard to Education Code section 69656; California Code of Regulations, title 5, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56252, 56292; and the EOPS Implementing Guidelines (Guidelines), staff finds that these sections do not require districts to perform any activities because:

- Education Code section 69656 states the intent of the Legislature for the California State University (CSU) and the University of California (UC) to provide fee waivers for admissions applications for EOPS transfer students who provide waiver forms signed by a community college EOPS director and, by its plain language, requires no specific action on the part of districts or community college.
- California Code of Regulations, title 5, sections 56220-56226 relate to student eligibility and responsibility and do not require districts to perform any activities.
- California Code of Regulations, title 5, section 56252 is a statement of purpose for EOPS financial aid and does not require districts to perform any activities.
- California Code of Regulations, title 5, section 56292 states that the Chancellor may adjust allocations to correct for an over or under allocation or utilization of EOPS funds, but does not require any district to perform any activities.
- The Guidelines are permissive, and use the modifier "should" throughout. Moreover, even if any required activities were imposed on the districts by the Guidelines, they would be requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus would not be state-mandated activities.³

³ Staff notes that Guidelines page 40, interpreting California Code of Regulations, title 5, section 56252, requires the EOPS program to notify the college's financial aid office when EOPS students receive book services. However, this is of no consequence since it is a downstream activity required as a condition of participation in an ongoing elective program.

CONCLUSION

Staff concludes that the test claim should be denied because the test claim statutes and executive orders do not require the community colleges to perform any state-mandated activities and thus do not impose a state-mandated program on community college districts because:

1. Downstream activities delineated by Education Code sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, and 69655, as added or amended by the test claim statutes, California Code of Regulations, title 5, sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, 56298 are requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.
2. Education Code Section 69656, California Code of Regulations, title 5, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252, 56292 and the Guidelines do not require districts to perform any activities and, even if they did, they would be requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus would not be state-mandated activities.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

STAFF ANALYSIS

Claimant

West Kern Community College District

Chronology

- 06/13/03 West Kern Community College District filed test claim with the Commission on State Mandates ("Commission")⁴
- 06/27/03 Commission staff issued completeness review letter and requested comments from state agencies
- 07/25/03 Department of Finance (DOF) requested a 45-day extension for filing comments
- 07/29/03 The Commission granted DOF's request for an extension to September 8, 2003 to file comments on test claim
- 08/21/03 California Community Colleges (CCC) requested an extension to October 11, 2003 to file comments
- 08/28/03 The Commission granted CCC's request for an extension to October 11, 2003 to file comments on test claim
- 09/11/03 DOF requested an additional 30-day extension to file comments
- 09/17/03 The Commission granted DOF an extension to October 13, 2003 to file comments on test claim
- 11/07/03 The Commission extended the due date for state agencies to file comments on test claim to February 7, 2004
- 02/09/04 DOF submitted comments on the test claim
- 03/04/04 Claimant submitted a response to DOF's comments on the test claim
- 03/11/04 CCC submitted comments on the test claim
- 04/23/04 Claimant submitted a response to CCC's comments on the test claim
- 06/09/04 DOF submitted comments on the claimant's response
- 07/06/04 Claimant submitted a response to DOF's June 9, 2003 comments on claimant's response
- 01/08/07 Claimant submitted a supplement to the test claim filing (i.e. the history of Title 5, CCR sections at issue in the test claim)
- 05/15/08 Claimant submitted a supplement to the test claim filing (i.e. the list of registers and relevant section numbers)
- 05/12/09 Commission issued draft staff analysis
- 05/20/09 Commission staff mailed the regulatory history for Title 5, California Code of Regulations, section 56210 under the cover page entitled "Re: Additional

⁴ Based on the filing date of June 13, 2003, the potential period of reimbursement for this test claim begins on July 1, 2001.

06/02/09

Claimant submitted comments on the draft staff analysis

Background

This test claim addresses the Community College Extended Opportunity Programs and Services program (EOPS).

In 1969, SB 164 added Article 8 to the Education Code establishing EOPS.⁵ Article 8 contains all of the code sections pled in this test claim. The intent of the Legislature in establishing EOPS was to "encourage local community colleges to establish and implement programs to identify those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited, to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions." (Ed. Code, § 69640.)

The community college districts (districts) are encouraged to participate in EOPS by both legislative intent language and state (and potentially federal) funding that is provided specifically for EOPS. In exchange for state funding, the district generally must meet minimum standards that are specified in the test claim statutes and executive orders.⁶

EOPS provides academic and financial support to community college students whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending college. Services are specifically designed for at-risk students and their special needs. Counseling contacts are required and a Student Educational Plan is developed for each student to assist the student in achieving their individual goals. Today, approximately 107,000 community college students are served by EOPS annually. The appropriation in the 2007-2008 state budget for EOPS was \$106.78 million (Prop 98 state funds - local assistance) while the districts contributed \$22.7 million to the program.

Importantly, as is reflected throughout the statutory and regulatory framework, the Legislature stated its intent that EOPS not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives. (See Ed. Code, § 69640.) Rather, EOPS is intended as a supplement to the other programs and services available to community college students.

To be eligible for EOPS a student must:

- (1) Be a resident of California
- (2) Be enrolled full-time when accepted into the EOPS program (the EOPS director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units).
- (3) Not have completed more than 70 units of degree applicable credit coursework in any combination of post-secondary higher education institutions.
- (4) Qualify to receive a Board of Governors (BOG) Grant.⁷

⁵ Statutes 1969, chapter 1579.

⁶ The regulations pled are collectively referred to as the test claim executive orders throughout this analysis.

⁷ A BOG Grant is a community college fee waiver provided to California residents who either:

The Role of the Board of Governors of the California Community Colleges

The BOG is required to consider adopting regulations which include all of the following objectives:

- (a) That the EOPS provided by a community college shall include, but not be limited to, staff qualified to counsel all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives, and that each EOPS student receives that counseling upon his or her initial enrollment in the community college, and at least every six months thereafter.
- (b) That in assisting all EOPS students to identify their educational objectives, the EOPS provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.
- (c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established. (Ed. Code, § 69641.5.)

The BOG is required to adopt rules and regulations necessary to implement Education Code Chapter 2, Article 8, including rules and regulations which do all of the following:

- (a) Prescribe the procedure by which a district shall identify a student eligible for EOPS on the basis of the student's language, social, or economic disadvantages.
- (b) Establish minimum standards for the establishment and conduct of EOPS. The standards may include, but shall not be limited to, guidelines for all of the following:
 - (1) The provision of staffing and program management.
 - (2) The establishment of a documentation and data collection system.
 - (3) The establishment of an EOPS advisory committee.
 - (4) The provision of recruitment and outreach services.

-
- A. Are recipients or dependants of recipients of: TANF/CalWORKs; SSI/SSP (Supplemental Security Income/State Supplemental Program); General Assistance, the Congressional Medal of Honor or who have certification from the California Department of Veterans Affairs or are a dependant of a victim of the September 11, 2001 terrorist attack; or,
 - B. Have an income (or are a dependant of someone with an income) at or below 150% of the federal poverty guidelines, (\$15,600 for a family of one for 2009/2010).

- (5) The provision of cognitive and noncognitive assessment, advising, and orientation services.
 - (6) The provision of college registration.
 - (7) The provision of basic skills instruction, seminars, and tutorial assistance.
 - (8) The provision of counseling and retention services.
 - (9) The provision of transfer services.
 - (10) The provision of direct aid.
 - (11) The establishment of objectives to achieve the goals specified in Education Code section 69640, and objectives to be applied in implementing EOPS.
- (c) Subject to approval of the Chancellor, establish procedures for the review and evaluation of the districts' EOPS.
 - (d) Require the submission of the reports by districts that will permit the evaluation of the program and services offered. (Ed. Code, § 69648.)

The BOG is also required to determine the elements of a statewide database for EOPS, pursuant to Education Code section 69648, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in section Education Code 69640, and program objectives adopted pursuant to section Education Code 69648 including, but not limited to, all of the following:

- (1) The annual number of EOPS students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.
- (2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the BOG shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.
- (3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment. In implementing this paragraph, the board of governors shall integrate the data collection with existing data collection requirements pertaining to vocational education.

Since January 1987, the BOG has been required to annually report to the Legislature regarding the number of students served by community college EOPS and the number of EOPS students who achieve their educational objectives. [Ed. Code, § 69655 (b).]

State Funding of EOPS

The BOG is required to review the need for state funds for state financial aid programs, including EOPS, and to include an estimate of such need in its budget for each year. (Section 69654.) The BOG may use up to one percent of the funds appropriated for the EOPS program by the annual Budget Act to monitor program activities and to conduct the evaluation of EOPS offered by districts. (Ed. Code, § 69648.5.) As mentioned above, for budget year 2007-2008, the

state provided \$106.78 million to community college EOPS programs while the districts contributed a combined \$22.7 million to their own EOPS programs.

Claimant's Position

Claimant alleges reimbursable state-mandated costs for districts to "provide certified directors, instructors and counselors; to provide counselors for students; to comply with new minimum standards; petition for waivers of minimum standards and staffing requirements; to enter into educational plans and mutual responsibility contracts; verify student eligibility and compliance; and utilize specific accounting standards and procedures in order to implement the EOPS program."⁸

Claimant maintains that even if the EOPS was originally an optional program, beginning with the 1987-1988 academic year Title 5 California Code of Regulations, section 56210 required each college to maintain EOPS programs at a minimum level.⁹ Claimant states that therefore, the provisions of Government Code section 17565 apply in this case. Government Code section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the district for those costs incurred after the operative date of the mandate. In further clarification of this issue, claimant states that this is more than maintenance of effort and that colleges may not discontinue the program.¹⁰ Claimant focuses on the "shall maintain" language of Title 5 California Code of Regulations, section 56210 in finding a mandate.

Claimant also argues that districts are practically compelled to provide EOPS because "in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648."¹¹ Claimant cites to the *Sacramento II* and *Kern* cases to support its practical compulsion arguments.¹²

On June 2, 2009, claimant submitted comments on the draft staff analysis. In addition to making a number of technical comments, claimant argued that the EOPS Implementing Guidelines (Guidelines) are executive orders because "they constitute a plan for implementation and administration of the EOPS program, and are administered by the State Community Colleges Chancellor, who serves at the pleasure of the Governor."¹³ Finally, claimant argued that community colleges are legally required to participate in EOPS by mandatory provisions in the test claim statutes and regulations, citing to Title 5, California Code of Regulations section 56210, which requires districts to maintain the same dollar level of services supported with non-EOPS funds as the average for the prior three years.¹⁴ In support of this argument claimant states

⁸ Exhibit A, Test Claim, p. 2.

⁹ Exhibit C, Claimant's March 4, 2004 response to DOF's comments on the test claim, p. 2.

¹⁰ Exhibit G, Claimant's July 6, 2004 response to DOF's response dated June 9, 2004, pp. 2-3.

¹¹ Exhibit C, Claimant's March 4, 2004 response to DOF's comments on the test claim, supra, pp. 2-3, Exhibit C.

¹² Exhibit C, Id., p. 3-6, citing *City of Sacramento v. State of California* (1990) 50 Cal. 3rd 51 (*Sacramento II*) and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern*).

¹³ Exhibit K, Claimant, comments on the draft staff analysis dated June 2, 2009, p. 2.

¹⁴ Id, p. 3.

that “[t]here is no exception to this provision to allow community colleges to discontinue their EOPS programs, regardless of the alleged initial choice to participate.”¹⁵

Department of Finance’s Position

DOF believes that a district’s participation in EOPS is the result of a discretionary action taken by the governing board of the district, and therefore the state laws and regulations at issue in this test claim do not impose state-mandated reimbursable activities.¹⁶ Moreover, DOF asserts, “the choice of a district to participate in this discretionary program remains discretionary as the program’s internal requirements change, because the authority to establish a program in statute has remained unchanged over time. The claimant therefore could withdraw from the program and not be subject to any altered requirements. . . .”¹⁷ DOF also emphasizes that “funding is specifically provided in the annual budget for districts who apply for funding, which then triggers the requirements of the program” and that “activities related to the requirements of the voluntary program have a specific fund source dedicated to offset district costs.”¹⁸ DOF cites to the plain language of sections 69640, 69649 which use the terms “encourage” and “may” regarding a district’s establishment of an EOPS program. DOF also cites to sections 69652 and 69653 which DOF says “establish mechanisms that authorize district to apply to the [BOG] for funding, rather than requiring them to do so. . . .” DOF also notes that if the BOG denied a district’s request to establish an EOPS program, a district would have no legal obligation to operate a program.¹⁹

In support of its argument that the test claim statutes and executive orders do not impose a reimbursable mandate, DOF cites to *Kern* in which DOF says “the court found that if a school district elects to participate in any underlying voluntary education-related funded program, the obligation to comply with the requirements related to that program does not constitute a reimbursable state mandate.”²⁰ With regard to California Code of Regulations, title 5, section 56210, DOF argues that it “applies only to those colleges choosing to operate a program” and “nothing prevents a district from discontinuing its program and its associated maintenance of effort requirement.”²¹

California Community Colleges Position

CCC states that there are no state-mandated costs because EOPS is voluntary and not compulsory.²² Specifically, CCC points out that Education Code section 69640 states legislative intent “to encourage local community college districts to establish and implement programs. . . .” Additionally, CCC cites to Education Code sections 69649 and 64650 regarding the establishment of Extended Opportunities Programs (EOP) and Extended Opportunities Services (EOS) which both state, in pertinent part that “[t]he governing board of a community college

¹⁵ Ibid.

¹⁶ Exhibit B, DOF comments on test claim dated February 9, 2004, p. 1.

¹⁷ Ibid.

¹⁸ Exhibit B, DOF, comments on test claim, supra, p. 1.

¹⁹ Id, p. 2.

²⁰ Exhibit B, DOF, comments on test claim, supra, page 3, citing to *Kern*, supra, 30 Cal.4th 727.

²¹ Exhibit E, DOF’s June 9, 2004 comments on claimant’s response dated April 23, 2004, p. 1.

²² Exhibit D, CCC, Chancellor’s Office, comments on test claim dated March 11, 2004, p. 2.

district *may*, with approval of the [BOG] establish. . . .” Finally, CCC quotes Education Code section 69652 and 69653 regarding state funding for EOPS which state that a district “. . . *may apply to the [BOG] for an allowance to meet all or a portion of the cost of establishing and operating [EOPS] authorized by the article*” and that “applications shall be subject to approval of the board.”

According to CCC’s analysis, “nothing in the law requires districts to have EOPS; indeed approval of the [BOG] is necessary for a district to establish such a program.”²³ Additionally, CCC adds, “nor does the law provide that the entire cost of establishing and operating EOPS will be covered, if the district has secured the required approval.” CCC also argues that the districts are not legally or practically compelled to establish and operate EOPS program and cites to the *Kern* case to support this argument.²⁴ Specifically, CCC states:

[t]here are no fines or penalties or other forms of compulsion if a district does not choose to voluntarily establish EOPS and receive state funding for the programs and services. If a District chooses to receive EOPS funding, compliance with the EOPS statutes and regulations merely amounts to “the cost of compliance with conditions of participation in these funded programs.”²⁵

CCC argues that even where districts had EOPS programs in place prior to various changes in statute, there are no state-mandated costs.²⁶ In support of this argument CCC cites a portion of the *Kern* decision which says in pertinent part: “. . . [t]he circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity’s decision whether to continue its participation in the modified program any less voluntary.”²⁷

Discussion

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. “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.”²⁸ 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.²⁹ 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.³⁰

²³ Exhibit D, CCC, Chancellor’s Office, comments on test claim, *supra*, page 2.

²⁴ *Ibid*, citing to *Department of Finance v. Commission on State Mandates [Kern High School District, et. Al., Real Parties in Interest] (Kern)* (2003) 30 Cal.4th 727, 730.

²⁵ *Id.*, page 3.

²⁶ Exhibit D, CCC, Chancellor’s Office, Comments of the Test Claim, *supra*, p. 3.

²⁷ *Id.*, page 4, citing to *Kern*, *supra*, 30 Cal.4th 727, 753-754.

²⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

³⁰ *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.3rd 830, 835 (*Lucia Mar*).

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.³¹ 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.³² A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."³³ Finally, the newly required activity or increased level of service must impose costs mandated by the state.³⁴

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 6.³⁵ 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."³⁶

The analysis addresses the following issue: do the test claim statutes and executive orders require community colleges to perform state-mandated activities?

Issue: Do Education Code sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656, as added or amended by the test claim statutes, California Code of Regulations, title 5, sections 56200, 56201, 56202, 56204, 56206, 56208, 56210, 56220, 56222, 56224, 56226, 56230, 56232, 56234, 56236, 56238, 56240, 56252, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56292, 56293, 56295, 56296, or, 56298, or the Guidelines published by the Chancellor of the California Community Colleges in January 2002 require community colleges to perform state-mandated activities?

Claimant alleges reimbursable state-mandated costs for districts to "provide certified directors, instructors and counselors; to provide counselors for students; to comply with new minimum standards; petition for waivers of minimum standards and staffing requirements; to enter into education plans and mutual responsibility contracts; verify student eligibility and compliance; and utilize specific accounting standards and procedures in order to implement the EOPS program."³⁷

³¹ *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*,

³² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

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

³⁴ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

³⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³⁶ *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.

³⁷ Exhibit A, Test Claim, p. 2.

Claimant also argues that districts are practically compelled to provide EOPS because “in order to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648.”³⁸ Claimant cites to the *Sacramento II* and *Kern* cases to support its practical compulsion arguments.³⁹

Staff concludes that the test claim should be denied because the test claim statutes and executive orders do not require the community colleges to perform any state-mandated activities and thus do not impose a state-mandated program on community college districts because:

- Downstream activities delineated by Education Code sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, and 69655, as added or amended by the test claim statutes, California Code of Regulations, Title 5 sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, 56298 are requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.
- Education Code section 69656, California Code of Regulations, title 5, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252, and 56292 and the Guidelines do not require districts to perform any activities and, even if they did, they would be requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus would not be state-mandated activities.⁴⁰

I. Downstream activities delineated by Education Code sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656, as added or amended by the test claim statutes, California Code of Regulations, title 5, sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, 56298, and Guidelines section 56252 are requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.

The decision to establish an EOP or EOS is a discretionary decision of the district which must be approved by the BOG. There is no requirement in law for establishment of EOPS programs. Education Code section 69649 states:

- (a) [t]he governing board of a community college district *may*, with the approval of the board, establish an EOP. Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648.
- (b) The board of governors may waive any or all of the minimum standards established pursuant to subdivision (b) of section 69648 if the board of governors

³⁸ Exhibit C, Claimant’s March 4, 2004 response to DOF’s comments on the test claim, supra, pp. 2-3.

³⁹ Id., p. 3-6, citing *City of Sacramento v. State of California* (1990) 50 Cal. 3rd 51 (*Sacramento II*) and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern*).

⁴⁰ Staff notes that Guidelines page 40, interpreting California Code of Regulations, title 5, section 56252, requires the EOPS program to notify the college’s financial aid office when EOPS students receive book services. However, this fact does not change the staff analysis since it is a downstream requirement of an elective program.

determines that unusual circumstances which merit a waiver exist. (Emphasis added.)

Likewise Education Code section 69650 provides:

The governing board of a community college district *may*, with the approval of the board, establish EOS. Such services *may* include, but need not be limited to:

- (a) Loans or grants to meet living costs or a portion thereof.
- (b) Loans or grants to meet the cost of student fees.
- (c) Loans or grants to meet cost of transportation between home and college.
- (d) The provision of scholarships.
- (e) Work-experience programs.
- (f) Job placement programs. (Emphasis added.)

Similarly, if the districts decide to establish an EOPS program, they may also apply to the BOG for a state grant to fund all or a portion of the costs of establishing and operating an EOPS program. (Ed. Code, § 69652.) Education Code section 69652 provides:

The governing board of a community college district may apply to the board for an allowance to meet all or a portion of the cost of establishing and operating EOPS. The application must contain a detailed plan for use of the allowance and be submitted in accordance with rules and regulations adopted by the BOG.

The use of funds provided by the state for EOPS is restricted as follows:

The governing board of a community college district shall not use any funds received from the state for the operation and administration of [EOPS] to supplant district resources, programs, or services authorized by section 69649 and 69650. The governing board may use those funds to meet the matching requirements to receive federal funds, or funds granted by nonprofit foundations, designated for the same purposes, for EOPS, as defined by section 69641. (Ed. Code, § 69651)⁴¹.

Consistent with the prohibition against supplanting district resources, programs or services with EOPS funds, is the requirement that the district must supplement the regular educational programs of the district to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives. (Ed. Code, § 69641.) In other words, EOPS resources, programs and funds are required to supplement the existing resources, programs and funds of the district in order to increase the likelihood that EOPS students, who by definition are disadvantaged and less likely to succeed in college than other students without such assistance, will reach their academic and career goals. It is up to each district to choose whether to establish an EOPS program and take advantage of the additional funds provided by the state to meet this important need.

Activities Required of Districts as a Condition of State Funding

If a district exercises its discretion to establish EOP and/or EOS and applies for state funding for its EOPS program, those decisions trigger a number of planning, funding and expenditure,

⁴¹ See also California Code of Regulations, title 5, section 56210 which was adopted to implement the requirements of this section.

staffing, student services, financial aid and program evaluation activities. These activities are listed below:

1. EOPS Plan

A. A District's submittal of an EOPS Plan is a condition of participation in the EOPS program: Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of California Code of Regulations, title 5, Chapter 7 for each college within the district which intends to conduct an EOPS program. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor. Changes to the program may be made only with the prior written approval of the Chancellor. (Cal. Code Regs., tit.5, § 56270.) Each plan shall contain the following:

- (1) The long-term goals of the EOPS program in supporting the goals of the college and the goals adopted for EOPS by the BOG.
- (2) The objectives of the EOPS program to be attained in the fiscal year for which EOPS funds are allocated.
- (3) The activities to be undertaken to achieve the objectives, including how the college plans to meet the program standards, EOPS financial aid standards and the staffing standards imposed by California Code of Regulations, title 5, Chapter 7.
- (4) An operating budget which indicates the planned expenditures of EOPS funds, and other district funds to be used to finance EOPS activities.
- (5) The number of students to be served.
- (6) An evaluation of the results achieved in the prior year of funding.
(Cal. Code Regs., tit.5, § 56272.)

B. EOPS Plan Deadlines and Procedures:

- (1) The Chancellor's Office shall annually set a final date for submission of EOPS plans and provide at least 90-days notice of that date. Applications and plans received after that date shall be returned to the district without evaluation or consideration. (Cal. Code Regs., tit.5, § 56274.) Plans and requests for funding that are submitted on time shall be reviewed, evaluated. Requests for funding shall be approved in whole or in part. (Cal. Code Regs., tit.5, § 56276.)
- (2) Each plan shall incorporate the priorities in California Code of Regulations, Title 5, section 56280 in the order presented when serving eligible EOPS students:
 - a. Priority in outreach and recruitment services shall be directed towards correcting the greatest underrepresentation among students served. Additional priority among underrepresented students shall be given to serving individuals who are the first in their family to attend college.
 - b. Priority in serving students enrolled at the college shall be:
 1. Serving continuing EOPS students with the lowest income.
 2. Serving continuing EOPS students with the lowest income who have transferred from another community college EOPS program.
 3. Serving first-time EOPS students with the lowest income. (Cal. Code Regs., tit.5, § 56280.)

2. Funding and Expenditures

- A. Districts shall maintain separate accounts for monies provided for, and expended in, support of EOPS activities by specific line item. (Cal. Code Regs., tit.5, § 56290.)
- B. Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide the same programs and services it offers to all of its credit enrolled students to EOPS students. The district shall fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. (Cal. Code Regs., tit.5, § 56293.)
- C. Districts accepting EOPS funds will be required to pay the 100% of the salary of the EOPS director. (Cal. Code Regs., tit.5, § 56293.)
- D. Colleges shall expend EOPS funds only for programs and services that are over, above, and in addition to the costs which are the district's responsibility as defined in California Code of Regulations, title 5, section 56293 (i.e. supplemental costs). (Cal. Code Regs., tit.5, § 56294.)
- E. Colleges may expend EOPS funds to meet the supplemental costs as defined in section 56294 for personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-6000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less. (Cal. Code Regs., tit.5, § 56295.)
- F. Requests to purchase computer hardware and/or software shall be approved by the district superintendent/president prior to transmittal for approval by the Chancellor. (Cal. Code Regs., tit.5, § 56295.)
- G. EOPS funds shall not be expended for the following:
 - (1) College administrative support costs (e.g. staff of business office, bookstore, reproduction, staff at the dean salary level and above).
 - (2) Indirect costs (e.g. heat, lights, power, janitorial service).
 - (3) Costs of furniture (chairs, desks coat hangers, etc.). (Cal. Code Regs., tit. 5 § 56296.)
- H. In each fiscal year the colleges shall expend for EOPS grants and work-study, an amount equal to that expended in the prior fiscal year, unless waived by the chancellor for the following reasons:
 - (1) To establish a book service program.
 - (2) The college allocation was corrected pursuant to section 56292.
 - (3) To meet the requirements of Article 3 (i.e. Program Standards) (Cal. Code Regs., tit.5, § 56298.)
- I. The college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline. (Cal. Code Regs., tit.5, § 56210; see also Ed. Code, § 69651, discussed above.)

3. **Staffing Standards**

- A. **Certified directors and instructors and board approval of counselors and support staff:** EOPS shall be provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. (Ed. Code § 69641.)
- B. **Full-time EOPS director:** Each college receiving EOPS funds shall employ a full-time EOPS director. Colleges having less than full-time EOPS director positions may continue such position upon approval by the Chancellor who shall consider the number of students served, size of the EOPS staff and budget and the scope and level of services offered when approving requests for less than full-time EOPS director positions. (Cal. Code Regs., tit.5, § 56230.)
- C. **Director qualifications:** The EOPS director must meet the minimum qualifications for a student services administrator as specified in California Code of Regulations, title 5, section 53420 or possess a Community College Supervisor Credential. In addition, an EOPS director must have:
- (1) within the last four years, two years experience or the equivalent:
 - a. in the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or,
 - b. as a community college EOPS counselor or EOPS instructor, or have a comparable experience working with disadvantaged clientele, and,
 - (2) two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social or economic disadvantages. (Cal. Code Regs., tit.5, § 56262.)
- D. **Staff:** EOPS shall be provided by a certificated director, instructors and counselors and other support staff employed by the governing board of the district. (Cal. Code Regs., tit.5, § 56260.)
- E. **Counselor qualifications:** EOPS counselors are those persons designated by the community college to serve as certificated counselors in the EOPS program and must possess the Community College Counselor Credential or a master's degree in counseling, rehabilitation counseling, clinical psychology, counseling psychology, guidance counseling, educational counseling, social work, or career development, or the equivalent, and:
- (1) have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social or economic disadvantages, or
 - (2) have completed six semester units or the equivalent of a college-level counseling practicum or counseling field-work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages, and,

- (3) have two years of occupational experience in work relating to predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages. (Cal. Code Regs., tit.5, § 56264.)

4. Student Services

A. **Outreach, orientation, and registration services:** Each college receiving EOPS funds shall provide access to services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:

- (1) Outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college.
- (2) Orientation to familiarize EOPS eligible students with: the location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology, (e.g., grade points, units) course add and drop procedures; and transfer procedures to four-year institutions.
- (3) Registration assistance for priority enrollment pursuant to Title 5 California Code of Regulations section 58108. (Cal. Code Regs., tit.5, § 56232.)

B. **Assessments:** Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the college president certifies are reliable, valid, and appropriate for the students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum include:

- (1) Course and placement tests in reading, comprehension, vocabulary, writing, and computations.
- (2) Diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.
- (3) Study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.
- (4) Support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extra-curricular pursuits).
- (5) Assessment instruments that are not culturally or linguistically biased. (Cal. Code Regs., tit. 5, § 56234.)

C. **Counseling and advisement:** Each college receiving EOPS funds shall provide counseling and advisement to EOPS-eligible students of at least three contact sessions per term for each student as follows:

- (1) A contact session which combines interview and interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.

- (2) An in-term contact session to ensure the student is succeeding adequately, that the programs and services are being provided effectively, and to plan changes as soon as may be needed to enhance student success.
- (3) A term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS program or the college. (Cal. Code Regs., tit.5, § 56236.)

D. Basic skills instruction and tutoring services: Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals. (Cal. Code Regs., tit.5, § 56238.)

E. Transfer and career employment services: Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate colleges and EOPS staff shall attempt to articulate coursework and support services needed by EOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to EOPS. (Cal. Code Regs., tit.5, § 56240.)

5. Financial Aid

A. Award procedures:

- (1) Financial aid offices shall award and disburse EOPS grant and workstudy funds according to college procedures upon the authorization of the EOPS office.
- (2) EOPS office shall authorize EOPS grant and workstudy awards such that:
 - a. Awards are distributed as evenly as possible between dependant and independent students.
 - b. Priority in awards is given to dependant or independent students having the lowest family or personal incomes, respectively.
- (3) EOPS may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis. (Cal. Code Regs., tit.5, § 56256.)

B. EOPS grants and workstudy awards: EOPS grants are required to be distributed to each student equally among terms in the college academic year. The provision of grants and workstudy awards is at the discretion of the colleges so long as workstudy awards do not exceed \$1,800 per academic year and EOPS grants do not exceed \$900 per academic year. However, the amount of the combined EOPS grant and workstudy award is limited to a maximum of \$1,800 or the student's unmet need, whichever is less. (Cal. Code Regs., tit.5, § 56254.)

C. Emergency loans: EOPS programs may establish an emergency loan program for EOPS students to meet the unexpected or untimely costs for books, college supplies, transportation and housing, subject to the following requirements:

- (1) Loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.

- (2) Loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.
- (3) The total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor. (Cal. Code Regs., tit.5, § 56258.)

6. Program Evaluation

- A. The Chancellor shall require districts receiving EOPS funds to identify students served and the level and type of programs and services each student received. (Cal. Code Regs., tit.5, § 56206.)
- B. Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives. (Cal. Code Regs., tit.5, § 56278.)

7. Advisory Committee

Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The committee shall consist of no fewer members than the local Board of Trustees. Members serve without compensation but may be reimbursed for necessary expenses incurred in performing their duties. (Cal. Code Regs., tit.5, § 56208.)

Community College Districts are Not Legally Compelled to Establish and Maintain an EOPS Program

The Commission finds that the requirement to perform the above outlined activities is triggered by the claimant's voluntary participation in the underlying EOPS program and acceptance of state funding for that program and that therefore, none of the required activities are state-mandated.

Claimant maintains that even if the EOPS was originally an optional program, beginning with the 1987-1988 academic year Title 5 California Code of Regulations, section 56210 required each college to maintain EOPS programs at a minimum level.⁴² Claimant states that therefore, the provisions of Government Code section 17565 apply in this case. Government Code section 17565 provides that if a district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the district for those costs incurred after the operative date of the mandate. In further clarification of this issue, claimant states that this is more than a maintenance of effort and that colleges may not discontinue the program.⁴³ Claimant focuses on the "shall maintain" language of Title 5 California Code of Regulations, section 56210 in finding a state mandate prohibiting the discontinuance the EOPS program. Title 5 California Code of Regulations section 56210 provides:

Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds

⁴² Exhibit C, claimant's March 4, 2004 response to DOF's comments on the test claim, p. 2.

⁴³ Exhibit G, claimant's July 6, 2004 response to DOF's response dated June 9, 2004, pp. 2-3.

as the average reported in its final budget report in the previous three academic years. At minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline.

When an administrative agency adopts regulations, California law requires that it also adopt what is known as a "Statement of Reasons."⁴⁴ The Final Statement of Reasons (Amended) for section 56210 states that "[t]his Section was adopted to implement Education Code Section 69651, and to identify a base year for purposes of establishing the level of district resources which would be required by this statute."⁴⁵ Section 69651, as discussed above, prohibits districts using any funds received from the state for the operation and administration of [EOPS] to supplant district resources, programs, or services authorized by sections 69649 and 69650. Section 69650 requires compliance with the regulations adopted by the BOG as a condition of receiving EOPS funding from the state.

The method adopted in California Code of Regulations, title 5, section 56210 to ensure that EOPS funds do not supplant district resources, programs, or services authorized by sections 69649 and 69650 was derived from testimony of presidents and superintendents of community colleges.⁴⁶ Specifically, "the colleges stated that using a percentage would give them more flexibility in the use of their general funds."⁴⁷ "Jack Randell, President of the Chief Executive Officers Association, testified that it would be advantageous to colleges to be able to move funds to those areas of the program with the greatest need."⁴⁸ Similarly the averaging of the previous three academic years was adopted "to insure that one abnormal year will not distort the non-EOPS monies made available to EOPS programs through services provided by colleges."⁴⁹ Finally, the fifteen percent minimum contribution provides "EOPS programs a minimum contribution figure in order for

⁴⁴ Exhibit L, The Administrative Procedure Act imposes a procedure and conditions on the adoption of regulations [see Gov. Code Ch. 3.5 (commencing with Sec. 11340).] The Act requires, among other things, that every agency maintain a file of each rulemaking that shall be deemed the record for that rulemaking proceeding and that the file must include a final statement of reasons. The statement of reasons must include a statement of the specific purpose for each adoption, amendment, or repeal, and the rationale for the determination by the agency that each regulation is reasonably necessary to carry out the purpose for which it is proposed or, simply restated, "why" a regulation is needed and "how" this regulation fills that need. (Gov. Code, § 11346.2(b)(I).) The final statement of reasons also includes a summary of each objection or recommendation made on the proposed regulation and the agency's response to those comments. (Gov. Code, § 11346.9.)

⁴⁵ Exhibit L, Final Statement of Reasons (Amended), Register 83, No. 18, 4-30-83, p. 4.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

programs to budget for the upcoming year”⁵⁰ There is nothing in the regulatory history to indicate that anyone thought section 56210 would make the EOPS program mandatory.

Claimant, in its comments submitted on the draft staff analysis, argued further that “[t]he adoption of section 56210 removed the voluntary aspect of the program for those community colleges that had provided an EOPS program in any of the three years preceding the 1987-88 fiscal year, while leaving the program voluntary for those community college districts that had not provided a program during that period of time.”⁵¹ Claimant maintains that “this maintenance of effort is similar to that seen in the *Health Fee Elimination* mandate, which was approved by the Commission on November 20, 1986.”⁵²

At the outset, with regard to the *Health Fee Elimination* mandate, this test claim is distinguishable on its facts because EOPS is not a mandatory program. Moreover, even if this test claim were similar, it is important to note that prior decisions of the Commission do not have precedential value. The California Supreme Court has held that the failure of a quasi-judicial agency to consider prior decisions on the same subject is not a violation of due process and does not constitute an arbitrary action by the agency.⁵³ In *Weiss*, the plaintiffs brought mandamus proceedings to review the refusal of the State Board of Equalization to issue an off-sale beer and wine license at their premises. Plaintiffs contended that the action of the board was arbitrary and unreasonable because the board granted similar licenses to other businesses in the past. The California Supreme Court disagreed with the plaintiffs’ contention and found that the board did not act arbitrarily. The Court stated in pertinent part: “[n]ot only does due process permit omission of reasoned administrative opinions but it probably also permits substantial deviation from the principle of stare decisis.”⁵⁴ In addition, the Attorney General’s Office has issued an opinion, citing the *Weiss* case, agreeing that the claims previously approved by the Commission on State Mandates have no precedential value. Rather “[a]n agency may disregard its earlier decision, provided that its action is neither arbitrary nor unreasonable”⁵⁵ While Attorney General Opinions are not binding; they are entitled to great weight.⁵⁶

Moreover, the merits of a claim brought under article XIII B, section 6 of the California Constitution must be analyzed individually. Commission decisions are not arbitrary or unreasonable as long as the decision strictly construes the Constitution and the statutory language of the test claim statute and does not apply section 6 as an equitable remedy.⁵⁷

Claimant has failed to consider the rules of statutory interpretation and thus interprets Title 5 California Code of Regulations, section 56210 as making the EOPS program mandatory.

⁵⁰ Ibid. Note that historically, districts have received a minimum of \$50,000 and a guarantee of at least 95% of the prior year funding from the state.

⁵¹ Exhibit K, claimant comments on the draft staff analysis, *supra*, pp. 3-4.

⁵² *Id.*, p.4.

⁵³ Exhibit L, *Weiss v. State Board of Equalization* (1953) 40 Cal. 2d 772, p.p. 776-777.

⁵⁴ *Id.*, p. 776.

⁵⁵ Exhibit L, 72 Ops.Cal.Atty.Gen.173, p. 178 fn.2 (1989).

⁵⁶ Exhibit L, *Rideout Hospital Foundation, Inc. v. County of Yuba* (1992) 8 Cal.App.4th 214, p. 227.

⁵⁷ *City of San Jose*, *supra*, 45 Cal.App.4th, pp. 1816-1817; *County of Sonoma*, *supra*, 84 Cal.App.4th, pp. 1280-1281.

Looking at section 56210 in isolation, claimant's interpretation is understandable. However, in determining what a statute requires, the Commission must look at the whole act.⁵⁸ Its words must be construed in context,⁵⁹ so as to make sense of the entire statutory scheme.⁶⁰ Here, though it is true that section 56210 says "the college shall maintain," this language must be read within the context of the whole statutory and regulatory scheme. As discussed above, the decision to establish an EOPS program and request funding for that program is a discretionary decision of the district which must be approved by the BOG.⁶¹ The statutory scheme makes clear that compliance with the requirements of the test claim statutes and executive orders is a condition of receiving funding for the EOPS program.⁶² There is no penalty for refusal to comply with the statutory and regulatory provisions other than a loss of EOPS funding from the state. Moreover, there is nothing in the law which prohibits a district from eliminating its EOPS program. Nor is there any requirement that specific opt-out provisions be provided in statute or regulation in order for a district to discontinue a discretionary program.

Furthermore, the Third District Court of Appeal has discussed regulatory interpretation principles at great length and has said "the interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute."⁶³ However, unlike statutory interpretation, the court stated, "where the language of the regulation is ambiguous, it is appropriate to consider the agency's interpretation. [Citation] Indeed, we defer to an agency's interpretation of a regulation involving its area of expertise, "unless the interpretation flies in the face of the clear language and purpose of the interpretive provision' [Citation.]"⁶⁴ Moreover, [t]he language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute [citation], and where possible the language should be read so as to conform to the spirit of the enactment. [Citation.]' [Citation.] [¶] Where statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation. [Citation.]"⁶⁵

Here, the plain language of the test claim statutes makes clear with its "may" language, the requirement for approval of the program by the BOG, and the requirement that the district request the funding; that EOPS was intended to be a voluntary grant program which provides *supplemental* services and financial assistance to the most disadvantaged students. The

⁵⁸ Exhibit L, *People v. Hammer* (2003) 30 Cal. 4th 756; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Ca. 4th 1106; *Teresa J. v. Superior Court* (3d Dist. 2002) 102 Cal. App. 4th 366.

⁵⁹ Exhibit L, *People v. Thomas* (1992) 4 Cal. 4th 206; *Seidler v. Municipal Court* (2d Dist. 1993) 12 Cal. App. 4th 1229.

⁶⁰ Exhibit L, *Flannery v. Prentice* (2001) 26 Cal. 4th 572.

⁶¹ Exhibit A, See Education Code sections 69649, 69650, 69652 and 69553.

⁶² Exhibit A, Education Code section 69649 which requires the districts to meet the minimum standards in the regulations adopted by the BOG as a condition of eligibility for state funding.

⁶³ Exhibit L, *County of Sacramento v. State Water Resources Control Bd.* (2007) 153 Cal.App.4th 1579, p. 1586 (citing *Blumenfeld v. San Francisco Bay Conservation etc. Com.* (1974) 43 Cal. App.3d 50, p. 59).

⁶⁴ Exhibit L, Id, p. 1587, (citing *Divers' Environmental Conservation Organization v. State Water Resources Control Bd.* (2006) 145 Cal.App.4th 246, p. 252).

⁶⁵ Id, p. 1588 (citing *Conrad v. Medical Bd. of California* (1996) 48 Cal.App.4th 1038, p. 1046.)

Legislature has encouraged the districts to participate in EOPS through the provision of substantial funding for the program.

Based on the principles of regulatory construction outlined above, the Commission should read California Code of Regulations, Title 5, section 56210 to conform to the spirit of the test claim statutes and in the context of the statutory framework as a whole. In fact, there is nothing in the regulatory package for section 56210 that even hints at Claimant's interpretation of this regulation. Moreover, the comments submitted by the Chancellor's Office on this test claim make clear that the Chancellor's interpretation is that EOPS is a voluntary program.⁶⁶

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.⁶⁷

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B. The ballot materials defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."⁶⁸ The court also reviewed and affirmed the holding of *City of Merced*,⁶⁹ determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.⁷⁰ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.⁷¹ (Emphasis in original.)

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* (Emphasis added.)⁷²

⁶⁶ Exhibit D, CCC, Chancellor's Office, comments on test claim, *supra*, p. 2.

⁶⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

⁶⁸ Exhibit L, California Ballot Pamphlet, Special Statewide Election, November 6, 1979, p. 16.

⁶⁹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

⁷⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

⁷¹ *Ibid.*

⁷² *Id.* at p. 731.

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.”

Claimant asserts that this EOPS test claim and the *Merced* and *Kern* case are factually dissimilar and are not legally determinative.⁷⁴ The Commission disagrees. Just as the court did in *Kern*, the draft staff analysis cited *Merced* for the general proposition that downstream activities which are requirements of an ongoing elective program are not state-mandated activities. Here, districts are not legally compelled to establish an EOPS program or to request and accept state EOPS funds for that program. Similarly in *Kern*, districts were not required to establish school site councils or receive funding for the various programs that required such councils.

The plain language of Education Code sections 69649, subdivision (a) and 69650, state that compliance with the EOPS rules and regulations is a condition of receiving state EOPS funding. Education Code section 69649, subdivision (a) states: “[t]he governing board of a community college district *may*, with the approval of the [BOG], establish an extended opportunity program. Except as provided in subdivision (b), *in order to be eligible to receive state funding, the program shall meet the minimum standards* established pursuant to subdivision (b) of section 69648.” (Emphasis added.) Likewise, section 69650, subdivision (a) provides: “[t]he governing board of a community college district *may*, with the approval of the [BOG], establish extended opportunity services. . . .” Moreover, the requirements imposed by title 5, sections 56232, 56234, 56236, 56238 are only imposed on those districts electing to establish an EOPS program and receiving state funding as is evidenced by the fact that each of those sections begins with the phrase: “[e]ach college receiving EOPS funds shall” Therefore, districts are not legally compelled by the state to comply with the requirements of the test claim statutes and executive orders.

Claimant Has Not Demonstrated by Evidence in the Record That it is Practically Compelled to Establish and Maintain an EOPS Program

Claimant also argues that districts are practically compelled to provide EOPS because “in order to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648.”⁷⁵ Specifically, Claimant states, that:

[t]he Legislature has challenged California community colleges to recognize the need and accept the responsibility for extending opportunities to all who may profit therefrom regardless of economic, social, and educational status. To ignore available funding to help recognize these needs and to ignore their responsibility is so far beyond the realm of practical reality, that it leaves community college districts without any rational discretion.

Claimant cites to the *Sacramento II* and *Kern* cases to support its practical compulsion arguments.⁷⁶

⁷³ Id. at pp. 744-745.

⁷⁴ Exhibit K, claimant comments on the draft staff analysis, supra, p. 2.

⁷⁵ Exhibit C, claimant’s March 4, 2004 response to DOF’s comments on the test claim, supra, pp. 2-3.

In *Kern*, the school districts made similar arguments and urged the court to define “state mandate” broadly to include situations where participation in the program is practically compelled; where the absence of a reasonable alternative to participation creates a “de facto” mandate.⁷⁷ The court previously applied such a construction to the definition of a federal mandate in the case of *Sacramento II*, where the court considered whether state statutes enacted as a result of various federal “incentives” for states to extend unemployment insurance coverage to public employees constituted a reimbursable state-mandated program under article XIII B, section 6.⁷⁸ The court in *Sacramento II*, concluded that the costs resulted from a federal mandate because the financial consequences to the state and its residents of failing to participate in the federal plan (full, double unemployment taxation by both state and federal governments) were so onerous and punitive; amounting to “certain and severe federal penalties” including “double taxation” and “other “draconian” measures.”⁷⁹

The court in *Kern* stated that although it analyzed the legal compulsion issue, it found it “unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.”⁸⁰ The court did provide language addressing what might constitute practical compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

Finally, we reject claimants’ alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had “no true option or choice” other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs “too good to refuse” — even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)⁸¹

⁷⁶ *Id.*, p. 3-6, citing *City of Sacramento v. State of California* (1990) 50 Cal. 3rd 51 (*Sacramento II*) and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern*).

⁷⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 748.

⁷⁸ *City of Sacramento*, *supra*, 50 Cal.3d 51, 74

⁷⁹ *City of Sacramento*, *supra*, 50 Cal.3d 51, 74; *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 750.

⁸⁰ *Id.* at p. 736.

⁸¹ *Id.* at 731.

Although the court in *Kern* declined to apply the reasoning in *City of Sacramento II* that a state mandate may be found in the absence of strict legal compulsion, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies – the court stated: “In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.”⁸²

However, the court in *Kern* found that the facts before it failed to amount to such a “de facto” mandate, since a school district that elects to discontinue participation in one of the educational programs at issue did not face “certain and severe” penalties (independent of the program funds at issue)⁸³ such as “double ... taxation” or other “draconian” consequences. The court concluded that:

[T]he circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants’ phrasing, a “de facto” reimbursable state mandate. Contrary to the situation that we described in *City of Sacramento* ... a claimant that elects to discontinue participation in one of the programs here at issue does not face “certain and severe ... penalties” such as “double ... taxation” or other “draconian” consequences ... but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6.⁸⁴

The court acknowledged that a participant in a funded program may be disappointed when additional requirements are imposed as a condition of continued participation in the program. Such conditions, however, do not make the program mandatory or reimbursable under article XIII B, section 6:

Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstances that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity’s decision whether to continue its participation in the modified program any less voluntary.⁸⁵

The result of the cases discussed above is that, if a local government participates “voluntarily,” i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement. Though *Kern* suggests “involuntarily” can extend beyond “legal compulsion” to “compelled as a practical matter to participate.” the latter phrase means facing “ ‘certain and severe ... penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences” and not merely having to “adjust to the withdrawal

⁸² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 752.

⁸³ *Id.* at page 731.

⁸⁴ *Id.* at page 754.

⁸⁵ *Id.* at pages 753-754.

of grant money along with the lifting of program obligations."⁸⁶

In this case, pursuant to the analysis put forward in the *Kern* case, during the course of the reimbursement period, claimant has not been practically compelled to perform the activities required by the test claim statutes and regulations, since the test claim statutes authorized but did not require establishment of an EOPS program, and no "substantial penalties" would be imposed for the district's failure to establish or decision to dismantle an EOPS program. Moreover, claimant has put no evidence into the record to show that the districts are practically compelled to establish and maintain EOPS programs.

The state has imposed some regulatory requirements upon districts receiving EOPS funds. The incentive, or "carrot," for community colleges to comply with the regulatory requirements of the EOPS program is the availability of funding to cover the costs of providing educational services to EOPS eligible students; the only consequence is the removal of the funds. There are no other "certain and severe" penalties imposed by law, or evidenced in the record, such as double taxation, or the removal of other, unrelated funding sources, if a district declines to participate in the EOPS program. Like the Court in *Kern*, a "district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits."⁸⁷ Under *Kern*, when additional requirements are imposed as a condition of participating in a funded program, those conditions do not make the program mandatory or reimbursable under article XIII B, section 6.

Additionally, in the *DOF v. Commission* case, the court expanded on the issue of what is required to support a finding of practical compulsion.⁸⁸ That case had to do (in part) with whether school districts were practically compelled to hire public safety officers, thus making compliance with the provisions of the Public Safety Officers Procedural Bill of Rights a reimbursable state-mandated program or higher level of service.

Like the record in this test claim, in *DOF v. Commission* there was no evidence in the record of practical compulsion - that school districts or special districts were not able to rely on the general law enforcement resources of cities and counties or that exercising their statutory authority to hire peace officers was the only reasonable alternative to carrying out their core functions. There, the trial court held the school districts and special districts employ peace officers in order to perform their basic and essential function to provide a service to the public. The Court of Appeal reversed and held that in cases of practical compulsion, there must be a "concrete" showing in the record that a local entity is facing certain and severe penalties, such as double taxation or other draconian consequences, if it fails to exercise the discretionary authority and comply with the downstream requirements imposed by a test claim statute.⁸⁹

These cases support the conclusion that evidence in the record is required to show practical compulsion. Absent such a showing by the claimant, the Commission does not find substantial evidence to support a finding of practical compulsion. Accordingly, the Commission finds that there are no state-mandated activities practically compelled by the

⁸⁶ Id.

⁸⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 753.

⁸⁸ *Department of Finance v. Commission on State Mandates (DOF v. Commission)* (2009) 170 Cal.App.4th 1355.

⁸⁹ Ibid.

test claim statutes and regulations.

II. Education Code section 69656 and California Code of Regulations, title 5, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252, 56292 and the Guidelines Do Not Require Districts to Perform Any Activities

Education Code section 69656 states the intent of the Legislature for the California State University and the University of California to provide fee waivers for admissions applications for EOPS transfer students who provide waiver forms signed by a community college EOPS director. Education Code section 69656, by its plain language, requires no specific action on the part of districts or community colleges.

With regard to Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56252, 56292 and the Guidelines, the Commission finds that these sections do not require districts to perform any activities because:

- Title 5 California Code of Regulations, sections 56200-56204 are general provisions and definitions not requiring districts to perform any activities.
- Title 5 California Code of Regulations, sections 56220-56226 relate to student eligibility and responsibility and do not require districts to perform any activities.
- Title 5 California Code of Regulations, section 56252 is a statement of purpose for EOPS financial aid and does not require districts to perform any activities.
- Title 5 California Code of Regulations, section 56292 states that the Chancellor may adjust allocations to correct for an over or under allocation or utilization of EOPS funds, but does not require any district to perform any activities.
- The Guidelines are merely the Chancellor's Offices' interpretation of the regulations that are the subject of this test claim.⁹⁰ The Guidelines specifically state that they "are not regulations" and that "college staff are *encouraged* to utilize the [G]uidelines in the administration of EOPS program activities."⁹¹

However, assuming arguendo, that the Guidelines are executive orders, they do not add additional requirements as is evidenced by the use of the modifier "should" throughout. Moreover, even if required activities could be identified in the Guidelines, such activities would be requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus would not be reimbursable state-mandated activities.⁹²

⁹⁰ Exhibit A, EOPS Implementing Guidelines for Title 5 Regulations, p. ii.

⁹¹ Exhibit A, EOPS Implementing Guidelines for Title 5 Regulations, p. ii. Note that staff acknowledges that the EOPS Guidelines also say "...it is the responsibility of individual colleges to establish local programs, policies and procedures in accordance with the *requirements of these policies* and other relevant statutes and state regulations." (Emphasis added.) This language is confusing since it appears in a technical assistance/guidance document and all other language in the document is permissive.

⁹² Staff notes that Guidelines page 40, interpreting California Code of Regulations, Title 5, section 56252, requires the EOPS program to notify the college's financial aid office when EOPS students receive book services. This fact does not change the staff analysis since this activity is a downstream activity required as a condition of participation in an ongoing elective program.

CONCLUSION

Staff concludes that the test claim should be denied because the test claim statutes and executive orders do not require the community colleges to perform any state-mandated activities and thus do not impose a state-mandated program on community college districts because:

3. Downstream activities delineated by Education Code sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, and 69655, as added or amended by the test claim statutes, California Code of Regulations, title 5, sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, 56298 are requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.
4. Education Code Section 69656, California Code of Regulations, title 5, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252, 56292 and the Guidelines do not require districts to perform any activities and, even if they did, they would be requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus would not be state-mandated activities.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

SixTen and Associates

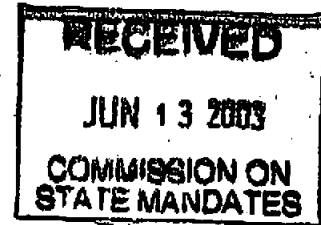
Mandate Reimbursement Services

Exhibit A

ARTHUR B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 9, 2003



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

Re: **TEST CLAIM OF West Kern Community College District**
Statutes of 1990, Chapter 1455
Extended Opportunity Programs and Services

Dear Ms. Higashi:

Enclosed are the original and seven copies of the West Kern Community College District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

William Duncan
Vice President, Administrative Services
West Kern Community College District
29 Emmons Park Drive
Taft, California 93268

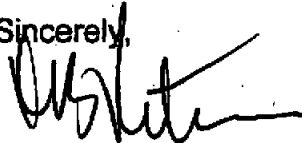
The Commission regulations provide for an informal conference of the interested parties

Paula Higashi, Executive Director,
Commission on State Mandates

June 9, 2003

within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

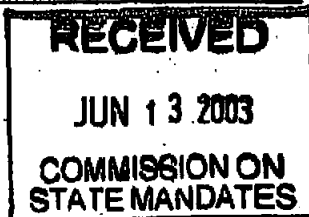


Keith B. Petersen

C: William Duncan, Vice President Administrative Services
West Kern Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only



TEST CLAIM FORM

Claim No. 02-TC-29

Local Agency or School District Submitting Claim

WEST KERN COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

West Kern Community College District
29 Emmons Park Drive
Taft, California 93268

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Extended Opportunity Programs and Services

(See: Attached)

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

William Duncan
Vice President Administrative Services

(661) 763-7700

Signature of Authorized Representative

Date

x *William H. Duncan*

June 3, 2003

**Attachment to CSM 2 (1/91)
Test Claim of West Kern Community College District
Extended Opportunity Programs and Services**

Statutes:

Title 5, California Code of Regulations

Chapter 1455, Statutes of 1990
Chapter 1372, Statutes of 1990
Chapter 1586, Statutes of 1985
Chapter 1178, Statutes of 1984

Section 56200
Section 56201
Section 56202
Section 56204
Section 56206

Code Sections:

Education Code Section 69640
Education Code Section 69641
Education Code Section 69641.5
Education Code Section 69643
Education Code Section 69648
Education Code Section 69649
Education Code Section 69652
Education Code Section 69655
Education Code Section 69656

Section 56208
Section 56210
Section 56220
Section 56222
Section 56224
Section 56226
Section 56230
Section 56232
Section 56234
Section 56236
Section 56238
Section 56240

Other:

EOPS Implementing Guidelines
Chancellor of the California Community
Colleges (January 2002)

Section 56252
Section 56254
Section 56256
Section 56258
Section 56260
Section 56262
Section 56264
Section 56270
Section 56272
Section 56274
Section 56276
Section 56278
Section 56280
Section 56290
Section 56292
Section 56293
Section 56295
Section 56296
Section 56298

Claim Prepared By:

Keith B. Petersen
SixTen and Associates
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Voice: (619) 514-8605
Fax: (619) 514-8645

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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Test Claim of:

West Kern Community
College District

Test Claimant

No. CSM. _____

Chapter 1455, Statutes of 1990
Chapter 1372, Statutes of 1990
Chapter 1586, Statutes of 1985
Chapter 1178, Statutes of 1984

Education Code Section 69640
Education Code Section 69641
Education Code Section 69641.5
Education Code Section 69643
Education Code Section 69648
Education Code Section 69649
Education Code Section 69652
Education Code Section 69655
Education Code Section 69656

Title 5, California Code of Regulations
Sections 56200, 56201, 56202, 56204, 56206
56208, 56210, 56220, 56222, 56224, 56226,
56230, 56232, 56234, 56236, 56238, 56240,
56252, 56254, 56256, 56258, 56260, 56262,
56264, 56270, 56272, 56274, 56276, 56278,
56280, 56290, 56292, 56293, 56295, 56296,
and 56298

(Continued on Next Page)

Extended Opportunity Programs and Services

Test Claim of West Kern Community College District
Chapter 1455/90 Extended Opportunity Programs and Services

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) TEST CLAIM FILING

) EOPS Implementing Guidelines
) Chancellor of the California Community
) Colleges (January 2002)

PART I. AUTHORITY FOR THE CLAIM

9 The Commission on State Mandates has the authority pursuant to Government Code
10 section 17551 (a) to "... hear and decide upon a claim by a local agency or school
11 district that the local agency or school district is entitled to be reimbursed by the state for
12 costs mandated by the state as required by Section 6 of Article XIII B of the California
13 Constitution." West Kern Community College District is a "school district" as defined in
14 Government Code section 17519.¹

PART II. LEGISLATIVE HISTORY OF THE CLAIM

16 This test claim alleges mandated costs subject to reimbursement by the state for
17 community college districts to provide certified directors, instructors and counselors; to
18 provide counselors for students; to comply with new minimum standards; petition for
19 waivers of minimum standards and staffing requirements; to enter into education plans
20 and mutual responsibility contracts; verify student eligibility and compliance; and utilize
21 specific accounting standards and procedures in order to implement the EOPS program.

22 **SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975**

¹ Government Code section 17519, as last amended by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools."

Test Claim of West Kern Community College District
Chapter 1455/90 Extended Opportunity Programs and Services

1 Article 4 of the Education Code (commencing with Section 25524) was entitled
2 "Extended Opportunity Programs and Services."

3 Section 25524² set forth legislative findings. Section 25524.3³ defined an
4 "extended opportunity programs or service" as an undertaking by a community college,
5 taught by instructors approved by the governing board, in the form and in accordance
6 with procedures prescribed by this article, which is over, above and in addition to the

² Education Code Section 25524, as added by Chapter 1579, Statutes of 1969:

"It is the intent of the Legislature that the California Community Colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and educational status. It is the intent and purpose of the Legislature to encourage local community colleges to establish and develop programs directed to identifying those students affected by language, social, and economic handicaps, to establish and develop services, techniques, and activities directed to the recruitment of such students to and their retention in community colleges and to the stimulation of their interest in intellectual, educational and vocational attainment.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state."

³Education Code Section 25524.3; as added by Chapter 1579, Statutes of 1969:

"An "extended opportunity program or service" is an undertaking by a community college, to be taught by instructors approved by the governing board, in the form and in accordance with procedures prescribed by this article, which is over, above, and in addition to, the regular educational programs of the college, having as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college. Participation in an extended opportunity program or service shall not preclude participation in any other program which may be offered in the college."

**Test Claim of West Kern Community College District
Chapter 1455/90 Extended Opportunity Programs and Services**

1 regular educational programs of the college, having as its purpose the provision of
2 positive encouragement directed to the enrollment of students handicapped by
3 language, social, and economic disadvantages, and to the facilitation of their successful
4 participation in the educational pursuits of the college.

5 Section 25524.7⁴ provided additional definitions including, at subdivision (d), a
6 definition of an "extended opportunity program" as a special program or method of
7 instruction designed to facilitate the language, educational or social development of a
8 student and increase his potential for success in the college. Subdivision (e) defined
9 "extended opportunity services" as a program of assistance designed to aid students
10 with socioeconomic handicaps to permit them to enroll in and participate in the
11 educational activities of the college.

⁴Education Code Section 25524.7, as added by Chapter 1579, Statutes of 1969:

"Definitions:

(a) "Board" means the Board of Governors of the California Community Colleges as created by Chapter 1.5 (commencing with Section 185) of Division 2.

(b) "District" means any school district in California that maintains one or more community colleges.

(c) "College" means a community college established by the governing board of a school district authorized to provide community college instruction.

(d) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a student and increase his potential for success in the college.

(e) "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college."

**Test Claim of West Kern Community College District
Chapter 1455/90 Extended Opportunity Programs and Services**

1 Section 25526.7⁵ required the Board of Governors of the California Community
2 Colleges to adopt rules and regulations necessary to implement the Article including
3 rules and regulations which:

- 4 (a) Prescribe the procedure by which a district shall identify a student eligible
5 for extended opportunity programs or services.
- 6 (b) Establish minimum standards for the establishment and conduct of
7 extended opportunity programs and services.
- 8 (c) Require the submission of such reports by districts as will permit the
9 evaluation of the program and services offered.

10 Section 25527⁶ provided that the governing board of any district may, with the

⁵Education Code Section 25526.7, as added by Chapter 1579, Statutes of 1969:

“The board shall adopt rules and regulations necessary to implement the provisions of this article, including rules and regulations which:

- (a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services.
- (b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services.
- (c) Require the submission of such reports by districts as will permit the evaluation of the programs and services.”

⁶Education Code Section 25527, as added by Chapter 1579, Statutes of 1969:

“The governing board of any district may, with the approval of the board, establish an extended opportunity program. Such program may include, but need not be limited to:

- (a) The provisions of tutorial services.
- (b) The establishment of remedial and developmental courses.
- (c) The establishment of a program of multicultural studies.
- (d) The provision of counseling services.

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1 approval of the Board of Governors of the California Community Colleges, establish an
2 extended opportunity program which may include, but not be limited to:

- 3 (a) The provision of tutorial services,
- 4 (b) The establishment of remedial and developmental courses,
- 5 (c) The establishment of a program of multicultural studies,
- 6 (d) The provision of counseling services, and
- 7 (e) The provision of recruitment services.

8 Section 25527.3⁷ provided that the governing board of any district may, with the
9 approval of the board, establish extended opportunity services which could include, but
10 was not be limited to:

- 11 (a) Loans or grants to meet living costs or a portion thereof,
- 12 (b) Loans or grants to meet the cost of student fees,
- 13 (c) Loans or grants to meet cost of transportation between home and college,

(e) The provision of recruitment services."

⁷Education Code Section 25527.3, as added by Chapter 1579, Statutes of 1969:

"The governing board of any district may, with the approval of the board,
establish extended opportunity services. Such services may include, but need not be
limited to:

- (a) Loans or grants to meet living costs or a portion thereof.
- (b) Loans or grants to meet the cost of student fees.
- (c) Loans or grants to meet cost of transportation between home and college.
- (d) The provision of scholarships.
- (e) Work-experience programs.
- (f) Job placement programs."

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- 1 (d) The provision of scholarships,
2 (e) Work-experience programs, and
3 (f) Job placement programs.

4 Section 25527.7⁸ provided that the governing board of any district may use any
5 funds under its control, not used for another particular purpose, for the programs and
6 services authorized by Sections 25527 and 25527.3, the administration of such
7 programs and services, and to meet matching requirements necessary to receive
8 federal funds, or funds granted by nonprofit foundations designated for the same
9 purpose.

10 Section 25528⁹ provided that the governing board of any district may apply to the
board of governors for an allowance to meet all or a portion of the cost of establishing

⁸ Education Code Section 25527.7, as added by Chapter 1579, Statutes of 1969:

"The governing board of any district may use any funds under its control not specified to be used for another particular purpose for the programs and services authorized by Sections 25527 and 25527.3, the administrative costs of such programs and services, and may use such funds to meet the matching requirements to receive federal funds, or funds granted by nonprofit foundations, designated for the same purposes."

⁹ Education Code Section 25528, as added by Chapter 1579, Statutes of 1969:

"The governing board of any district may apply to the board for an allowance to meet all or a portion of the cost of establishing and operating extended opportunity programs or services authorized by this article. The application shall contain a detailed plan or plans for use of the allowance. The plan or plans shall be submitted in accordance with rules and regulations adopted by the board. The board may also adopt rules and regulations relating to the form and content of applications and procedures for review, evaluation, and approval thereof."

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1 and operating extended opportunity programs and services. The application shall
2 contain a detailed plan or plans for use of the allowance.

3 Section 25528.3¹⁰ provided that allowance applications were subject to the
4 approval of the board, with payments to be made by the State Controller and approved
5 by the Department of Finance.

6 **SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974.**

7 Chapter 1270, Statutes of 1975, Section 1, repealed Article 4 of the Education
8 Code allowing Extended Opportunity Programs and Services. Section 13 added
9 Division 25 - "Student Financial Aid Programs". Chapter 9, commencing with Section
10 42000, established new authority for Community College Extended Opportunity
11 Programs and Services.

12 Section 42000¹¹ adopted the same legislative intent as repealed Section 25524:

¹⁰ Education Code Section 25528.3, as added by Chapter 1579, Statutes of 1969:

"Applications shall be subject to the approval of the board. Upon approval by the board, it shall certify an apportionment or apportionments to the Controller. The Controller shall draw warrants on the State Treasury in the amounts certified in favor of the county treasurer of the county which has jurisdiction over the applicant district in accordance with a schedule of payments established by the board and approved by the Department of Finance. The county treasurer shall immediately credit the general fund of the applicant school district exactly as apportioned by the board."

¹¹ Education Code Section 42000, as added by Chapter 1270, Statutes of 1975, Section 13:

"It is the intent of the Legislature that the California community colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and

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1 Section 42001¹² adopted the same definition of "Extended Opportunity Program
2 or Service" as repealed Section 25524.3.

3 Section 42002¹³ adopted similar definitions as repealed Section 25524.7.

educational status. It is the intent and purpose of the Legislature to encourage local community colleges to establish and develop programs directed to identifying those students affected by language, social, and economic handicaps, to establish and develop services, techniques, and activities directed to the recruitment of such students to and their retention in community colleges and to the stimulation of their interest in intellectual, educational and vocational attainment.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state."

¹² Education Code Section 42001, as added by Chapter 1270, Statutes of 1975, Section 13:

"An "extended opportunity program or service" is an undertaking by a community college, to be taught by instructors approved by the governing board, in the form and in accordance with procedures prescribed by this article, which is over, above, and in addition to, the regular educational programs of the college, having as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college. Participation in an extended opportunity program or service shall not preclude participation in any other program which may be offered in the college."

¹³ Education Code Section 42002, as added by Chapter 1270, Statutes of 1975, Section 13:

"Definitions:

(a) "Board" means the Board of Governors of the California Community Colleges as created by Chapter 1.5 (commencing with Section 185) of Division 2.

(b) "District" means any school district in California that maintains one or more community colleges.

(c) "College" means a community college established by the governing board of a school district authorized to provide community college instruction.

(d) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a

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1 Section 42008¹⁴ adopted the same requirement that the board adopt rules and
2 regulations as repealed Section 25526.7.

3 Section 42009¹⁵ adopted the same elements of an Extended Opportunity
4 Program as repealed Section 25527.

student and increase his potential for success in the college.

(e) "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college."

¹⁴ Education Code Section 42008, as added by Chapter 1270, Statutes of 1975, Section 13:

"The board shall adopt rules and regulations necessary to implement the provisions of this article, including rules and regulations which:

- (a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services.
- (b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services.
- (c) Require the submission of such reports by districts as will permit the evaluation of the programs and services."

¹⁵ Education Code Section 42009, as added by Chapter 1270, Statutes of 1975, Section 13:

"The governing board of any district may, with the approval of the board, establish an extended opportunity program. Such program may include, but need not be limited to:

- (a) The provisions of tutorial services.
- (b) The establishment of remedial and developmental courses.
- (c) The establishment of a program of multicultural studies.
- (d) the provision of counseling services.
- (e) The provision of recruitment services."

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1 Section 42010¹⁶ adopted the same elements of Extended Opportunity Services
2 as repealed Section 25527.3.

3 Section 42011¹⁷ adopted similar language to repealed Section 25527.7, however
4 it changed the included references to Education Code Section 42009 and 42010.

5 Section 42012¹⁸ adopted the same language regarding applications for

¹⁶ Education Code Section 42010, as added by Chapter 1270, Statutes of 1975,
Section 13:

"The governing board of any district may, with the approval of the board,
establish extended opportunity services. Such services may include, but need not be
limited to:

- (a) Loans or grants to meet living costs or a portion thereof.
- (b) Loans or grants to meet the cost of student fees.
- (c) Loans or grants to meet cost of transportation between home and college.
- (d) The provision of scholarships.
- (e) Work-experience programs.
- (f) Job placement programs."

¹⁷ Education Code Section 42011, as added by Chapter 1270, Statutes of 1975,
Section 13:

"The governing board of any district may use any funds under its control not
specified to be used for another particular purpose for the programs and services
authorized by Sections ~~25527~~ 42009 and ~~25527.3~~ 42010, the administration of such
programs and services, and may use such funds to meet the matching requirements to
receive federal funds, or funds granted by nonprofit foundations, designated for the
same purposes."

¹⁸ Education Code Section 42012, as added by Chapter 1270, Statutes of 1975,
Section 13:

"The governing board of any district may apply to the board for an allowance to
meet all or a portion of the cost of establishing and operating extended opportunity
programs or services authorized by this article. The application shall contain a detailed
plan or plans for use of the allowance. The plan or plans shall be submitted in

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1 allowances as repealed Section 25528.

2 Section 42013¹⁹ adopted the same language regarding the approval of
3 applications as repealed Section 25528.3

4 Chapter 1010, Statutes of 1976, Section 2 (operative April 30, 1977) recodified
5 and renumbered the Education Code. Code sections before and after the recodification
6 and renumbering are as follows:

| <u>Former Code Section</u> | <u>New Code Section</u> |
|----------------------------|-------------------------|
| 42000 | 69640 |
| 42001 | 69641 |
| 42002 | 69642 |
| 42008 | 69648 |
| 42009 | 69649 |
| 42010 | 69650 |

accordance with rules and regulations adopted by the board. The board may also adopt rules and regulations relating to the form and content of applications and procedures for review, evaluation, and approval thereof."

¹⁹ Education Code Section 42013, as added by Chapter 1270, Statutes of 1975, Section 13:

"Applications shall be subject to the approval of the board. Upon approval by the board, it shall certify an apportionment or apportionments to the Controller. The Controller shall draw warrants on the State Treasury in the amounts certified in favor of the county treasurer of the county which has jurisdiction over the applicant district in accordance with a schedule of payments established by the board and approved by the Department of Finance. The county treasurer shall immediately credit the general fund of the applicant school district exactly as apportioned by the board."

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1 42011 69651

2 42012 69652

3 42013 69653

4 Chapter 242, Statutes of 1977, Section 31, amended Education Code Section
5 69642²⁰ by adding subdivision (a) to define "board"²¹ as the Board of Governors of the
6 California Community Colleges. Subdivisions (a), (b), (c) and (d) were relettered
7 subdivisions (b), (c), (d) and (e), respectively.

8 Chapter 609, Statutes of 1984, Section 1, added Education Code Section
9 69648.5.²² Subdivision (a) required the board to adopt rules and regulations

²⁰ Education Code Section 69642, as amended by Chapter 242, Statutes of 1977,
Section 31:

"Definitions:

(a) "Board" means the Board of Governors of the California Community Colleges.

(b) ~~(a)~~ "District" means any community college district in California that maintains one or more community colleges.

(c) ~~(b)~~ "College" means a community college established by the governing board of a community college district authorized to provide community college instruction.

(d) ~~(c)~~ "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a student and increase his potential for success in the college.

(e) ~~(d)~~ "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college."

²¹ Chapter 1010, Statutes of 1976, had deleted the definition of "board."

²² Education Code Section 69648.5, as added by Chapter 609, Statutes of 1984,
Section 1:

"(a) The board shall adopt rules and regulations establishing requirements for appropriate credentials to be held by extended opportunity programs and services professional faculty and staff paraprofessionals. The rules and regulations shall also

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1 establishing credential requirements and training standards for the extended opportunity
2 programs and services professional faculty and staff paraprofessionals. Subdivision (c)
3 allowed the office of the Chancellor of the California Community College to waive the
4 credential requirements if the person employed in the extended opportunity program or
5 service has had three years of work related experience or if there are other
6 circumstances which require a waiver.

7 Education Code Section 1178, Statutes of 1984, Section 1, amended Education
8 Code Section 69640²³ to expand the intent and purpose of the Legislature in

establish, where appropriate, training standards for these faculty and staff.

(b) Persons employed in extended opportunity programs or services as faculty or staff shall be deemed to possess the appropriate credentials designated by the board under subdivision (a) if they have been employed in these positions for three consecutive years prior to the effective date of this section.

(c) The office of the Chancellor of the California Community College may waive the credential requirements established under subdivision (a) if a person employed in extended opportunity programs or services has had three years of related work experience, or if there are other circumstances for which a waiver is appropriate."

²³ Education Code Section 69640, as amended by Chapter 1178, Statutes of 1984, Section 1:

"It is the intent of the Legislature that the California Community Colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and educational status. It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and develop implement programs directed to identifying those students affected by language, social, and economic handicaps, to establish and develop services, techniques, and activities directed to the recruitment of such students to and their retention in community colleges and to the stimulation of their interest in intellectual, educational and vocational attainment to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to,

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1 establishing the Community College Extended Opportunity Programs and Services
2 (EOPS) to increase the number of eligible EOPS students served, and to assist those
3 students in achieving their educational objectives and goals, including, but not limited to,
4 obtaining job skills, occupational certificates, or associate degrees, and transferring to
5 four-year institutions.

6 Section 69640, as amended, also required the Board of Governors of the
7 California Community Colleges to adopt rules and regulations establishing EOPS goals

obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions.

By January 1, 1986, the Board of Governors of the California Community Colleges shall adopt rules and regulations establishing EOPS goals consistent with this article. These goals may include all of the following:

- (a) To increase the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.
- (b) To increase the number and percentage of Extended Opportunity Programs and Services (EOPS) students who successfully complete their chosen educational objectives.
- (c) To increase the number and percentage of EOPS students who are successfully placed into career employment.
- (d) To increase the number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community colleges.
- (e) To strive to assist community colleges to meet student and employee affirmative action objectives.
- (f) To improve the delivery of programs and services [sic.] to disadvantaged students.

The Legislature further intends that EOPS shall not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state."

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1. consistent with the Article to include the following:

- 2. (a) To increase the enrollment in community colleges of students affected by
3. language, social and economic disadvantages,
- 4. (b) To increase the number of EOPS students who meet their educational
5. objectives,
- 6. (c) To increase the number of EOPS students who find employment after
7. college,
- 8. (d) To increase the number of EOPS students who transfer to four-year
9. institutions,
- 10. (e) To assist community colleges in meeting student and employee
11. affirmative action objectives, and
- 12. (f) To improve the delivery of programs and services to disadvantaged
13. students.

14. Chapter 1178, Statutes of 1984, Section 2, amended Education Code Section
15. 69641²⁴ to provide that Extended Opportunity Programs and Services (EOPS) provided

²⁴ Education Code Section 69641, as amended by Chapter 1178, Statutes of 1984,
Section 2:

~~"An extended opportunity program or service" is an undertaking by a community college, to be taught by instructors approved by the governing board, in the form of and in accordance with procedures prescribed by this article, which is over, above, and in addition to, the regular educational programs of the college, having as its purpose the provision of positive encouragement directed to The Extended Opportunity Programs and Services (EOPS) provided by a community college shall supplement the regular educational programs of the community college to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation facilitate of their the successful participation in the educational pursuits of the college~~

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1 by community colleges must supplement the regular educational programs of the
2 community college. The amendment also provided that EOPS programs shall be taught
3 by certificated directors and instructors, as well as by counselors and other support staff
4 approved by the governing board of the community college district.

5 Chapter 1178, Statutes of 1984, Section 3, amended Education Code Section
6 69642²⁵ to make technical changes and to change the text from "school district" to
7 "community college district".

8 Chapter 1178, Statutes of 1984, Section 4, amended Section 69648²⁶, at

completion of their educational goals and objectives.

EOPS shall be provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. Participation in an extended opportunity program or service shall not preclude participation in any other program which may be offered in by the community college.

²⁵ Education Code Section 69642, as amended by Chapter 1178, Statutes of 1984, Section 3:

"Definitions:

(a) "Board" means the Board of Governors of the California Community Colleges.

(b) "District" means any school community college district in California that maintains one or more community colleges.

(c) "College" means a community college established by the governing board of a school community college district authorized to provide community college instruction.

(d) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a student and increase his or her potential for success in the college.

(e) "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college, and to progress toward completing their educational goals and objectives, including, but not limited to, graduation from college.

²⁶ Education Code Section 69648, as amended by Chapter 1178, Statutes of 1984, Section 4:

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1 subdivision (b), which identifies the minimum standards required to be established by
2 the board's rules and regulations as follows:

- 3 (1) The provision of staffing and program management.
4 (2) The establishment of a documentation and data collections system.
5 (3) The establishment of an EOPS advisory committee.

"By January 1, 1986, The the board shall adopt rules and regulations necessary to implement the provisions of this article, including rules and regulations which do all of the following:

(a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services on the basis of the student's language, social, or economic disadvantages.

(b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services. The standards may include, but shall not be limited to, guidelines for all of the following:

(1) The provision of staffing and program management.

(2) The establishment of a documentation and data collection system.

(3) The establishment of an EOPS advisory committee.

(4) The provision of recruitment and outreach services.

(5) The provision of cognitive and noncognitive assessment, advising, and orientation services.

(6) The provision of college registration.

(7) The provision of basic skills instruction, seminars, and tutorial assistance.

(8) The provision of counseling and retention services.

(9) The provision of transfer services.

(10) The provision of direct aid.

(11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing extended opportunity programs and services.

(c) The standards specified in subdivision (b) shall be adopted and implemented by the commencement of the 1985-86 academic year.

(d) Subject to approval of the chancellor, establish procedures for the review and evaluation of the districts' extended opportunity programs and services.

(e) (e)-Require the submission of such the reports by districts as will permit the evaluation of the program and services offered."

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- 1 (4) The provisions of recruitment and outreach services.
- 2 (5) The provision of cognitive and noncognitive assessment, advising and
3 orientation services.
- 4 (6) The provision of college registration.
- 5 (7) The provision of basic skills instruction, seminars, and tutorial assistance.
- 6 (8) The provision of counseling and retention services.
- 7 (9) The provision of transfer services.
- 8 (10) The provision of direct aid.
- 9 (11) The establishment of objectives to achieve the goals specified in Section
10 69640, and the establishment of objectives to be applied in implementing
extended opportunity programs and services.

12 New subdivision (c) required the standards to be adopted and implemented by
13 the commencement of the 1985-86 academic year. New subdivision (d) required
14 community college districts to establish procedures for the review and evaluation of the
15 district's extended opportunity programs and services, subject to the approval of the
16 chancellor. Former subdivision (c) was relettered as subdivision (e), along with other
17 technical changes.

18 Chapter 1178, Statutes of 1984, Section 6, amended Education Code Section
19 69649²⁷ by deleting subdivisions (a) through (e) which set forth suggested elements of

²⁷ Education Code Section 69649, as amended by Chapter 1178, Statutes of 1984, Section 6:

"(a) The governing board of any a community college district may, with the

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1 an extended opportunity program, by lettering the first paragraph as subdivision (a) and
2 adding a provision that only extended opportunity programs which meet the minimum
3 standards established pursuant to subdivision (b) of Section 69648 are eligible to
4 receive state funding. The amendment also added a new subdivision (b) which allows
5 the chancellor to waive any or all of the minimum standards established if the chancellor
6 determines that unusual circumstances exist which merit a waiver. Therefore, to be
7 eligible for state funding, districts are required to meet the minimum standards set forth
8 in subdivision (b) of Section 69648 or submit and obtain waivers of these standards from
9 the Chancellor. Prior to this time, a district's participation in Extended Opportunity
10 Programs and Services was discretionary.

11 Chapter 1178, Statutes of 1984, Section 7, amended Education Code Section
12 69651²⁸ to prohibit the governing board of a community college district from using any

approval of the board, establish an extended opportunity program. ~~Such program may include, but need not be limited to:~~

- ~~(a) The provisions of tutorial services.~~
- ~~(b) The establishment of remedial and developmental courses.~~
- ~~(c) The establishment of a program of multicultural studies.~~
- ~~(d) the provision of counseling services.~~
- ~~(e) The provision of recruitment services.~~

Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of Section 69648.

(b) The chancellor may waive any or all of the minimum standards established pursuant to subdivision (b) of Section 69648 if the chancellor determines that unusual circumstances which merit a waiver exist."

²⁸ Education Code Section 69651, as amended by Chapter 1178, Statutes of 1984, Section 7:

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1 funds received from the state for the operation and administration of extended
2 opportunity programs and services to supplant district resources, programs, or services
3 authorized by Sections 69649 and 69650.

4 Chapter 1178, Statutes of 1984, Section 8, added Education Code Section
5 69655²⁹. Subdivision (a) required the Chancellor of the California Community Colleges to

"The governing board of any a community college district may ~~shall not use any funds under its control not specified to be used for another particular purpose for the programs and services authorized by Sections 69649 and 69650, the administration of such programs and services, and may use such funds received from the state for the operation and administration of extended opportunity programs and services to supplant district resources, programs, or services authorized by Sections 69649 and 69650. The governing board may use those funds~~ to meet the matching requirements to receive federal funds, or funds granted by nonprofit foundations, designated for the same purposes, for extended opportunity programs and services, as defined by Section 69641."

²⁹ Education Code Section 69655, as added by Chapter 1178, Statutes of 1984, Section 8:

"(a) Pursuant to Section 69648, the Chancellor of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the chancellor shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

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1 determine the elements of a statewide data base for the Community College Extended
2 Opportunity Programs and Services, which shall be used for periodic evaluation of the
3 programs and services. The data base shall include all information necessary to
4 demonstrate the statewide progress towards achieving the program goals identified in
5 Section 69640, and program objectives adopted pursuant to Section 69648 including,
6 but not limited to, all of the following:

- 7 (1) The annual number of extended opportunity programs and services
8 (EOPS) students and non-EOPS students who complete degree or
9 certificate programs, transfer programs, or other programs, as determined

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the chancellor shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January, 1987, the chancellor shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

(c) A task force under the direction of the California Postsecondary Education Commission shall be established to evaluate existing supplemental services and financial assistance provided for community college EOPS students who transfer to public four-year institutions; and to make recommendations for modification of those services and assistance programs necessary to facilitate the transfer process. The task force shall be comprised of representatives from all of the following:

- (1) The California Postsecondary Education Commission.
- (2) The University of California.
- (3) The California State University.
- (4) The community colleges.
- (5) The Legislative Analyst.
- (6) The Department of Finance.

The task force shall submit a report summarizing its findings and the plan to the fiscal committees of the Legislature on or before February 15, 1985."

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1 by state and local matriculation policies.

- 2 (2) The annual number of EOPS and non-EOPS students who transfer to
3 institutions which award the baccalaureate degree.
- 4 (3) The annual number of EOPS and non-EOPS students completing
5 occupational programs who find career employment.

6 Subdivision (b) requires the chancellor to report annually to the Legislature regarding the
7 number of students served by the Community College Extended Opportunity Programs
8 and Services and the number of EOPS students who achieve their education objectives.

9 Subdivision (c) established a task force under the direction of the California
10 Postsecondary Education Commission to evaluate existing programs provided for
11 community college EOPS students who transfer to public four-year institutions and to
12 make recommendations for modification of those services necessary to facilitate the
13 transfer process.

14 Chapter 1586, Statutes of 1985, Section 1, added Education Code Section
15 69641.5³⁰ which, at subdivision (a), requires the Board of Governors of the California

³⁰ Education Code Section 69641.5, as added by Chapter 1586, Statutes of 1985,
Section 1:

"On or before April 1, 1986, the Board of Governors of the California Community
Colleges shall consider adopting regulations which include all of the following objectives:

(a) That the Extended Opportunity Programs and Services provided by a
community college shall include, but not be limited to, staff qualified to counsel all EOPS
students regarding their individual educational objectives and the specific academic or
vocational training program necessary to achieve those objectives, and that each EOPS
student receives that counseling upon his or her initial enrollment in the community
college, and at least every six months thereafter.

(b) That in assisting all EOPS students to identify their educational objectives, the

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1 Community Colleges to adopt regulations which ensure that each EOPS student
2 receives counseling upon his or her initial enrollment in the community college, and at
3 least every six months thereafter. Subdivision (b) requires the EOPS director at each
4 community college to disseminate the names and addresses of potential transfer
5 students to admissions staff at public universities throughout the state at least once a
6 year. Subdivision (c) requires the EOPS director at each community college to work
7 with other community college staff to encourage all interested EOPS students to enroll in
8 existing community college classes designed to develop skills necessary for successful
9 study at a university. Therefore, districts were required to provide counseling to each
10 EOPS student upon his or her initial enrollment and at least every six months thereafter.
11 Therefore, the EOPS director at each community college is required to disseminate the
12 names and addresses of potential transfer students to admissions staff at public
13 universities throughout the state at least once a year. Therefore, the EOPS director at
14 each community college is required to work with other community college staff to

Extended Opportunity Programs and Services provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.

(c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established."

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1 encourage all EOPS students to enroll in existing community college classes designed
2 to develop skills necessary for successful study at a university.

3 Chapter 1586, Statutes of 1985, Section 3, added Section 69656³¹ which states
4 that it is the intent of the Legislature that the California State University and the
5 University of California provide fee waivers for admissions applications for all EOPS
6 transfer students who provide waiver forms signed by a community college EOPS
7 director. Therefore, Community College Districts are required to provide and sign fee
8 waiver forms for EOPS students who wish to apply for admission to a California State
9 University or the University of California.

10 Chapter 248, Statutes of 1986, Section 36, amended Education Code Section
11 69648.5 by renumbering the Section from 69648.5 to 69648.7.

12 Chapter 1372, Statutes of 1990, Section 246, amended Education Code Section
13 69640 to delete the January 1, 1986 performance date and to make technical changes.

14 Chapter 1372, Statutes of 1990, Section 247, amended Education Code Section
15 69641 to make technical changes.

16 Chapter 1372, Statutes of 1990, Section 248 amended Education Code Section
17 69641.5 to delete the Board of Governor's April 1, 1986 deadline for adopting EOPS

³¹ Education Code Section 69656, as added by Chapter 1586, Statutes of 1985, Section 3:

"It is the intent of the Legislature that the California State University and the University of California provide fee waivers for admissions applications for all EOPS transfer students who provide waiver forms signed by a community college EOPS director."

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1 regulations.

2 Chapter 1372, Statutes of 1990, Section 249, amended Education Code Section
3 69642 to delete the definitions of "board," "district," and "college."

4 Chapter 1372, Statutes of 1990, Section 255, amended Education Code Section
5 69648 to delete subdivision (c) which required standards to be adopted and
6 implemented by the commencement of the 1985-86 academic year.

7 Chapter 1372, Statutes of 1990, Section 257, repealed Education Code Section
8 69648.7.

9 Chapter 1372, Statutes of 1990, Section 258, amended Education Code Section
10 69649³² by allowing the board of governors, rather than the chancellor, to waive any or
11 all of the minimum standards required to establish an extended opportunity program or
12 service or determine that unusual circumstances exist which merits a waiver.

13 Chapter 1372, Statutes of 1990, Section 260, amended Education Code Section
14 69653³³, to require the Controller to draw warrants directly in favor of the governing

³² Education Code Section 69649, as amended by Chapter 1372, Statutes of 1990,
Section 258:

"(a) The governing board of a community college district may, with the approval of
the board, establish an extended opportunity program.

Except as provided in subdivision (b), in order to be eligible to receive state
funding, the program shall meet the minimum standards established pursuant to
subdivision (b) of Section 69648.

(b) The chancellor board of governors may waive any or all of the minimum
standards established pursuant to subdivision (b) of Section 69648 if the chancellor
board of governors determines that unusual circumstances which merit a waiver exist."

³³ Education Code Section 69653, as amended by Chapter 1372, Statutes of 1990,
Section 260:

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1 board of the community college district rather than the county treasurer.

2 Chapter 1455, Statutes of 1990, Section 4, amended Education Code Section
3 69655 by deleting subdivision (c) which had required the establishment of a task force to
4 evaluate existing services.

5 Chapter 1455, Statutes of 1990, Section 5, repealed Education Code Section
6 69657.

7 **TITLE 5 CALIFORNIA CODE OF REGULATION REQUIREMENTS**

8 The Title 5 Regulations for Extended Opportunity Programs and Services are
9 found in Subchapter 2.5 of Chapter 7 of Division 6, commencing with Section 56200.

10 Copies of those regulations are attached hereto as Exhibit 4 and are incorporated herein
11 by reference. The Chancellor's Office of the California Community Colleges has also
12 published and promulgated a document entitled "EOPS Implementing Guidelines" for the
13 Title 5 Regulations (hereinafter "Implementing Guidelines"), a copy of which is attached
14 hereto as Exhibit 5 and is incorporated herein by reference.

15 **Article 1. General Provisions and Definitions**

16 Section 56200 provides that the Chapter implements, and should be read in

"Applications shall be subject to the approval of the board. Upon approval by the board, it shall certify an apportionment or apportionments to the Controller. The Controller shall draw warrants on the State Treasury in the amounts certified in favor of the ~~county treasurer of the county governing board of the community college district~~ which has jurisdiction over the applicant district in accordance with a schedule of payments established by the board and approved by the Department of Finance. ~~The county treasurer shall immediately credit the general fund of the applicant school district exactly as apportioned by the board.~~"

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1 conjunction with, Chapter 2, Article 8 (commencing with Section 69640) of the Education
2 Code. See also the "Implementing Guidelines" for Section 56200.

3 Section 56201 authorizes the Chancellor to waive any part of Article 3 (Program
4 Standards) and Article 5 (staffing standards), upon request submitted to the Chancellor
5 in writing by the district. See also the "Implementing Guidelines" for Section 56201
6 which provides that, if a community college cannot meet any or all of the minimum
7 program standards requirements in Article 3, or the staffing standards outlined in Article
8 5, the college is required to submit a waiver request. All waiver requests must be
9 submitted in writing and set forth in detail the reasons for the request and the resulting
10 problems caused if the request is denied. Any waiver granted will only be valid through
11 the end of the academic year in which they are granted.

12 Section 56202 provides the definition of a "Full-Time Student" for purposes of
13 program eligibility. See also the "Implementing Guidelines" for Section 56202 which
14 requires verification of "Full-Time student enrollment" be placed in each student's file
15 (hard copy or electronic) in the form of enrollment sheets or transcripts. This document
16 should represent an official college document verifiable at the Admissions and Records
17 Office or the computer system the college maintains.

18 Section 56204 defines an EOPS student as a person for whom, at a minimum,
19 the EOPS program has documentation in the student's file of an EOPS application,
20 Educational Plan, and Mutual Responsibility Contract. See also the "Implementing
21 Guidelines" for Section 56204 which requires the Educational Plan to include a

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1 sequenced multi-term road map of all courses agreed upon by both the student and a
2 counselor necessary to meet the student's educational needs and goals. The
3 Educational Plan should offer students a visual time line of required coursework needed
4 to complete their individualized educational goals, including certificate, associate
5 degree, transfer objective, or a combination of any of the above. The EOPS Educational
6 Plan must be developed/monitored from term-to-term with a trained and certificated
7 counselor as needed, in response to student accomplishments, achievements, and
8 challenges. The Mutual Responsibility Contract is a binding document in which both
9 parties, the EOPS program and the student, must agree to the terms and conditions of
10 the contract. The Mutual Responsibility Contract specifies what services the student
11 may receive and the roles, responsibilities, and expectations of both parties. The
12 appropriate documentation must be available in each student's EOPS file for purposes
13 of verifying a student as "served." The documentation should be signed by the
14 appropriate college personnel, (e.g., EOPS Director, EOPS Counselor) along with the
15 signature of the student served.

16 Section 56206 requires districts receiving EOPS funds to identify students served
17 and the level and type of programs and services each student received. See also the
18 "Implementing Guidelines" for Section 56206.

19 Section 56208 requires each EOPS program to have an Advisory Committee
20 which shall meet at least once during each academic year. Although members shall
21 serve without compensation, they may be reimbursed for necessary expenses. See also

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1 the "Implementing Guidelines" for Section 56208 which allows related travel costs (but
2 not other necessary expenses) to be paid out of EOPS funds. Colleges are also
3 required to make available, for on-site program reviews, advisory committee minutes
4 and a list identifying each member of the committee and his or her affiliations.

5 Section 56210 requires each college to maintain the same dollar level of services
6 supported with non-EOPS funds as the average reported in its final budget report in the
7 previous three academic years. At a minimum, this amount shall equal the three-year
8 average or 15% of the average EOPS allocation to that college for the same three base
9 years, which ever is greater. See also the "Implementing Guidelines" for Section 56210.

10 Any service or function that is considered district contribution (i.e., expenditures "above,
11 beyond and in addition to" general expenditures) must be included in and approved as
12 part of the district's program plan and also reported in the district's A1 Budget Report.

13 The Chancellor's Office will determine the amount of the minimum obligation of each
14 district according to the procedures set forth in this section, and the college will be
15 notified in writing of the amount of the obligation. If, after calculating the college's
16 obligation, the obligation is found to be less than the EOPS Director's salary and
17 benefits, the district is still required to pay the director's full salary and benefits.

18 Article 2. Student Eligibility and Responsibility

19 Section 56220 sets forth the eligibility requirements for students. Districts are
20 required to verify that each student applicant:

- 21 (a) Is a resident of California;

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- 1 (b) Is enrolled full-time when accepted into the EOPS program;
- 2 (c) Has not completed more than 70 units of degree applicable credit;
- 3 coursework in any combination of post-secondary higher education
- 4 institutions;
- 5 (d) Qualifies to receive a Board of Governors Grant; and
- 6 (e) Is educationally disadvantaged as determined by the EOPS and as
- 7 specified by legislation.

8 **See also the "Implementing Guidelines" for Section 56220.**

9 Section 56222 sets forth student responsibilities. Districts are required to verify

10 that each student applicant has:

- 11 (a) Applied for state and/or federal financial aid pursuant to the applicable
- 12 rules and procedures of the college of attendance;
- 13 (b) Maintained academic progress towards a certificate, associate degree, or
- 14 transfer goal pursuant to the academic standards established by the
- 15 college of attendance applicable to all credit enrolled students;
- 16 (c) Filed an initial EOPS application and has completed and adhered to a
- 17 student educational plan and an EOPS mutual responsibility contract for
- 18 programs and services; and,
- 19 (d) Provided income documentation as required for financial aid by the college
- 20 of attendance within two months of acceptance into the EOPS program.

21 **See also the "Implementing Guidelines" for Section 56222 which requires the Mutual**

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1 Responsibility Contract referred to in subsection (c) of Section 56222 to be signed by
2 both the student and the EOPS Director, EOPS counselor or EOPS para-professional
3 and be maintained in the student's file.

4 Section 56224, subdivision (a), requires students to be eligible for and receive
5 programs and services pursuant to Sections 56220 and 56222. Subdivision (b) requires
6 districts to receive financial information and verify financial need according to the rules
7 and procedures established for financial aid at the college of attendance. Subdivision
8 (c) requires districts to verify a student's need for EOPS financial aid. See also the
9 "Implementing Guidelines" for Section 56224 which requires the verifications to be made
10 each academic year. An EOPS Director must adhere to Title 5 Sections 56252 and
11 56254 when recommending awards of EOPS funds for financial aid, grants and
12 workstudy awards. Income verifications must be made using specified tax forms.

13 Section 56226 provides for continuing student eligibility until the student has
14 completed 70 degree applicable credit units of instruction or six semesters of enrollment,
15 or until he or she has failed to meet the terms, conditions, and follow-up provisions of
16 the student education plan and/or the EOPS mutual responsibility contract. See also the
17 "Implementing Guidelines" for Section 56226 which allows the 70 unit limit to be waived
18 by the EOPS Director, when appropriate. The EOPS director is authorized to disqualify
19 any student from the program who is not making academic progress as required in his or
20 her educational plan. EOPS staff should develop appropriate office procedures to track
21 student participation and all the necessary information must be included in the EOPS

1 student's file.

2 Article 3. Program Standards

3 Section 56230 requires each college receiving EOPS funds to employ a full-time
4 EOPS director to directly manage and/or coordinate the daily operation of the programs
5 and services offered, and to supervise and/or coordinate the staff assigned to perform
6 EOPS activities. See also the "Implementing Guidelines" for Section 56230 which
7 provides that colleges must request waivers from the Chancellor's Office prior to
8 initiating any change in the EOPS Director's position; and waiver requests must be
9 submitted and approved each fiscal year to be valid to receive a waiver for a less than a
10 full-time director.

11 Section 56232 requires colleges receiving EOPS funds to provide access
12 services to identify EOPS eligible students and facilitate their enrollment, including, at a
13 minimum:

- 14 (a) Outreach and recruitment to increase the number of potential eligible
15 students who enroll at the college;
- 16 (b) Orientation to familiarize EOS eligible students with:
- 17 (1) The location and function of the college and EOPS programs and
18 services,
- 19 (2) The college catalog,
- 20 (3) The college application,
- 21 (4) The registration process, with emphasis on academic and grading

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1 standards,

2 (5) College terminology,

3 (6) Course add and drop procedures and related rules,

4 (7) Financial aid application procedures, and

5 (8) Transfer procedures to four-year institutions.

6 (c) Registration assistance for priority enrollment.

7 See also the "Implementing Guidelines" for Section 56232.

8 Section 56234 requires each college receiving EOPS funds to assess each
9 EOPS eligible student, the results of which are to be explained and interpreted to EOPS
10 students by counselors trained in the use and meaning of such assessments. The
11 assessments must include:

12 (a) Course and placement tests in reading, comprehension, vocabulary,
13 writing, and computations;

14 (b) Diagnostic tests to determine the specific academic skill deficiencies in
15 areas in which placement tests indicate that the student has a low
16 probability of success in degree applicable courses as defined by college
17 policies;

18 (c) A study skill assessment which determines how well the student is able to
19 take lecture notes, outline written material, use library services, and use
20 effective study techniques;

21 (d) Support service assessment to determine the need for financial aid, child

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1 care, part-time employment, or extra-curricular pursuits; and

2 (e) Assessment instruments that are not culturally or linguistically biased:

3 See also the "Implementing Guidelines" for Section 56234 which provides that, at a
4 minimum, EOPS Programs have an obligation to provide all the assessments listed in
5 this section. If an EOPS Program or college cannot provide one or more of the
6 assessments outlined in this section, a waiver must be requested.

7 Section 56236 requires colleges receiving EOPS funds to provide counseling and
8 advisement to each EOPS-eligible student at least three times per term as follows:

9 (a) A contact session which combines interview interpretation of assessment
10 results to prepare a student educational plan and a mutual responsibility
11 contract specifying what programs and services the student shall receive
12 and what the student is expected to accomplish;

13 (b) An in-term contact session to ensure the student is succeeding
14 adequately, that programs and services are being provided effectively, and
15 to plan changes as may be needed to enhance student success; and

16 (c) A term-end or program exit contact session to assess the success of
17 students in reaching the objectives of that term, the success of the
18 programs and services provided in meeting student needs, and to assist
19 students to prepare for the next term of classes, or to make future plans if
20 students are leaving the EOPS program or the college.

21 See also the "Implementing Guidelines" for Section 56236 which provides that colleges

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1 do not have the option of requesting a waiver for this specific section. Programs that
2 receive funding for this area are required to provide at least three (3) counseling and/or
3 advising contacts per semester (two per quarter) for each student. And at least two
4 contacts each semester must be with a certificated counselor, particularly for developing
5 and updating an education plan with a student.

6 Section 56238 requires colleges receiving EOPS funds to provide basic skills
7 instruction and tutoring services to EOPS eligible students who, on the basis of
8 assessments and counseling, need such services to succeed in reaching their
9 educational goals. See also the "Implementing Guidelines" for Section 56238 which
10 provides that, if an EOPS student, on the basis of assessments and counseling, is
11 determined to be in need of special services, the EOPS Programs are obligated to
12 provide such services. Documentation should include sign-in sheets or tutor time sheets
13 indicating for whom and when services were rendered. In order to receive a waiver for
14 any section of basic skills instruction or tutorial services, a college or district must submit
15 a waiver request which documents that the tutoring and/or basic skills instruction
16 needed by EOPS students is provided by the overall college basic skills instruction or
17 tutoring program at a level which meets the special needs of EOPS eligible students.

18 Section 56240 requires colleges receiving EOPS funds to provide assistance to
19 EOPS eligible students to transfer to four-year institutions and/or to find career
20 employment in their field of training. See also the "Implementing Guidelines" for Section
21 56240. If neither transfer nor career employment services are available on campus,

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1 EOPS should provide both, or submit a waiver request indicating services in one area.

2 Documentation should include sign-in sheets for workshops, presentations or special
3 events, including EOPS conducted tours in these specific program service areas.

4 Article 4. Financial Aid Standards

5 Section 56252 provides that EOPS grants and workstudy awards shall be
6 awarded for the purpose of reducing potential student loan indebtedness, or to reduce
7 unmet financial need, after Pell grants and other state, federal or institutional financial
8 aid has been awarded to the student. See also the "Implementing Guidelines" for
9 Section 56252 which requires the financial aid policy to be in writing and included in the
10 Financial Aid Handbook or Consumer Guide.

11 Section 56254 provides that grants may be awarded in an amount not to exceed
12 \$900 per academic year, that workstudy awards shall not exceed \$1,800 per academic
13 year, and that no combination of grants and workstudy awards may exceed \$1,800. See
14 also the "Implementing Guidelines" for Section 56254 which also requires the financial
15 award policy to be in writing and included in the Financial Aid Handbook or Consumer
16 Guide. The \$1,800 limit applies to EOPS funds only.

17 Section 56256 requires college financial aid offices to award and disburse EOPS
18 grant and workstudy funds upon the authorization of the EOPS office; that awards be
19 distributed as evenly as possible between dependent and independent students, and
20 priority in awards is given to dependent or independent students having the lowest
21 family or personal incomes, respectively. See also the "Implementing Guidelines" for

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1 Section 56256 which also requires the financial aid awarding policy to be in writing and
2 included in either the Financial Aid Handbook/Consumer Guide or EOPS Information
3 Guide.

4 Section 56258 provides that EOPS programs may establish an emergency loan
5 program for EOPS students to meet unexpected or untimely costs for books, college
6 supplies, transportation and housing, which may not exceed \$300 in a single academic
7 year and must be repaid within the academic year in which the loan was made. Loan
8 funds are required to be held in a separate account established for that purpose. The
9 amount held, including interest and budget transfers, in excess of three times the
10 amount originally set aside to establish the program, shall be returned to Chancellor.

11 See Also: "Implementing Guidelines" for Section 56258.

12 Article 5. Staffing Standards

13 Section 56260 requires EOPS services to be provided by certificated directors,
14 instructors and counselors and other support staff employed by the governing board of
15 the community college district. See also the: "Implementing Guidelines" for Section
16 56260 which requires appropriate documentation of EOPS staff supervision and
17 accountability be accomplished through job specifications or descriptions explaining
18 specific duties, functions and reporting responsibilities. In addition, an organizational
19 chart for EOPS should be developed and kept up-to-date, indicating the staffing areas
20 and levels of responsibility along with reporting functions for the entire EOPS staff which
21 includes extended or marginal EOPS staff in the student services area.

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1 Section 56262, subdivision (a), requires the EOPS Director to meet the minimum
2 qualifications for a student services administrator, or to possess a Community College
3 Supervisor Credential. Subdivision (b) requires that the EOPS Director have two years
4 of experience, within the last four years, in the management or administration of
5 educational programs, community organizations, government programs, or private
6 industry in which the applicant dealt predominantly with ethnic minorities or persons
7 handicapped by language, social or economic disadvantages, or, as a community
8 college EOPS counselor or instructor, or have comparable experience. Subdivision (c)
9 requires that he or she must have completed a minimum of six units of college-level
10 course work predominantly relating to ethnic minorities or persons handicapped by
11 educational, language, or social disadvantages. See also the "Implementing Guidelines"
12 for Section 56262 which requires that, in order to receive a waiver for any section
13 concerning the qualifications of the EOPS Director on a college campus, the college or
14 district must submit a waiver request which meets the following conditions and
15 standards: For subsection (a), no waiver is available; for subsections (b) and (c), a
16 waiver may be granted for one (1) year. After one year, all qualifications must be met
17 or, at a minimum, "reasonable" progress must be demonstrated.

18 Section 56264, subdivision (a), requires EOPS certified counselors to possess
19 the Community College Counselor Credential or possess a master's degree in
20 counseling, rehabilitation counseling, clinical psychology, counseling psychology,
21 guidance counseling, educational counseling, social work, or career development, or the

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1 equivalent. Subdivision (b) requires counselors to have completed a minimum of nine
2 semester units of college course work predominantly relating to ethnic minorities or
3 persons handicapped by language, social, or economic disadvantages or six units or
4 equivalent of a college-level counseling practicum or counseling field work courses in a
5 community college EOPS program or in a program dealing predominately with ethnic
6 minorities or persons handicapped by language, social or economic disadvantages.
7 Subdivision (c) requires counselors to have two years of occupational experience in
8 work relating to ethnic minorities or persons handicapped by language, social, or
9 economic disadvantages. See also the "Implementing Guidelines" for Section 56264
10 which provides that no waivers will be granted for subsection (a). A waiver may be
11 granted for one (1) year for subsections (b) and (c). After one year, all qualifications
12 must be met or, at a minimum, "reasonable" progress must be demonstrated.

13 Article 6. Plans and Priorities

14 Section 56270, subdivision (a), requires each district participating in EOPS to
15 submit a program plan for each college within the district conducting an EOPS program
16 (to be considered as a contract between the district and the Chancellor's office) to the
17 Chancellor for approval. Subdivision (b) provides that the Chancellor will notify in writing
18 those districts whether the district's plan is complete and whether the plan is approved
19 or disapproved. If the plan is disapproved, the Chancellor will notify the district how the
20 plan is deficient and the district shall submit a corrected plan. See also the
21 "Implementing Guidelines" for Section 56270.

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1 Section 56272 requires each program plan to address:

- 2 (a) The long-term goals of the EOPS program;
- 3 (b) The objectives of the EOPS program to be attained in the fiscal year for
4 which EOPS funds are allocated;
- 5 (c) The activities to be undertaken to achieve the objectives;
- 6 (d) An operating budget which indicates the planned expenditures of EOPS
7 funds, and of other district funds to be used to finance EOPS activities;
- 8 (e) The number of students to be served; and
- 9 (f) An evaluation of the results achieved in the prior year of funding.

10 See also the "Implementing Guidelines" for Section 56272 which provides that the
11 Program Plan does not include long-term goals. Each college should have their
12 program's long-term goals in some other format for reference.

13 Section 56274 requires the Chancellor to annually establish a final date for the
14 submission of EOPS plans and shall notify districts of this date and distribute the forms
15 for the submission of the plan not less than 90 days prior to that date. See also the
16 "Implementing Guidelines" for Section 56274.

17 Section 56276 requires the Chancellor to review all plans and requests for
18 funding and approve the plans for funding in whole or in part. See also the
19 "Implementing Guidelines" for Section 56276 which provides that the Chancellor may
20 reject plans and requests for funding submitted after the deadline.

21 Section 56278 requires each college having an approved plan to participate

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1 annually in an evaluation of the effectiveness of the program which shall be conducted
2 by the Chancellor. See also the "Implementing Guidelines" for Section 56278 which
3 provides that only measurements of student success in achieving their educational goals
4 may be required on an annual basis. The remaining two (2) forms of evaluation, i.e.,
5 Audits/Validations and Program Reviews (on-site and/or Survey) may be conducted on a
6 six-year cycle (accreditation schedule) basis which entails conducting approximately 20
7 evaluations per academic year.

8 Section 56280, subdivision (b) requires each plan to incorporate the following
9 priorities in serving students enrolled at the college:

- 10 (1) Serving continuing EOPS students with the lowest income;
- 11 (2) Serving continuing EOPS students with the lowest income who are
12 transferring from another EOPS program conducted by a community
13 college; and
- 14 (3) Serving first-time EOPS students with the lowest income.

15 See also the "Implementing Guidelines" for Section 56280.

16 Article 7. Funding and Expenditures

17 Section 56290 requires districts to maintain separate accounts for monies
18 provided for, and expended in support of, EOPS activities by specific line item. See also
19 the "Implementing Guidelines" for Section 56290 which requires all accounting
20 procedures concerning the utilization of EOPS Program funds to be in accordance and
21 compliance with the California Community College Budget and Accounting Manual.

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1 Section 56292 authorizes the Chancellor to adjust the allocation to any college

2 during a fiscal year to:

3 (a) Correct over or under allocated amounts in any of the three prior fiscal
4 years, or

5 (b) Correct for over or under utilization of allocated amounts in the current
6 year.

7 See also the "Implementing Guidelines" for Section 56292 which explains that
8 adjustments are made resulting from corrected approved final claims, district audit citing,
9 Chancellor's Office validations, audits and comprehensive program reviews:

10 Section 56293 requires districts, conducting EOPS programs to provide to EOPS
11 students who need them, the same programs and services the college offers to all of its
12 credit enrolled students and to fund the cost of such programs and services from
13 resources available to it, except EOPS funds. Districts accepting EOPS funds are
14 required to pay the salary of the EOPS director at the rate of 100% of salary and
15 benefits annually. See also the "Implementing Guidelines" for Section 56293 which
16 provides that a waiver may be possible to allow colleges to have a part-time EOPS
17 director.

18 Section 56294 requires colleges to expend EOPS funds only for programs and
19 services which are over, above, and in addition to the costs which are the district's
20 responsibility as defined in Section 56293. See also the "Implementing Guidelines" for
21 Section 56294 which illustrates an example of "over and above" services such as more

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1 tutoring hours being provided over those available to non-EOPS students; or one to one
2 tutoring sessions which are available to EOPS students only rather than group tutoring.

3 Section 56295 limits expenditure of EOPS funds to meet only the EOPS
4 supplemental costs as defined in Section 56294 for personnel and other expenses
5 approved in the EOPS annual plan. See also the "Implementing Guidelines" for Section
6 56295 which provides that when purchasing computer hardware and/or software, the
7 expenditure must receive local approval from the district superintendent/president first,
8 and then submitted to the Chancellor's Office for approval.

9 Section 56296 prohibits the expenditure of EOPS funds for:

- 10 (a) College administrative support costs;
- 11 (b) Indirect costs;
- 12 (c) Political or professional association dues and/or contributions;
- 13 (d) Costs of furniture;
- 14 (e) Costs of construction, remodeling, renovation, or vehicles; and
- 15 (f) Travel costs other than travel costs of EOPS staff and students for EOPS
16 activities or functions.

17 See also the "Implementing Guidelines" for Section 56296 which provides that
18 restrictions for items (d), (e) and (f) may be waived on a case-by-case basis. All waiver
19 requests must be submitted in writing prior to expending monies for the costs outlined.

20 Section 56297 provides that the Chancellor may allocate funds for recommended
21 special projects recommended by the state advisory committee. See also the

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1 "Implementing Guidelines" for Section 56297.

2 Section 56298 requires colleges to expend annually for EOPS grants and
3 workstudy an amount equal to that expended in the prior fiscal year, unless waived by
4 the Chancellor. See also the "Implementing Guidelines" for Section 56298.

5 PART III. STATEMENT OF THE CLAIM

6 SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

7 The "EOPS Implementing Guidelines" for Title 5 Regulations - Extended
8 Opportunity Programs & Services of the Chancellor of California Community Colleges
9 are "Executive Orders" as defined in the Government Code Section 17516³⁴ and
10 together with the Education Code Sections and Title 5 Regulations referenced in this
test claim result in community college districts incurring costs mandated by the state, as

³⁴ Government Code Section 17516, added by Chapter 1459, Statutes of 1984, section 1:

" 'Executive Order' means any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.
- (c) Any agency, department, board, or commission of state government.

"Executive Order" does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control Board and regional water quality control board will not adopt enforcement orders against publicly owned dischargers which mandate major wastewater treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

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1 defined in Government Code Section 17514³⁵, by creating new state-mandated duties
2 related to the uniquely governmental function of providing public service and education
3 to students and these statutes apply to community college districts and do not apply
4 generally to all residents and entities in the state.³⁶

5 The new duties mandated by the state upon community college districts require
6 state reimbursement of the direct and indirect costs of labor, materials and supplies,
7 data processing services and software, contracted services and consultants, equipment
8 and capital assets, staff and student training and travel to implement the following
9 required activities:

10 **EDUCATION CODE**

11 A) Pursuant to Article 8 of the Education Code (commencing with Section 69640) to
12 adopt policies and procedures, and periodically revise those policies and

³⁵ Government Code section 17514, as added by Chapter 1459, Statutes of 1984:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, 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."

³⁶ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App. 3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly governmental function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

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1 procedures, to comply with the Community College Extended Opportunity

2 Programs and Services requirements.

3 B) Pursuant to Education Code Section 69640, subdivision (a), increasing the
4 number and percentage of students enrolled in community colleges who are
5 affected by language, social, and economic disadvantages, consistent with state
6 and local matriculation policies.

7 C) Pursuant to Education Code Section 69640, subdivision (b), increasing the
8 number and percentage of Extended Opportunity Programs and Services (EOPS)
9 students who successfully complete their chosen educational objectives.

10 D) Pursuant to Education Code Section 69640, subdivision (c), increasing the
11 number and percentage of EOPS students who are successfully placed into
12 career employment.

13 E) Pursuant to Education Code Section 69640, subdivision (d), increasing the
14 number and percentage of EOPS students who transfer to four-year institutions
15 following completion of the related educational programs at community colleges.

16 F) Pursuant to Education Code Section 69640, subdivision (e), meeting student and
17 employee affirmative action objectives.

18 G) Pursuant to Education Code Section 69640, subdivision (f), improving the
19 delivery of programs and services to the disadvantaged.

20 H) Pursuant to Education Code Section 69641, providing EOPS certificated directors
21 and instructors, as well as counselors and other support staff approved by the

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1 governing board of the community college district.

- 2 I) Pursuant to Education Code Section 69641.5, subdivision (a), counseling
3 all EOPS students regarding their individual educational objectives and the
4 specific academic or vocational training program necessary to achieve those
5 objectives by qualified staff upon the student's initial enrollment in the community
6 college, and at least every six months thereafter.
- 7 J) Pursuant to Education Code Section 69641.5, subdivision (b), assisting all EOPS
8 students identify their educational objectives; identifying those students who want
9 to transfer to a four-year institution, and those who have the potential to transfer
10 successfully; and disseminating the names and addresses of these potential
11 transfer students to admissions staff at public universities throughout the state at
12 least once a year.
- 13 K) Pursuant to Education Code Section 69641.5, subdivision (c), working with other
14 community college staff to encourage all interested EOPS students to enroll in
15 existing community college classes designed to develop skills necessary for
16 successful study at a university, including, but not limited to, time management,
17 research and study skills, classroom note-taking skills, and writing skills, and that
18 these classes be developed if they are not already established.
- 19 L) Pursuant to Education Code Section 69643, subdivision (c), reimbursing the
20 necessary travel and other expenses of the State Advisory Committee incurred in
21 performing their duties and responsibilities.

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- 1 M) Pursuant to Education Code Section 69648, subdivision (b), establishing
2 standards, pursuant to the rules and regulations of the board, for the
3 establishment and conduct of extended opportunity programs and services to
4 include, but not be limited to, guidelines for all of the following:
- 5 (1) The provision of staffing and program management.
 - 6 (2) The establishment of a documentation and data collection system.
 - 7 (3) The establishment of an EOPS advisory committee.
 - 8 (4) The provision of recruitment and outreach services.
 - 9 (5) The provision of cognitive and noncognitive assessment, advising, and
10 orientation services.
 - 11 (6) The provision of college registration.
 - 12 (7) The provision of basic skills instruction, seminars, and tutorial assistance.
 - 13 (8) The provision of counseling and retention services.
 - 14 (9) The provision of transfer services.
 - 15 (10) The provision of direct aid.
 - 16 (11) The establishment of objectives to achieve the goals specified in Section
17 69640, and objectives to be applied in implementing extended opportunity
18 programs and services.
- 19 N) Pursuant to Education Code Section 69648, subdivision (d), reviewing and
20 evaluating the districts' extended opportunity programs and services, pursuant to
21 the rules and regulations of the board.

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- 1 O) Pursuant to Education Code Section 69648, subdivision (e), submitting reports,
2 pursuant to the rules and regulations of the board, that will permit the evaluation
3 of the program and services offered.
- 4 P) Pursuant to Education Code Section 69649, subdivision (a), meeting the
5 minimum standards established pursuant to subdivision (b) of Section 69648.
- 6 Q) Pursuant to Education Code Section 69649, subdivision (b), when unusual
7 circumstances exist, petitioning the board of governors for a waiver of the
8 minimum standards established pursuant to subdivision (b) of Section 69648.
- 9 R) Pursuant to Education Code Section 69652, funding that portion of the cost of
10 establishing and operating extended opportunity programs or services not
11 reimbursed by allowance.
- 12 S) Pursuant to Education Code Section 69655, subdivision (a), to cooperate with the
13 Chancellor, as may be requested, in supplying the information necessary to
14 establish a statewide data base which will be used for the periodic evaluation of
15 the programs and services, including, but not limited to, all of the following:
- 16 (1) The annual number of extended opportunity programs and services
17 (EOPS) students and non-EOPS students who complete degree or
18 certificate programs, transfer programs, or other programs, as determined
19 by state and local matriculation policies;
- 20 (2) The annual number of EOPS and non-EOPS students who transfer to
21 institutions which award the baccalaureate degree; and

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1 (3) The annual number of EOPS and non-EOPS students completing
2 occupational programs who find career employment.

3 T) Pursuant to Education Code Section 69656, to provide and sign fee waiver
4 forms for all EOPS transfer students submitting admission applications to the
5 California State University and the University of California.

6 **TITLE 5, CALIFORNIA CODE OF REGULATIONS**

7 **Article 1. General Provisions and Definitions**

8 1A) Pursuant to Subchapter 2.5 of the California Code of Regulations (commencing
9 with Section 56200) to adopt policies and procedures, and periodically revise
10 those policies and procedures, to comply with the Community College Extended
11 Opportunity Programs and Services requirements.

12 1B) Pursuant to Title 5, California Code of Regulations, Section 56201, and the
13 "Implementing Guidelines" to that section, submitting requests to the Chancellor
14 in writing, when a community college cannot meet any or all of the minimum
15 program standards requirements in Article 3, or the staffing standards outlined in
16 Article 5, requesting a waiver of the program or staffing standards setting forth in
17 detail the reasons for the request and the resulting problems caused if the
18 request is denied.

19 1C) Pursuant to Title 5, California Code of Regulations, Section 56202, and the
20 "Implementing Guidelines" to that section, placing in each student's file, in hard
21 copy or electronic form, enrollment sheets or transcripts verifying classification as

1 a full-time student.

2 1D) Pursuant to Title 5, California Code of Regulations, Section 56204, and the
3 "Implementing Guidelines" to that section, placing in each EOPS student's file an
4 EOPS application, an Educational plan and a Mutual Responsibility Contract.

5 (1) The Educational Plan shall include:

6 (a) A sequenced multi-term road map of all courses agreed upon by
7 both the student and a counselor necessary to meet the student's
8 educational needs and goals.

9 (b) A visual time line of required coursework needed to complete
10 individualized educational goals, including certificate, associate
11 degree, transfer objective, or a combination of any of the above.

12 (c) Development and/or monitoring from term-to-term with a trained
13 and certificated counselor as needed, in response to student
14 accomplishments, achievements, and challenges.

15 (2) The Mutual Responsibility Contract shall specify what services the student
16 may receive and the roles, responsibilities, and expectations of both
17 parties. Placing the contract, signed by the appropriate college personnel
18 and the student, in each student's EOPS file for purposes of verifying a
19 student as "served."

20 1E) Pursuant to Title 5, California Code of Regulations, Section 56206, and the
21 "Implementing Guidelines" to that section, identifying the students served and the

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1 level and type of programs each student received.

2 1F) Pursuant to Title 5, California Code of Regulations, Section 56208, and the
3 "Implementing Guidelines" to that section, reimbursing members of the district
4 Advisory Committee for necessary expenses, other than travel costs.

5 1G) Pursuant to Title 5, California Code of Regulations, Section 56210, maintaining
6 the same dollar level of services supported with non-EOPS funds as the average
7 reported in its final budget report in the previous three academic years.

8 (1) At a minimum, this amount shall equal the three-year average or 15% of
9 the average EOPS allocation to that college for the same three base
10 years, which ever is greater.

11 (2) Any service or function that is considered district contribution must be
12 included in and approved as part of the district's program plan and also
13 reported in the district's A1 Budget Report.

14 (3) If, after the Chancellor's Office calculates the college's obligation, the
15 obligation is found to be less than the EOPS Director's salary and benefits,
16 the district is still required to pay the director's full salary and benefits.

17 **Article 2. Student Eligibility and Responsibility**

18 2A) Pursuant to Title 5, California Code of Regulations, Section 56220, and the
19 "Implementing Guidelines" to that section, verifying that each student applicant:

20 (1) Is a resident of California,

21 (2) Is enrolled full-time when accepted into the EOPS program,

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1 (3) Has not completed more than 70 units of degree applicable credit
2 coursework in any combination of post-secondary higher education
3 institutions,

4 (4) Qualifies to receive a Board of Governors Grant, and

5 (5) Is educationally disadvantaged as determined by the EOPS and as
6 specified by legislation.

7 2B) Pursuant to Title 5, California Code of Regulations, Section 56222, and the
8 "Implementing Guidelines" to that section, verifying that each student applicant
9 has:

10 (1) Applied for state and/or federal financial aid pursuant to the applicable
11 rules and procedures of the college of attendance;

12 (2) Maintained academic progress towards a certificate, associate degree, or
13 transfer goal pursuant to the academic standards established by the
14 college of attendance applicable to all credit enrolled students;

15 (3) Filed an initial EOPS application and has completed and adhered to a
16 student educational plan and an EOPS mutual responsibility contract for
17 programs and services;

18 (4) Provided income documentation as required for financial aid by the college
19 of attendance within two months of acceptance into the EOPS program;
20 and

21 (5) Signed his or her Mutual Responsibility Contract.

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1 2C) Pursuant to Title 5, California Code of Regulations, Section 56224, and the

2 "Implementing Guidelines" to that section:

- 3 (1) Receiving and verifying financial information and verifying financial need,
4 annually.
- 5 (2) Verifying a student's need for EOPS financial aid annually.
- 6 (3) Adhering to Title 5, Sections 56252 and 56254, when recommending
7 awards of EOPS funds for financial aid, grants and workstudy awards.
- 8 (4) Income verifications must be made using designated tax forms.

9 2D) Pursuant to Title 5, California Code of Regulations, Section 56226, and the

10 "Implementing Guidelines" to that section, monitoring student eligibility as
follows:

- 11 (1) Developing appropriate office procedures to track student participation and
12 including all necessary information in the EOPS student's file.
- 13 (2) Disqualifying students from the program who have completed 70 degree
14 applicable credit units of instruction or six semesters of enrollment.
- 15 (3) When appropriate, waiving the 70 unit limit.
- 16 (4) Disqualifying any student when he or she has failed to meet the terms,
17 conditions, and follow-up provisions of the student education plan and/or
18 the EOPS mutual responsibility contract.
- 19 (5) Disqualifying any student from the program who is not making academic
20 progress as required by his or her educational plan.
- 21

Article 3. Program Standards

3A) Pursuant to Title 5, California Code of Regulations, Section 56230, and the "Implementing Guidelines" to that section, employing a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities.

(1) Requesting waivers from the Chancellor's Office prior to initiating any change in the EOPS Director's position, and

(2) Requesting waivers for permission to employ an EOPS for a less than full-time.

3B) Pursuant to Title 5, California Code of Regulations, Section 56232, and the "Implementing Guidelines" to that section, providing access services to identify EOPS eligible students and to facilitate their enrollment, including, at a minimum:

(1) Outreach and recruitment to increase the number of potential eligible students who enroll at the college.

(2) Orientation to familiarize EOPS eligible students with:

(a) The location and function of the college and EOPS programs and services,

(b) The college catalog,

(c) The college application,

(d) The registration process, with emphasis on academic and grading

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1 standards,

2 (e) College terminology,

3 (f) Course add and drop procedures and related rules,

4 (g) Financial aid application procedures, and

5 (h) Transfer procedures to four-year institutions.

6 (3) Registration assistance for priority enrollment.

7 3C) Pursuant to Title 5, California Code of Regulations, Section 56234, and the
8 "Implementing Guidelines" to that section, assessing each EOPS eligible
9 student, and explaining and interpreting the results to EOPS students by
10 counselors trained in the use and meaning of such assessments. The
assessments must include:

12 (1) Course and placement tests in reading, comprehension, vocabulary,
13 writing, and computations;

14 (2) Diagnostic tests to determine the specific academic skill deficiencies in
15 areas in which placement tests indicate that the student has a low
16 probability of success in degree applicable courses as defined by college
17 policies;

18 (3) A study skill assessment which determines how well the student is able to
19 take lecture notes, outline written material, use library services, and use
20 effective study techniques;

21 (4) Support service assessment to determine the need for financial aid, child

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1 care, part-time employment, or extra-curricular pursuits; and

2 (5) Assessment instruments that are not culturally or linguistically biased.

3 If an EOPS Program or college cannot provide one or more of the assessments
4 outlined in this section, a waiver must be requested.

5 3D) Pursuant to Title 5, California Code of Regulations, Section 56236, and the
6 "Implementing Guidelines" to that section, providing counseling and advisement
7 to each EOPS-eligible student at least three times per term as follows:

8 (1) A contact session which combines interview interpretation of assessment
9 results to prepare a student educational plan and a mutual responsibility
10 contract specifying what programs and services the student shall receive
11 and what the student is expected to accomplish;

12 (2) An in-term contact session to ensure the student is succeeding
13 adequately, that programs and services are being provided effectively, and
14 to plan changes as may be needed to enhance student success; and

15 (3) A term-end or program exit contact session to assess the success of
16 students in reaching the objectives of that term, the success of the
17 programs and services provided in meeting student needs, and to assist
18 students to prepare for the next term of classes, or to make future plans if
19 students are leaving the EOPS program or the college.

20 3E) Pursuant to Title 5, California Code of Regulations, Section 56238, and the
21 "Implementing Guidelines" to that section, providing basic skills instruction and

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1 tutoring services to EOPS eligible students who, on the basis of assessments
2 and counseling, need such services to succeed in reaching their educational
3 goals.

4 (1) Documentation should include sign-in sheets or tutor time sheets indicating
5 for whom and when services were rendered.

6 (2) When requesting a waiver for any section of basic skills instruction or
7 tutorial services, submitting a waiver request that documents that the
8 tutoring and/or basic skills instruction needed by EOPS students is
9 provided by the overall college basic skills instruction or tutoring program
10 at a level which meets the special needs of EOPS eligible students.

11 3F) Pursuant to Title 5, California Code of Regulations, Section 56240, and the
12 "Implementing Guidelines" to that section, providing assistance to EOPS eligible
13 students to transfer to four-year institutions and/or to find career employment in
14 their field of training.

15 (1) If neither transfer nor career employment services are available on
16 campus, providing both, or submitting a waiver request indicating services
17 in one area.

18 (2) Documentation should include sign-in sheets for workshops, presentations
19 or special events, including EOPS conducted tours in these specific
20 program service areas.

21 **Article 4. Financial Aid Standards**

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1 4A) Pursuant to Title 5, California Code of Regulations, Section 56252, and the
2 "Implementing Guidelines" to that section, awarding grants and workstudy
3 awards; monitoring and limiting amounts as required by Section 56254; and to
4 distribute them as evenly as possible as required by Section 56256; and including
5 the written financial aid policy in the Financial Aid Handbook or
6 Consumer Guide.

7 4B) Pursuant to Title 5, California Code of Regulations, Section 56258, and the
8 "Implementing Guidelines" to that section, establishing and implementing an
9 emergency loan program for EOPS students to meet unexpected or untimely
10 costs for books, college supplies, transportation and housing.

11 (1) Holding loan funds in a separate account established for that purpose.

12 (2) Returning to the Chancellor any amounts held, including interest and
13 budget transfers, in excess of three times the amount originally set aside
14 to establish the program.

15 **Article 5. Staffing Standards**

16 5A) Pursuant to Title 5, California Code of Regulations, Section 56260, and the
17 "Implementing Guidelines" to that section, providing EOPS services by
18 certificated directors, instructors and counselors and other support staff employed
19 by the governing board of the community college district.

20 (1) Document compliance through job specifications or descriptions explaining
21 specific duties, functions and reporting responsibilities.

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1 (2) Developing and keeping up to date an organizational chart indicating the
2 staffing areas and levels of responsibility along with reporting functions for
3 the entire EOPS staff which includes extended or marginal EOPS staff in
4 the student services area.

5 5B) Pursuant to Title 5, California Code of Regulations, Section 56262, and the
6 "Implementing Guidelines" to that section, requiring the EOPS Director hired to
7 meet the minimum qualifications for a Student Services Administrator, or possess
8 a Community College Supervisor Credential.

9 (1) Pursuant to subdivision (b), the EOPS Director shall have two years of
10 experience, within the last four years, in the management or administration
11 of educational programs, community organizations, government programs,
12 or private industry in which the Director dealt predominantly with ethnic
13 minorities or persons handicapped by language, social or economic
14 disadvantages, or, as a community college EOPS counselor or instructor,
15 or have comparable experience.

16 (2) Pursuant to subdivision (c) the EOPS Director shall have completed a
17 minimum of six units of college-level course work predominantly relating to
18 ethnic minorities or persons handicapped by educational, language, or
19 social disadvantages.

20 (3) No waivers of the requirements of subdivision are available.

21 (4) When necessary, requesting a waiver of the requirements of subsections

1 (b) and (c), for a maximum period of one (1) year.

2 5C) Pursuant to Title 5, California Code of Regulations, Section 56264, and the
3 "Implementing Guidelines" to that section, requiring EOPS certified counselors
4 hired to possess the Community College Counselor Credential,, or possess a
5 master's degree in counseling, rehabilitation counseling, clinical psychology,
6 counseling psychology, guidance counseling, educational counseling, social work,
7 or career development, or the equivalent.

8 (1) Pursuant to subdivision (b), counselors must have completed a minimum
9 of nine semester units of college course work predominantly relating to
10 ethnic minorities or persons handicapped by language, social, or economic
11 disadvantages or six units or equivalent of a college-level counseling
12 practicum or counseling field work courses in a community college EOPS
13 program or in a program dealing predominately with ethnic minorities or
14 persons handicapped by language, social or economic disadvantages.

15 (2) Pursuant to subdivision (c), counselors must have two years of
16 occupational experience in work relating to ethnic minorities or persons
17 handicapped by language, social, or economic disadvantages.

18 (3) No waivers will be granted for subdivision (a).

19 (4) When necessary, applying for waivers of one (1) year for subdivisions (b)
20 and (c).

21 **Article 6. Plans and Priorities**

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- 1 6A) Pursuant to Title 5, California Code of Regulations, Section 56270, and the
2 "Implementing Guidelines" to that section, submitting an EOPS plan for each
3 college within the district to the Chancellor for approval. If the plan is deemed
4 deficient, submitting a corrected plan.
- 5 6B) Pursuant to Title 5, California Code of Regulations, Section 56272 and the
6 "Implementing Guidelines" to that section, each submitted plan must address:
- 7 (1) The long-term goals of the EOPS program;
 - 8 (2) The objectives of the EOPS program to be attained in the fiscal year for
9 which EOPS funds are allocated;
 - 10 (3) The activities to be undertaken to achieve the objectives;
 - 11 (4) An operating budget which indicates the planned expenditures of EOPS
12 funds, and of other district funds to be used to finance EOPS activities;
 - 13 (5) The number of students to be served; and
 - 14 (6) An evaluation of the results achieved in the prior year of funding.
- 15 6C) Pursuant to Title 5, California Code of Regulations, Section 56274, filing, by the
16 final date established by the Chancellor's office, the district's EOPS plans on the
17 forms distributed by the Chancellor.
- 18 6D) Pursuant to Title 5, California Code of Regulations, Section 56276, and the
19 "Implementing Guidelines" to that section, funding the costs of the program to the
20 extent not approved by the Chancellor.
- 21 6E) Pursuant to Title 5, California Code of Regulations, Section 56278, and the

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1 "Implementing Guidelines" to that section, participating annually in an evaluation
2 of the effectiveness of the program which shall be conducted by the Chancellor.

3 (1) The measurements of student success in achieving their educational goals
4 may be required on an annual basis.

5 (2) The remaining two (2) forms of evaluation, [i.e., Audits/Validations and
6 Program Reviews (on-site and/or Survey)] may be conducted on a six-year
7 cycle (accreditation schedule) basis which entails conducting
8 approximately 20 evaluations per academic year.

9 6F) Pursuant to Title 5, California Code of Regulations, Section 56280, and the
10 "Implementing Guidelines" to that section, requiring and analyzing the data
11 necessary to serve students enrolled at the college in the following priorities:

12 (1) Serving continuing EOPS students with the lowest income;

13 (2) Serving continuing EOPS students with the lowest income who are
14 transferring from another EOPS program conducted by a community
15 college; and

16 (3) Serving first-time EOPS students with the lowest income.

17 **Article 7. Funding and Expenditures**

18 7A) Pursuant to Title 5, California Code of Regulations, Section 56290, and the
19 "Implementing Guidelines" to that section, maintaining separate accounts for
20 monies provided for, and expended in support of, EOPS activities by specific line
21 item in accordance and compliance with the California Community College

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1 Budget and Accounting Manual.

2 7B) Pursuant to Title 5, California Code of Regulations, Section 56292, and the
3 "Implementing Guidelines" to that section, making adjustments in the accounting
4 of EOPS activities to comply with adjustments made by the Chancellor to correct
5 over or under allocated and utilized amounts in any of the three prior fiscal years.

6 7C) Pursuant to Title 5, California Code of Regulations, Section 56293, and the
7 "Implementing Guidelines" to that section, paying the salary and benefits of the
8 EOPS Director, and when necessary and appropriate, applying for a waiver
9 allowing a part-time EOPS Director.

10 7D) Pursuant to Title 5, California Code of Regulations, Section 56295, and the
11 "Implementing Guidelines" to that section, obtaining local approval from the
12 district superintendent/president when purchasing computer hardware and/or
13 software prior to submitting the request for final approval. Then, obtaining final
14 approval from the Chancellor's Office.

15 7E) Pursuant to Title 5, California Code of Regulations, Section 56296, and the
16 "Implementing Guidelines" to that section, funding the cost of EOPS expenditures
17 for:

- 18 (a) College administrative support costs;
- 19 (b) Indirect costs;
- 20 (c) Political or professional association dues and/or contributions;
- 21 (d) Costs of furniture;

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- 1 (e) Costs of construction, remodeling, renovation, or vehicles; and
2 (f) Travel costs other than travel costs of EOPS staff and students for EOPS
3 activities or functions.

4 When necessary or appropriate, obtaining waivers from the restrictions of items
5 listed in subdivisions (d), (e) and (f) from the Office of the Chancellor.

6 7F) Pursuant to Title 5, California Code of Regulations, Section 56298, and the
7 "Implementing Guidelines" to that section, expending annually for EOPS grants
8 and workstudy an amount equal to that expended in the prior fiscal year and,
9 when necessary or appropriate, applying to the Chancellor's Office for waivers of
10 this spending requirement.

11 **SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT**

12 None of the Government Code Section 17556³⁷ statutory exceptions to a finding

³⁷ Government Code section 17556 as last amended by Chapter 589/89:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges,

Test Claim of West Kern Community College District
Chapter 1455/90 Extended Opportunity Programs and Services

1 of costs mandated by the state apply to this statute. Note that to the extent community
2 colleges may have previously performed functions similar to those mandated by the
3 referenced code sections and regulations, such efforts did not establish a preexisting
4 duty that would relieve the state of its constitutional requirement to later reimburse
5 districts when these activities became mandated.³⁶

6 **SECTION 4. FUNDING FOR THE STATE MANDATE**

7 Community colleges may receive dedicated grant and categorical funding for
8 some of the activities included in this test claim. To the extent that the funding is
9 provided each year, and to the extent that the dedicated funds are applied to activities
10 mandated by the state, the amounts received and applicable to mandated activities will
11 reduce the amount of costs mandated by the state. The test claimant is informed and
12 believes that the Chancellor of the California Community Colleges has the

fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or 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.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

³⁸ Government Code section 17565, as added by Chapter 879/86:

If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

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1 documentation necessary to determine the amounts of these special purpose funds

2 allocated to each college year, and the purposes for which the funds were intended.

3 This information can be utilized to determine the revenue offset amounts each year.

4 **PART IV. ADDITIONAL CLAIM REQUIREMENTS**

5 The following elements of this claim are provided pursuant to Section 1183, Title

6 2, California Code of Regulations:

7 Exhibit 1: Declaration of Terry Brothers
8 EOPS Director
9 West Kern Community College District

10
11 Exhibit 2: Copies of Statutes cited:
12
13 Chapter 1455, Statutes of 1990
14 Chapter 1372, Statutes of 1990
15 Chapter 1586, Statutes of 1985
16 Chapter 1178, Statutes of 1984

17
18 Exhibit 3: Education Code sections cited:

19
20 Section 69640
21 Section 69641
22 Section 69641.5
23 Section 69643
24 Section 69648
25 Section 69649
26 Section 69652
27 Section 69655
28 Section 69656

29
30 Exhibit 4: Title 5, California Code of Regulations cited:

31
32 Section 56200
33 Section 56201
34 Section 56202
35 Section 56204
36 Section 56206

Test Claim of West Kern Community College District
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- 1 Section 56208
- 2 Section 56210
- 3 Section 56220
- 4 Section 56222
- 5 Section 56224
- 6 Section 56226
- 7 Section 56230
- 8 Section 56232
- 9 Section 56234
- 10 Section 56236
- 11 Section 56238
- 12 Section 56240
- 13 Section 56252
- 14 Section 56254
- 15 Section 56256
- 16 Section 56258
- 17 Section 56260
- 18 Section 56262
- 19 Section 56264
- 20 Section 56270
- 21 Section 56272
- 22 Section 56274
- 23 Section 56276
- 24 Section 56278
- 25 Section 56280
- 26 Section 56290
- 27 Section 56292
- 28 Section 56293
- 29 Section 56295
- 30 Section 56296
- 31 Section 56298

32

33 Exhibit 5: Executive Orders:

34

35 EOPS Implementing Guidelines

36 Chancellor of the California Community

37 Colleges (January 2002)

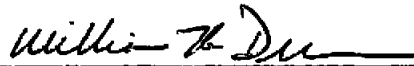
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Test Claim of West Kern Community College District
Chapter 1455/90 Extended Opportunity Programs and Services

PART V. CERTIFICATION

I declare under penalty of perjury that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on June, 3, 2003, at Taft, California, by:



William Duncan
Vice President - Administrative Services
West Kern Community College District

Voice: (661) 763-7700
FAX: (661) 763-7705

APPOINTMENT OF REPRESENTATIVE

West Kern Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



William Duncan
Vice President - Administrative Services

6/3/03
Date

EXHIBIT 1
DECLARATION OF TERRY BROTHERS

DECLARATION OF TERRY BROTHERS

West Kern Community College District

Test Claim of West Kern Community College District

COSM No. _____

Statutes:

Chapter 1455, Statutes of 1990
Chapter 1372, Statutes of 1990
Chapter 1586, Statutes of 1985
Chapter 1178, Statutes of 1984

Code Sections:

Education Code Section 69640
Education Code Section 69641
Education Code Section 69641.5
Education Code Section 69643
Education Code Section 69648
Education Code Section 69649
Education Code Section 69652
Education Code Section 69655
Education Code Section 69656

Other:

EOPS Implementing Guidelines
Chancellor of the California Community
Colleges (January 002)

Title 5, California Code of Regulations

| | |
|---------------|---------------|
| Section 56200 | Section 56254 |
| Section 56201 | Section 56256 |
| Section 56202 | Section 56258 |
| Section 56204 | Section 56260 |
| Section 56206 | Section 56262 |
| Section 56208 | Section 56264 |
| Section 56210 | Section 56270 |
| Section 56220 | Section 56272 |
| Section 56222 | Section 56274 |
| Section 56224 | Section 56276 |
| Section 56226 | Section 56278 |
| Section 56230 | Section 56280 |
| Section 56232 | Section 56290 |
| Section 56234 | Section 56292 |
| Section 56236 | Section 56293 |
| Section 56238 | Section 56295 |
| Section 56240 | Section 56296 |
| Section 56252 | Section 56298 |

Extended Opportunity Programs and Services

I, Terry Brothers, EOPS Director, West Kern Community College District, make the following declaration and statement.

In my capacity as EOPS Director for the West Kern Community College District, I am responsible for implementing the Extended Opportunity Programs and Services and I directly manage and/or coordinate the daily operation of the programs and services

Declaration of Terry Brothers
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offered, and supervise and coordinate the staff assigned to perform EOPS activities at the district. I am familiar with the provisions and requirements of the Statutes, Education Code Sections, Title 5 Regulations and Executive Order enumerated above.

These Education Code sections require West Kern Community College District to:

EDUCATION CODE

- A) Pursuant to Article 8 of the Education Code (commencing with Section 69640) to adopt policies and procedures, and periodically revise those policies and procedures, to comply with the Community College Extended Opportunity Programs and Services requirements.
- B) Pursuant to Education Code Section 69640, subdivision (a), increasing the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.
- C) Pursuant to Education Code Section 69640, subdivision (b), increasing the number and percentage of Extended Opportunity Programs and Services (EOPS) students who successfully complete their chosen educational objectives.
- D) Pursuant to Education Code Section 69640, subdivision (c), increasing the number and percentage of EOPS students who are successfully placed into career employment.
- E) Pursuant to Education Code Section 69640, subdivision (d), increasing the

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number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community colleges.

- F) Pursuant to Education Code Section 69640, subdivision (e), meeting student and employee affirmative action objectives.
- G) Pursuant to Education Code Section 69640, subdivision (f), improving the delivery of programs and services to the disadvantaged.
- H) Pursuant to Education Code Section 69641, providing EOPS certificated directors and instructors, as well as counselors and other support staff approved by the governing board of the community college district.
- I) Pursuant to Education Code Section 69641.5, subdivision (a), counseling all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives by qualified staff upon the student's initial enrollment in the community college, and at least every six months thereafter.
- J) Pursuant to Education Code Section 69641.5, subdivision (b), assisting all EOPS students identify their educational objectives; identifying those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully; and disseminating the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.
- K) Pursuant to Education Code Section 69641.5, subdivision (c), working with other

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community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established.

- L) Pursuant to Education Code Section 69643, subdivision (c), reimbursing the necessary travel and other expenses of the State Advisory Committee incurred in performing their duties and responsibilities.
- M) Pursuant to Education Code Section 69648, subdivision (b), establishing standards, pursuant to the rules and regulations of the board, for the establishment and conduct of extended opportunity programs and services to include, but not be limited to, guidelines for all of the following:
 - (1) The provision of staffing and program management.
 - (2) The establishment of a documentation and data collection system.
 - (3) The establishment of an EOPS advisory committee.
 - (4) The provision of recruitment and outreach services.
 - (5) The provision of cognitive and noncognitive assessment, advising, and orientation services.
 - (6) The provision of college registration.
 - (7) The provision of basic skills instruction, seminars, and tutorial assistance.
 - (8) The provision of counseling and retention services.

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- (9) The provision of transfer services.
- (10) The provision of direct aid.
- (11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing extended opportunity programs and services.
- N) Pursuant to Education Code Section 69648, subdivision (d), reviewing and evaluating the districts' extended opportunity programs and services, pursuant to the rules and regulations of the board.
- O) Pursuant to Education Code Section 69648, subdivision (e), submitting reports, pursuant to the rules and regulations of the board, that will permit the evaluation of the program and services offered.
- P) Pursuant to Education Code Section 69649, subdivision (a), meeting the minimum standards established pursuant to subdivision (b) of Section 69648.
- Q) Pursuant to Education Code Section 69649, subdivision (b), when unusual circumstances exist, petitioning the board of governors for a waiver of the minimum standards established pursuant to subdivision (b) of Section 69648.
- R) Pursuant to Education Code Section 69652, funding that portion of the cost of establishing and operating extended opportunity programs or services not reimbursed by allowance.
- S) Pursuant to Education Code Section 69655, subdivision (a), to cooperate with the Chancellor, as may be requested, in supplying the information necessary to

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establish a statewide data base which will be used for the periodic evaluation of the programs and services, including, but not limited to, all of the following:

- (1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.
- (2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree.
- (3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

T) Pursuant to Education Code Section 69656, to provide and sign fee waiver forms for all EOPS transfer students submitting admission applications to the California State University and the University of California.

TITLE 5, CALIFORNIA CODE OF REGULATIONS

Article 1. General Provisions and Definitions

1A) Pursuant to Subchapter 2.5 of the California Code of Regulations (commencing with Section 56200) to adopt policies and procedures, and periodically revise those policies and procedures, to comply with the Community College Extended Opportunity Programs and Services requirements.

1B) Pursuant to Title 5, California Code of Regulations, Section 56201, and the

**Declaration of Terry Brothers
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Extended Opportunities and Services**

"Implementing Guidelines" to that section, submitting requests to the Chancellor in writing, when a community college cannot meet any or all of the minimum program standards requirements in Article 3, or the staffing standards outlined in Article 5, requesting a waiver of the program or staffing standards setting forth in detail the reasons for the request and the resulting problems caused if the request is denied.

- 1C) Pursuant to Title 5, California Code of Regulations, Section 56202, and the "Implementing Guidelines" to that section, placing in each student's file, in hard copy or electronic form, enrollment sheets or transcripts verifying classification as a full-time student.
- 1D) Pursuant to Title 5, California Code of Regulations, Section 56204, and the "Implementing Guidelines" to that section, placing in each EOPS student's file an EOPS application, an Educational plan and a Mutual Responsibility Contract.
- (1) The Educational Plan shall include:
- (a) A sequenced multi-term road map of all courses agreed upon by both the student and a counselor necessary to meet the student's educational needs and goals.
 - (b) A visual time line of required coursework needed to complete individualized educational goals, including certificate, associate degree, transfer objective, or a combination of any of the above.
 - (c) Development and/or monitoring from term-to-term with a trained

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and certificated counselor as needed, in response to student accomplishments, achievements, and challenges.

- (2) The Mutual Responsibility Contract shall specify what services the student may receive and the roles, responsibilities, and expectations of both parties. Placing the contract, signed by the appropriate college personnel and the student, in each student's EOPS file for purposes of verifying a student as "served."
- 1E) Pursuant to Title 5, California Code of Regulations, Section 56206, and the "Implementing Guidelines" to that section, identifying the students served and the level and type of programs each student received.
- 1F) Pursuant to Title 5, California Code of Regulations, Section 56208, and the "Implementing Guidelines" to that section, reimbursing members of the district Advisory Committee for necessary expenses, other than travel costs.
- 1G) Pursuant to Title 5, California Code of Regulations, Section 56210, maintaining the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years.
- (1) At a minimum, this amount shall equal the three-year average or 15% of the average EOPS allocation to that college for the same three base years, which ever is greater.
- (2) Any service or function that is considered district contribution must be included in and approved as part of the district's program plan and also

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reported in the district's A1 Budget Report.

- (3) If, after the Chancellor's Office calculates the college's obligation, the obligation is found to be less than the EOPS Director's salary and benefits, the district is still required to pay the director's full salary and benefits.

Article 2. Student Eligibility and Responsibility

2A) Pursuant to Title 5, California Code of Regulations, Section 56220, and the "Implementing Guidelines" to that section, verifying that each student applicant:

- (1) Is a resident of California,
- (2) Is enrolled full-time when accepted into the EOPS program,
- (3) Has not completed more than 70 units of degree applicable credit coursework in any combination of post-secondary higher education institutions,
- (4) Qualifies to receive a Board of Governors Grant, and
- (5) Is educationally disadvantaged as determined by the EOPS and as specified by legislation.

2B) Pursuant to Title 5, California Code of Regulations, Section 56222, and the "Implementing Guidelines" to that section, verifying that each student applicant has:

- (1) Applied for state and/or federal financial aid pursuant to the applicable rules and procedures of the college of attendance;
- (2) Maintained academic progress towards a certificate, associate degree, or

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transfer goal pursuant to the academic standards established by the college of attendance applicable to all credit enrolled students;

- (3) Filed an initial EOPS application and has completed and adhered to a student educational plan and an EOPS mutual responsibility contract for programs and services;
- (4) Provided income documentation as required for financial aid by the college of attendance within two months of acceptance into the EOPS program;
and
- (5) Signed his or her Mutual Responsibility Contract.

2C) Pursuant to Title 5, California Code of Regulations, Section 56224, and the "Implementing Guidelines" to that section:

- (1) Receiving and verifying financial information and verifying financial need, annually.
- (2) Verifying a student's need for EOPS financial aid annually.
- (3) Adhering to Title 5, Sections 56252 and 56254, when recommending awards of EOPS funds for financial aid, grants and workstudy awards.
- (4) Income verifications must be made using designated tax forms.

2D) Pursuant to Title 5, California Code of Regulations, Section 56226, and the "Implementing Guidelines" to that section, monitoring student eligibility as follows:

- (1) Developing appropriate office procedures to track student participation and

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including all necessary information in the EOPS student's file.

- (2) Disqualifying students from the program who have completed 70 degree applicable credit units of instruction or six semesters of enrollment.
- (3) When appropriate, waiving the 70 unit limit.
- (4) Disqualifying any student when he or she has failed to meet the terms, conditions, and follow-up provisions of the student education plan and/or the EOPS mutual responsibility contract.
- (5) Disqualifying any student from the program who is not making academic progress as required by his or her educational plan.

Article 3. Program Standards

3A) Pursuant to Title 5, California Code of Regulations, Section 56230, and the "Implementing Guidelines" to that section, employing a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities.

- (1) Requesting waivers from the Chancellor's Office prior to initiating any change in the EOPS Director's position, and
- (2) Requesting waivers for permission to employ an EOPS for a less than full-time.

3B) Pursuant to Title 5, California Code of Regulations, Section 56232, and the "Implementing Guidelines" to that section, providing access services to identify

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EOPS eligible students and to facilitate their enrollment, including, at a minimum:

- (1) Outreach and recruitment to increase the number of potential eligible students who enroll at the college.
- (2) Orientation to familiarize EOPS eligible students with:
 - (a) The location and function of the college and EOPS programs and services,
 - (b) The college catalog,
 - (c) The college application,
 - (d) The registration process, with emphasis on academic and grading standards,
 - (e) College terminology,
 - (f) Course add and drop procedures and related rules,
 - (g) Financial aid application procedures, and
 - (h) Transfer procedures to four-year institutions.
- (3) Registration assistance for priority enrollment.

3C) Pursuant to Title 5, California Code of Regulations, Section 56234, and the "Implementing Guidelines" to that section, assessing each EOPS eligible student, and explaining and interpreting the results to EOPS students by counselors trained in the use and meaning of such assessments. The assessments must include:

- (1) Course and placement tests in reading, comprehension, vocabulary,

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writing, and computations;

- (2) Diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies;
- (3) A study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques;
- (4) Support service assessment to determine the need for financial aid, child care, part-time employment, or extra-curricular pursuits; and
- (5) Assessment instruments that are not culturally or linguistically biased.

If an EOPS Program or college cannot provide one or more of the assessments outlined in this section, a waiver must be requested.

- 3D) Pursuant to Title 5, California Code of Regulations, Section 56236, and the "Implementing Guidelines" to that section, providing counseling and advisement to each EOPS-eligible student at least three times per term as follows:
- (a) A contact session which combines interview interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish;
 - (b) An in-term contact session to ensure the student is succeeding

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adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success; and

- (c) A term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS program or the college.

3E) Pursuant to Title 5, California Code of Regulations, Section 56238, and the "Implementing Guidelines" to that section, providing basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals.

- (1) Documentation should include sign-in sheets or tutor time sheets indicating for whom and when services were rendered.
- (2) When requesting a waiver for any section of basic skills instruction or tutorial services, submitting a waiver request which documents that the tutoring and/or basic skills instruction needed by EOPS students is provided by the overall college basic skills instruction or tutoring program at a level which meets the special needs of EOPS eligible students.

3F) Pursuant to Title 5, California Code of Regulations, Section 56240, and the "Implementing Guidelines" to that section, providing assistance to EOPS eligible

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students to transfer to four-year institutions and/or to find career employment in their field of training.

- (1) If neither transfer nor career employment services are available on campus, providing both, or submitting a waiver request indicating services in one area.
- (2) Documentation should include sign-in sheets for workshops, presentations or special events, including EOPS conducted tours in these specific program service areas.

Article 4. Financial Aid Standards

- 4A) Pursuant to Title 5, California Code of Regulations, Section 56252, and the "Implementing Guidelines" to that section, awarding grants and workstudy awards; monitoring and limiting amounts as required by Section 56254; and to distribute them as evenly as possible as required by Section 56256; and including the written financial aid policy in the Financial Aid Handbook or Consumer Guide.
- 4B) Pursuant to Title 5, California Code of Regulations, Section 56258, and the "Implementing Guidelines" to that section, establishing and implementing an emergency loan program for EOPS students to meet unexpected or untimely costs for books, college supplies, transportation and housing.
 - (1) Holding loan funds in a separate account established for that purpose.
 - (2) Returning to the Chancellor any amounts held, including interest and budget transfers, in excess of three times the amount originally set aside

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persons handicapped by language, social or economic disadvantages.

- (2) Pursuant to subdivision (c), counselors must have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages.
- (3) No waivers will be granted for subdivision (a).
- (4) When necessary, applying for waivers of one (1) year for subdivisions (b) and (c).

Article 6. Plans and Priorities

- 6A) Pursuant to Title 5, California Code of Regulations, Section 56270, and the "Implementing Guidelines" to that section, submitting an EOPS plan for each college within the district to the Chancellor for approval. If the plan is deemed deficient, submitting a corrected plan.
- 6B) Pursuant to Title 5, California Code of Regulations, Section 56272 and the "Implementing Guidelines" to that section, each submitted plan must address:
 - (1) The long-term goals of the EOPS program;
 - (2) The objectives of the EOPS program to be attained in the fiscal year for which EOPS funds are allocated;
 - (3) The activities to be undertaken to achieve the objectives;
 - (4) An operating budget which indicates the planned expenditures of EOPS funds, and of other district funds to be used to finance EOPS activities;
 - (5) The number of students to be served; and

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- (6) An evaluation of the results achieved in the prior year of funding.
- 6C) Pursuant to Title 5, California Code of Regulations, Section 56274, filing, by the final date established by the Chancellor's office, the district's EOPS plans on the forms distributed by the Chancellor
- 6D) Pursuant to Title 5, California Code of Regulations, Section 56276, and the "Implementing Guidelines" to that section, funding the costs of the program to the extent not approved by the Chancellor.
- 6E) Pursuant to Title 5, California Code of Regulations, Section 56278, and the "Implementing Guidelines" to that section, participating annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor.
- (1) The measurements of student success in achieving their educational goals may be required on an annual basis.
- (2) The remaining two (2) forms of evaluation, i.e., Audits/Validations and Program Reviews (on-site and/or Survey) may be conducted on a six-year cycle (accreditation schedule) basis which entails conducting approximately 20 evaluations per academic year.
- 6F) Pursuant to Title 5, California Code of Regulations, Section 56280, and the "Implementing Guidelines" to that section, requiring and analyzing the data necessary to serve students enrolled at the college in the following priorities:
- (1) Serving continuing EOPS students with the lowest income;
- (2) Serving continuing EOPS students with the lowest income who are

transferring from another EOPS program conducted by a community college; and

- (3) Serving first-time EOPS students with the lowest income.

Article 7. Funding and Expenditures

- 7A) Pursuant to Title 5, California Code of Regulations, Section 56290, and the "Implementing Guidelines" to that section, maintaining separate accounts for monies provided for, and expended in support of, EOPS activities by specific line item in accordance and compliance with the California Community College Budget and Accounting Manual.
- 7B) Pursuant to Title 5, California Code of Regulations, Section 56292, and the "Implementing Guidelines" to that section, making adjustments in the accounting of EOPS activities to comply with adjustments made by the Chancellor to correct over or under allocated and utilized amounts in any of the three prior fiscal years.
- 7C) Pursuant to Title 5, California Code of Regulations, Section 56293, and the "Implementing Guidelines" to that section, paying the salary and benefits of the EOPS Director, and when necessary and appropriate, applying for a waiver allowing a part-time EOPS Director.
- 7D) Pursuant to Title 5, California Code of Regulations, Section 56295, and the "Implementing Guidelines" to that section, obtaining local approval from the district superintendent/president when purchasing computer hardware and/or software prior to submitting the request for final approval. Then, obtaining final

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approval from the Chancellor's Office.

- 7E) Pursuant to Title 5, California Code of Regulations, Section 56296, and the "Implementing Guidelines" to that section, funding the cost of EOPS expenditures for:
- (a) College administrative support costs;
 - (b) Indirect costs;
 - (c) Political or professional association dues and/or contributions;
 - (d) Costs of furniture;
 - (e) Costs of construction, remodeling, renovation, or vehicles; and
 - (f) Travel costs other than travel costs of EOPS staff and students for EOPS activities or functions.

When necessary or appropriate, obtaining waivers from the restrictions of items listed in subdivisions (d), (e) and (f) from the Office of the Chancellor.

- 7F) Pursuant to Title 5, California Code of Regulations, Section 56298, and the "Implementing Guidelines" to that section, expending annually for EOPS grants and workstudy an amount equal to that expended in the prior fiscal year and when necessary or appropriate, applying to the Chancellor's Office for waivers of this spending requirement.

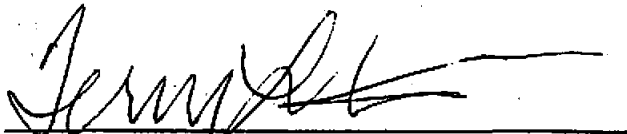
It is estimated that the West Kern Community College District incurred more than \$1,000 in staffing and other costs in excess of any funding provided to the district and the state for the period from July 1, 2001 through June 30, 2002 to implement these new

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duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 3 day of June, 2003, at Taft, California



Terry Brothers
EOPS Director
West Kern Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 1455

An act to amend Sections 54444.1 and 69655 of, to repeal Sections 54528 and 69657 of, and to repeal Article 8.5 (commencing with Section 69660) of Chapter 2 of Part 42 of, the Education Code, to amend Sections 15980 and 15982 of, to add Section 13337.3 to, to repeal Sections 8589.2, 8839, 15972, 16367, and 16367.1 of, and to repeal Article 1.9 (commencing with Section 16369) of Chapter 2 of Division 4 of Title 2 of, the Government Code, to amend Section 1596.865 of, and to repeal Sections 209, 446.8, 1528, 1569.70, 1597.06, 25412, 25413, 25414, and 41514 of, the Health and Safety Code, to amend Section 1864 of the Insurance Code, to repeal Section 30796.5 of the Streets and Highways Code, to amend Section 35581 of, and to repeal Section 1660.6 of, the Vehicle Code, and to repeal Section

When a district or agency is funded directly by the state, the parties to the service agreement shall include the department and the district or operating agency in which the eligible migrant pupils are enrolled. The basic responsibilities of these three parties shall be as specified in Section 54444.4.

The parties, whether regional or directly funded, shall take the necessary steps to ensure the effective involvement of the Migrant Parent Advisory Committee for that district or agency. Representatives of the Migrant Parent Advisory Committee shall have the right to be present and participate in all deliberations between the parties regarding the service agreement or any subsequent changes thereto. The service agreement shall include a signed statement from the officers of the Migrant Parent Advisory Committee signifying that such participation has occurred.

This subdivision shall become operative July 1, 1982.

(e) The Superintendent of Public Instruction shall develop an annual operating calendar for regions and directly funded districts including dates for the submission and approval of applications and service agreements. Any changes in regional boundaries for the subsequent fiscal year shall be made and approved by December 31 of the current year. Any changes in funding allocations for regions shall be made by December 31 of the current year or immediately after notification of a federal grant award.

This subdivision shall become operative July 1, 1982.

(f) The Superintendent of Public Instruction shall preserve the supplemental nature of the migrant education program. The program shall be maintained outside the supervision or above the administrative level of the consolidated application programs. The superintendent shall not incorporate the migrant education program into the consolidated application process, except as provided below:

(1) Commencing with the 1983-84 school year, directly funded districts may apply for migrant education funds as part of their consolidated application provided the district parent advisory council on migrant education approves the inclusion.

(2) Commencing with school year 1982-83 and pending the recommendations of the department study and task force report, a copy of the district's annual application for migrant education funds as required by Section 54443.1 shall be attached to the district's annual consolidated application.

SEC. 3. Section 54528 of the Education Code is repealed.

SEC. 4. Section 69655 of the Education Code is amended to read:

69655. (a) Pursuant to Section 69648, the Chancellor of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but

not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the chancellor shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the chancellor shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January 1987, the chancellor shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

SEC. 5. Section 69657 of the Education Code is repealed.

SEC. 6. Article 8.5 (commencing with Section 69660) of Chapter 2 of Part 42 of the Education Code is repealed.

SEC. 7. Section 8589.2 of the Government Code is repealed.

SEC. 8. Section 8839 of the Government Code is repealed.

SEC. 9. Section 13337.3 is added to the Government Code, to read:

13337.3. (a) (1) "Advisory body" means every board, bureau, commission, committee, panel, task force, or similar group created by statute or executive order whose principal function is to review, advise, plan, advocate, or promote.

(2) "State funded" means receiving direct or indirect support from the General Fund, from funds that could be made available for General Fund purposes, or from funds which could be used to free up General Fund moneys. The determination of whether an advisory body is state funded shall be made by the Director of Finance.

(b) On and after January 1, 1993, moneys may not be expended for the support of any state-funded advisory body unless that advisory body is evaluated pursuant to this section.

(c) The Governor's Budget submitted to the Legislature for the 1992-93 fiscal year shall include an addendum which evaluates the need for every state-funded advisory body in state government. That addendum shall identify each advisory body along with the relevant statutory or executive order reference establishing the advisory body, the funding source for each advisory body, including all direct and indirect costs and staff allocated, and an evaluation based on the

an intermodal weighing facility.

(c) The Department of Transportation shall submit an annual report not later than August 1, 1990, and August 1 each year thereafter, describing its progress in developing the intermodal weight determination program, and its recommendations for the future of the program.

SEC. 29. Section 5692 of the Welfare and Institutions Code is repealed.

SEC. 30. It is the intent of the Legislature, in adding Section 13337.3 to the Government Code by Section 9 of this act, to utilize the evaluation prepared by the executive branch in order to consider which advisory boards should continue and which ones should be terminated. If the Legislature agrees with an evaluation and recommendation prepared pursuant to Section 13337.3 that an advisory board should be continued, the Legislature shall include an appropriation for that advisory body in the Budget Act of 1992. If the Legislature agrees with an evaluation and recommendation prepared pursuant to Section 13337.3 that an advisory body should be terminated, the Legislature intends to only provide funding in the Budget Act of 1992 for that advisory board until January 1, 1993, after which funding shall not be available, and the Legislature intends to enact legislation in 1992, effective January 1, 1993, to terminate that advisory body and any other advisory body that it agrees should be terminated.

CHAPTER 1372

An act to amend Sections 40, 41, 52, 92, 262.3, 1043, 1240, 1245, 1246, 1250, 1252, 1253, 1260, 1262, 1271, 1294, 1297, 1298, 1330, 1340, 1400, 1500, 1510, 1602, 1606, 1700, 1721, 1831, 1946, 4002, 4003, 7000, 8006, 8008, 8070, 8080, 8081, 8084, 8092, 8207, 8225, 8285.5, 8320, 8322, 8328, 8329, 8362, 8394, 8510, 8534, 8760, 8761, 8762, 8763, 8764, 8765, 8771, 10407, 10504, 10900, 10901, 10907, 10910, 10912, 10913, 10914, 11001, 12020, 12220, 12302, 12400, 12401, 12402, 12405, 14000, 15100, 15106, 15140, 15141, 15142, 15147, 15252, 15254, 15502, 15520, 15527, 15528, 15541, 15551, 15570, 15574, 15701, 15718, 15735, 15745, 15752, 15794, 16042, 16045, 16080, 16100, 16105, 16165, 16195, 16197, 16200, 16214, 17302, 17313, 17900, 17901, 17902, 17903, 18100, 18101, 18102, 18103, 18110, 18111, 18120, 18121, 18122, 18131, 18132, 18134, 18137, 18138, 18139, 18170, 18171, 18172, 19901, 22200, 22504, 24806, 24923, 24924, 32033, 32300, 32371, 32372, 33031, 33113, 33117, 33117.5, 35501, 39214.5, 39308, 39383, 39830, 41303, 41332, 44849, 44850, 44854, 51875.7, 52152, 52154, 52302.3, 52342, 52512, 62001, 66010, 66011, 66017, 66021, 66700, 68011, 68012, 68016, 68022, 68023, 68040, 68041, 68051, 68070, 68071, 68072, 68073, 68100, 69510, 69511.5, 69537, 69640, 69641, 69641.5, 69642, 69643, 69648, 69648.5, 69649, 69653, 69655, 71004, 71020, 71040, 71046, 71050, 71090, 71092, 71093, 72000, 72023.5, 72027, 72031, 72102, 72122, 72241, 72247, 72423, 72500, 72506, 72530, 74000, 74001, 74104, 74105, 74106, 74107, 74109, 74110, 74132, 74134, 74135, 74136, 74139, 74140, 74153, 74154, 74155, 74158, 74159, 74202, 74270, 74290, 76000, 76001, 76020, 76403, 76407, 78031, 78032, 78211.5, 78213, 78216, 78217, 78230, 78249, 78300, 78401, 78900, 78907, 79020, 79021, 79154, 79155, 81033, 81130, 81130.5, 81133, 81160, 81177, 81179, 81805, 81807, 81820, 81822, 81836, 81837, 81901, 81908, 81947, 82321, 82537, 82542, 84030, 84040.6, 84207, 84320, 84328, 84362, 84381, 84382, 84383, 84384, 84660, 84890, and 85230 of, to amend and repeal Section 32033 of, to add Sections 8323, 71025, 71028, 72013, 72014, 72015, 72243, 72249, 72253.3, 72253.5, 72253.7, 78034, 84001, 84700.3, 85266.5, 87448, and 88020.5 to, to add Chapter 1.5 (commencing with Section 78100) to Part 48 of, to repeal Sections 91, 265, 1255, 7001, 7002, 8085, 8329.5, 8511, 8513, 8514, 8515, 8516, 12210, 12404, 14020, 14021, 15000, 32200, 44971, 66101, 66102, 66200, 66700.5, 66902.5, 67007, 68010, 68013, 68019, 68020, 68021, 68090, 69644, 69645, 69646, 69647, 69648.7, 69657, 71005, 71027.5, 71033, 71034, 71038, 71039, 71041, 71042, 71047, 71048, 71095, 71096, 71097, 72001, 72002, 72020, 72021, 72023.7, 72024, 72025, 72028, 72029, 72030, 72032, 72033, 72035, 72120, 72125, 72126, 72132, 72200, 72202, 72203, 72204, 72208, 72231, 72237, 72241.5, 72244, 72247.1, 72248, 72255, 72256, 72408, 72409, 72412, 72413, 72419, 72419.5, 72420, 72421, 72422, 72531, 72532, 74010, 74011, 74271, 74282, 74283, 74291, 74292, 74293, 74294, 74295, 76001.5, 76002, 76006, 76021, 76142, 76160, 76400, 76405, 76408, 76409, 76470, 78001, 78002, 78003, 78004, 78005, 78006, 78007, 78010, 78011, 78012, 78220, 78221, 78222, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78250, 78270, 78272, 78301, 78302, 78303, 78304, 78305, 78402, 78403, 78405, 78407, 78409, 78412, 78440, 78440.5, 78441,

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student organization of each of the four postsecondary education segments may submit a list of nominees. The appropriate student organizations are:

- (1) The California State Student Association.
- (2) The University of California Student Association.
- (3) The California Association of Independent College and University Students.

(4) A composite group of representative community college student organizations, as determined by the Board of Governors of the California Community Colleges.

(c) Participating student organizations designated in subdivision (b) shall inform students within their respective segment of pending student vacancies on the commission.

(d) Any person appointed pursuant to subdivision (a) may be reappointed if the person is renominated pursuant to subdivision (b), but in no event shall the person be reappointed for more than two consecutive terms if the student is enrolled in the same postsecondary education segment as the one in which he or she was enrolled when first appointed.

(e) The person appointed as a student member of the Student Aid Commission pursuant to this section shall be subject to confirmation by the Senate as required in subdivision (d) of Section 69511.

SEC. 245. Section 69537 of the Education Code is amended to read:

69537. An individual selected for a Cal Grant A award who enrolls in a California community college may elect to have the award held in trust for him or her for a period not to exceed two academic years, except that the commission may extend the period in which his or her award may be held in trust for up to three academic years if, in the commission's judgment, the student's rate of academic progress has been as rapid as could be expected in light of the personal and financial conditions that the student has encountered. The commission shall, in that case, hold the award in trust, to be granted to the award winner upon receipt of his or her request therefor within that period, provided that at the time of making the request he or she meets all of the requirements of this chapter. Upon receipt of the request the commission shall assess or reassess the financial needs of the award winner. The commission may prescribe the forms and procedures to be utilized for the purposes of this section. The commission may award to another eligible individual any award being so held in trust, subject to this section and any other conditions and restrictions that may be imposed by the commission, to the end that all authorized awards are being continually utilized. Following the first year for which any Cal Grant award is made, the awards shall be included in the number of the continuing awards available for any year and not the authorized new awards for the year.

SEC. 246. Section 69640 of the Education Code is amended to read:

69640. It is the intent of the Legislature that the California

Community Colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and educational status. It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and implement programs directed to identifying those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions.

The rules and regulations of the Board of Governors of the California Community Colleges shall be consistent with this article. These rules and regulations, and EOPS, shall be consistent with all of the following goals:

(a) To increase the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.

(b) To increase the number and percentage of Extended Opportunity Programs and Services (EOPS) students who successfully complete their chosen educational objectives.

(c) To increase the number and percentage of EOPS students who are successfully placed into career employment.

(d) To increase the number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community colleges.

(e) To strive to assist community colleges to meet student and employee affirmative action objectives.

(f) To improve the delivery of programs and services to the disadvantaged.

The Legislature further intends that EOPS shall not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state.

SEC. 247. Section 69641 of the Education Code is amended to read:

69641. The Extended Opportunity Programs and Services (EOPS) provided by a community college district shall supplement the regular educational programs of the community college district to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives. EOPS shall be

provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. Participation in an extended opportunity program or service shall not preclude participation in any other program offered by the community college district.

SEC. 248. Section 69641.5 of the Education Code is amended to read:

69641.5. The Board of Governors of the California Community Colleges shall consider adopting regulations which include all of the following objectives:

(a) That the Extended Opportunity Programs and Services provided by a community college shall include, but not be limited to, staff qualified to counsel all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives, and that each EOPS student receives that counseling upon his or her initial enrollment in the community college, and at least every six months thereafter.

(b) That in assisting all EOPS students to identify their educational objectives, the Extended Opportunity Programs and Services provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.

(c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established.

SEC. 249. Section 69642 of the Education Code is amended to read:

69642. Definitions:

(a) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a student and increase his or her potential for success in the college.

(b) "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college, and to progress toward completing their educational goals and objectives, including, but not limited to, graduation from college.

SEC. 250. Section 69643 of the Education Code is amended to read:

69643. (a) There is in the state government the Advisory

Committee on Extended Opportunity Programs and Services. It shall be comprised of nine members appointed by the board, two members appointed by the Speaker of the Assembly and two members appointed to the Senate Committee on Rules. The nine members appointed by the board shall serve for four-year terms, except the first term of each shall be determined by lot at the first meeting of the board. Three shall serve for four years, three shall serve for three years, and three shall serve for two years. The two members appointed by the Speaker of the Assembly and the two members appointed by the Senate Committee on Rules shall serve at the pleasure of the respective appointing powers.

(b) The chairperson and vice chairperson of the committee shall be designated by the board from among the members appointed by the board.

(c) The members of the committee shall serve without compensation, but shall be reimbursed for necessary traveling and other expenses incurred in performing their duties and responsibilities.

(d) The committee shall serve as an advisory body to the board, shall formulate and present policy recommendations as it determines will effect statewide establishment and conduct of community college programs of extended opportunities and services, shall review annually and report to the board the progress made under this article with the California Community Colleges toward the extension of educational opportunities for all students who may profit from instruction, and make other recommendations to implement this article. The Chancellor of the California Community Colleges shall be executive secretary of the committee, shall report to the board on the actions of the committee, and, at the recommendation of the committee and its direction, shall make recommendations to the board pursuant to this article.

(e) All meetings of the committee shall be open and public, and all persons shall be permitted to attend any meeting of the committee.

SEC. 251. Section 69644 of the Education Code is repealed.

SEC. 252. Section 69645 of the Education Code is repealed.

SEC. 253. Section 69646 of the Education Code is repealed.

SEC. 254. Section 69647 of the Education Code is repealed.

SEC. 255. Section 69648 of the Education Code is amended to read:

69648. By January 1, 1986, the board shall adopt rules and regulations necessary to implement this article, including rules and regulations which do all of the following:

(a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services on the basis of the student's language, social, or economic disadvantages.

(b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services. The standards may include, but shall not be limited to, guidelines for all

of the following:

- (1) The provision of staffing and program management.
 - (2) The establishment of a documentation and data collection system.
 - (3) The establishment of an EOPS advisory committee.
 - (4) The provision of recruitment and outreach services.
 - (5) The provision of cognitive and noncognitive assessment, advising, and orientation services.
 - (6) The provision of college registration.
 - (7) The provision of basic skills instruction, seminars, and tutorial assistance.
 - (8) The provision of counseling and retention services.
 - (9) The provision of transfer services.
 - (10) The provision of direct aid.
 - (11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing extended opportunity programs and services.
- (c) Subject to approval of the chancellor, establish procedures for the review and evaluation of the districts' extended opportunity programs and services.
- (d) Require the submission of the reports by districts that will permit the evaluation of the program and services offered.

SEC. 256. Section 69648.5 of the Education Code is amended to read:

69648.5. The board of governors may use up to 1 percent of the funds appropriated for the EOPS program by the annual Budget Act to monitor program activities and to conduct the evaluation of EOPS offered by districts.

SEC. 257. Section 69648.7 of the Education Code is repealed.

SEC. 258. Section 69649 of the Education Code is amended to read:

69649. (a) The governing board of a community college district may, with the approval of the board, establish an extended opportunity program.

Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of Section 69648.

(b) The board of governors may waive any or all of the minimum standards established pursuant to subdivision (b) of Section 69648 if the board of governors determines that unusual circumstances which merit a waiver exist.

SEC. 260. Section 69653 of the Education Code is amended to read:

69653. Applications shall be subject to the approval of the board. Upon approval by the board, it shall certify an apportionment or apportionments to the Controller. The Controller shall draw warrants on the State Treasury in the amounts certified in favor of the governing board of the community college district which has jurisdiction over the applicant district in accordance with a schedule

of payments established by the board and approved by the Department of Finance.

SEC. 261. Section 69655 of the Education Code is amended to read:

69655. (a) Pursuant to Section 69648, the Board of Governors of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the board of governors shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the board of governors shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January 1987 the board of governors shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

SEC. 262. Section 69657 of the Education Code is repealed.

SEC. 263. Section 71004 of the Education Code is amended to read:

71004. Members of the board shall receive their actual and necessary traveling expenses while on official business. Each member shall also receive one hundred dollars (\$100) for each day he or she is attending to official business. The headquarters of the board and the chief executive officer shall be in Sacramento.

SEC. 264. Section 71005 of the Education Code is repealed.

SEC. 265. Section 71020 of the Education Code is amended to read:

71020. The board of governors shall develop and submit to the Governor, every three years, commencing July 1, 1989, a diversity paper concerning its own membership, providing the board's

Accordingly, the Board of Governors of the California Community Colleges shall continue its review of the Education Code related to the administration and operation of the California Community Colleges and shall recommend to the Legislature the amendment or repeal of those provisions affected by Chapter 973 of the Statutes of 1988 which have not been accomplished in this act.

SEC. 714. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1586

An act to add Sections 69641.5, 69656, and 69657 to the Education Code, relating to education.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 69641.5 is added to the Education Code, to read:

69641.5. On or before April 1, 1986, the Board of Governors of the California Community Colleges shall consider adopting regulations which include all of the following objectives:

(a) That the Extended Opportunity Programs and Services provided by a community college shall include, but not be limited to, staff qualified to counsel all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives, and that each EOPS student receives that counseling upon his or her initial enrollment in the community college, and at least every six months thereafter.

(b) That in assisting all EOPS students to identify their educational objectives, the Extended Opportunity Programs and

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Services provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.

(c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established.

SEC. 3. Section 69656 is added to the Education Code, to read: 69656. It is the intent of the Legislature that the California State University and the University of California provide fee waivers for admissions applications for all EOPS transfer students who provide waiver forms signed by a community college EOPS director.

SEC. 4. Section 69657 is added to the Education Code, to read: 69657. The California Postsecondary Education Commission shall assess statewide progress in the implementation of the recommendations of the task force established pursuant to subdivision (c) of Section 69655. The commission shall report its findings to the fiscal committees of the Legislature on or before May 15, 1986.

CHAPTER 1178

An act to amend Sections 69640, 69641, 69642, 69648, 69649, and 69651 of, and to add Sections 69648.5 and 69655 to, the Education Code, relating to community colleges.

[Approved by Governor September 15, 1984. Filed with Secretary of State September 17, 1984.]

The people of the State of California do enact as follows:

SECTION 1. Section 69640 of the Education Code is amended to read:

69640. It is the intent of the Legislature that the California community colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and educational status. It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and implement programs directed to identifying those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions.

By January 1, 1986, the Board of Governors of the California Community Colleges shall adopt rules and regulations establishing EOPS goals consistent with this article. These goals may include all of the following:

(a) To increase the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.

(b) To increase the number and percentage of Extended Opportunity Programs and Services (EOPS) students who successfully complete their chosen educational objectives.

(c) To increase the number and percentage of EOPS students who are successfully placed into career employment.

(d) To increase the number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community college.

(e) To strive to assist community colleges to meet student and employee affirmative action objectives.

(f) To improve the delivery of programs and services to disadvantaged students.

The Legislature further intends that EOPS shall not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state.

SEC. 2. Section 69641 of the Education Code is amended to read: 69641. The Extended Opportunity Programs and Services (EOPS) provided by a community college shall supplement the regular educational programs of the community college to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives. EOPS shall be provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. Participation in an extended opportunity program or service shall not preclude participation in any other program offered by the community college.

SEC. 3. Section 69642 of the Education Code is amended to read: 69642. Definitions:

(a) "Board" means the Board of Governors of the California Community Colleges.

(b) "District" means any community college district in California that maintains one or more community colleges.

(c) "College" means a community college established by the governing board of a community college district authorized to provide community college instruction.

(d) "Extended opportunity program" means a special program or method of instruction designed to facilitate the language, educational, or social development of a student and increase his or her potential for success in the college.

(e) "Extended opportunity services" means a program of assistance designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the educational activities of the college, and to progress toward completing their educational goals and objectives, including, but not limited to, graduation from college.

SEC. 4. Section 69648 of the Education Code is amended to read: 69648. By January 1, 1986, the board shall adopt rules and regulations necessary to implement this article, including rules and

regulations which do all of the following:

(a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services on the basis of the student's language, social, or economic disadvantages.

(b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services. The standards may include, but shall not be limited to, guidelines for all of the following:

(1) The provision of staffing and program management.

(2) The establishment of a documentation and data collection system.

(3) The establishment of an EOPS advisory committee.

(4) The provision of recruitment and outreach services.

(5) The provision of cognitive and noncognitive assessment, advising, and orientation services.

(6) The provision of college registration.

(7) The provision of basic skills instruction, seminars, and tutorial assistance.

(8) The provision of counseling and retention services.

(9) The provision of transfer services.

(10) The provision of direct aid.

(11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing extended opportunity programs and services.

(c) The standards specified in subdivision (b) shall be adopted and implemented by the commencement of the 1985-86 academic year.

(d) Subject to the approval of the chancellor, establish procedures for the review and evaluation of the districts' extended opportunity programs and services.

(e) Require the submission of such reports by districts as will permit the evaluation of the program and services offered.

SEC. 5. Section 69648.5 is added to the Education Code, to read: 69648.5. The chancellor may use up to 1 percent of the funds appropriated for the EOPS program by the annual Budget Act to monitor program activities and to conduct the evaluation of EOPS offered by districts.

SEC. 6. Section 69649 of the Education Code is amended to read: 69649. (a) The governing board of a community college district may, with the approval of the board, establish an extended opportunity program.

Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of Section 69648.

(b) The chancellor may waive any or all of the minimum standards established pursuant to subdivision (b) of Section 69648 if the chancellor determines that unusual circumstances which merit a waiver exist.

SEC. 7. Section 69651 of the Education Code is amended to read:

69651. The governing board of a community college district shall not use any funds received from the state for the operation and administration of extended opportunity programs and services to supplant district resources, programs, or services authorized by Sections 69649 and 69650. The governing board may use those funds to meet the matching requirements to receive federal funds, or funds granted by nonprofit foundations, designated for the same purposes, for extended opportunity programs and services, as defined by Section 69641.

SEC. 8. Section 69655 is added to the Education Code, to read:

69655. (a) Pursuant to Section 69648, the Chancellor of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the chancellor shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the chancellor shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January, 1987, the chancellor shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

(c) A task force under the direction of the California Postsecondary Education Commission shall be established to evaluate existing supplemental services and financial assistance provided for community college EOPS students who transfer to public four-year institutions, and to make recommendations for modification of those services and assistance programs necessary to facilitate the transfer process. The task force shall be comprised of representatives from all of the following:

- (1) The California Postsecondary Education Commission.
- (2) The University of California.
- (3) The California State University.
- (4) The community colleges.
- (5) The Legislative Analyst.
- (6) The Department of Finance.

The task force shall submit a report summarizing its findings and the plan to the fiscal committees of the Legislature on or before February 15, 1985.

SEC. 9. It is the intent of the Legislature that, commencing with the 1986-87 fiscal year, and each fiscal year thereafter, a sum shall be appropriated through the annual Budget Act to the Chancellor of the California Community Colleges which is sufficient to maintain and operate the statewide data base required pursuant to Section 69655 of the Education Code, and to reimburse community college districts for costs of collecting the data for that data base.

**EXHIBIT 3
COPIES OF CODE SECTIONS CITED**

§ 69640. Legislative findings and intent; community college extended opportunity programs and services; rules and regulations; goals

It is the intent of the Legislature that the California Community Colleges recognize the need and accept the responsibility for extending the opportunities for community college education to all who may profit therefrom regardless of economic, social, and educational status. It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and implement programs directed to identifying those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions.

* * * The rules and regulations of the Board of Governors of the California Community Colleges shall be consistent with this article. These rules and regulations* * *, and EOPS* * *, shall be consistent with* * * all of the following goals:

- (a) To increase the number and percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with state and local matriculation policies.
- (b) To increase the number and percentage of Extended Opportunity Programs and Services (EOPS) students who successfully complete their chosen educational objectives.
- (c) To increase the number and percentage of EOPS students who are successfully placed into career employment.
- (d) To increase the number and percentage of EOPS students who transfer to four-year institutions following completion of the related educational programs at community colleges.
- (e) To strive to assist community colleges to meet student and employee affirmative action objectives.
- (f) To improve the delivery of programs and services to the disadvantaged * * *.

The Legislature further intends that EOPS shall not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives.

The Legislature finds that the establishment and development of extended opportunity programs and services are essential to the conservation and development of the cultural, social, economic, intellectual, and vocational resources of the state.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 246.)

§ 69641. Extended opportunity programs and services

The Extended Opportunity Programs and Services (EOPS) provided by a community college district shall supplement the regular educational programs of the community college district to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives. EOPS shall be provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. Participation in an extended opportunity program or service shall not preclude participation in any other program offered by the community college district.
(Amended by Stats.1990, c. 1272 (S.B.1854), § 247.)

§ 69641.5. Adoption of regulations; objectives

* * * The Board of Governors of the California Community Colleges shall consider adopting regulations which include all of the following objectives:

(a) That the Extended Opportunity Programs and Services provided by a community college shall include, but not be limited to, staff qualified to counsel all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives, and that each EOPS student receives that counseling upon his or her initial enrollment in the community college, and at least every six months thereafter.

(b) That in assisting all EOPS students to identify their educational objectives, the Extended Opportunity Programs and Services provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.

(c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 248.)

EDUCATION CODE

§ 69643. Advisory committee

(a) There is in the state government the Advisory Committee on Extended Opportunity Programs and Services. It shall be comprised of nine members appointed by the board, two members appointed by the Speaker of the Assembly and two members appointed by the Senate Committee on Rules. The nine members appointed by the board shall serve for four-year terms, except the first term of each shall be determined by lot at the first meeting of the board. Three shall serve for four years, three shall serve for three years, and three shall serve for two years. The two members appointed by the Speaker of the Assembly and the two members appointed by the Senate Committee on Rules shall serve at the pleasure of the respective appointing powers.

(b) The chairperson and vice chairperson of the committee shall be designated by the board * * *.

(c) The members of the committee shall serve without compensation, but shall be reimbursed for necessary traveling and other expenses incurred in performing their duties and responsibilities.

(d) The committee shall serve as an advisory body to the board, shall formulate and present policy recommendations as it determines will effect statewide establishment and conduct of community college programs of extended opportunities and services, shall review annually and report to the board the progress made under this article with the California Community Colleges toward the extension of educational opportunities for all students who may profit from instruction, and make other recommendations to implement this article. The Chancellor of the California Community Colleges shall be executive secretary of the committee, shall report to the board on the actions of the committee, and, at the recommendation of the committee and its direction, shall make recommendations to the board pursuant to this article.

(e) All meetings of the committee shall be open and public, and all persons shall be permitted to attend any meeting of the committee.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 250; Stats.1991, c. 1038 (S.B.9), § 1, eff. Oct. 14, 1991.)

EDUCATION CODE

§ 69648. Rules and regulations; extended opportunity programs and services standards

By January 1, 1986, the board shall adopt rules and regulations necessary to implement this article, including rules and regulations which do all of the following:

- (a) Prescribe the procedure by which a district shall identify a student eligible for extended opportunity programs or services on the basis of the student's language, social, or economic disadvantages.
- (b) Establish minimum standards for the establishment and conduct of extended opportunity programs and services. The standards may include, but shall not be limited to, guidelines for all of the following:
 - (1) The provision of staffing and program management.
 - (2) The establishment of a documentation and data collection system.
 - (3) The establishment of an EOPS advisory committee.
 - (4) The provision of recruitment and outreach services.
 - (5) The provision of cognitive and noncognitive assessment, advising, and orientation services.
 - (6) The provision of college registration.
 - (7) The provision of basic skills instruction, seminars, and tutorial assistance.
 - (8) The provision of counseling and retention services.
 - (9) The provision of transfer services.
 - (10) The provision of direct aid.
 - (11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing extended opportunity programs and services.

* * *

(c) Subject to * * * approval of the chancellor, establish procedures for the review and evaluation of the districts' extended opportunity programs and services.

(d) Require the submission of the reports by districts that will permit the evaluation of the program and services offered.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 256.)

EDUCATION CODE

§ 69649. Establishment of extended opportunity programs; eligibility for state funding

(a) The governing board of a community college district may, with the approval of the board, establish an extended opportunity program.

Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of Section 69648.

(b) The * * * board of governors may waive any or all of the minimum standards established pursuant to subdivision (b) of Section 69648 if the * * * board of governors determines that unusual circumstances which merit a waiver exist.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 258.)

§ 69652. Application for allowance for cost of programs or services

The governing board of a community college district may apply to the board for an allowance to meet all or a portion of the cost of establishing and operating extended opportunity programs or services authorized by this article. The application shall contain a detailed plan or plans for use of the allowance. The plan or plans shall be submitted in accordance with rules and regulations adopted by the board. The board may also adopt rules and regulations relating to the form and content of applications and procedures for review, evaluation, and approval thereof.

(Stats.1976, c. 1010, § 2, operative April 30, 1977.)

EDUCATION CODE

§ 69655. Statewide data base for community college extended opportunity programs and services

(a) Pursuant to Section 69648, the Chancellor of the California Community Colleges shall determine the elements of a statewide data base for the Community College Extended Opportunity Programs and Services, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but not limited to, all of the following:

(1) The annual number of extended opportunity programs and services (EOPS) students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.

(2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the chancellor shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.

(3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment.

In implementing this paragraph, the chancellor shall integrate the data collection with existing data collection requirements pertaining to vocational education.

(b) Beginning in January 1987, the chancellor shall annually report to the Legislature regarding the number of students served by the Community College Extended Opportunity Programs and Services and the number of EOPS students who achieve their educational objectives.

(Amended by Stats.1990, c. 1372 (S.B.1854), § 281; Stats.1990, c. 1455 (S.B.2374), § 4.)

§ 69656. Fee waivers; admissions applications for transfer students

It is the intent of the Legislature that the California State University and the University of California provide fee waivers for admissions applications for all EOPS transfer students who provide waiver forms signed by a community college EOPS director.

(Added by Stats.1985, c. 1586, § 3.)

EXHIBIT 4
COPIES OF REGULATIONS CITED

der allocated amounts in the current fiscal year or any of the three immediately preceding fiscal years.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310-12 and 84850, Education Code.

HISTORY

1. New section filed 3-29-88; operative 4-28-88 (Register 88, No. 16).
2. Repealer and new section filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56074. Accounting for Funds.

Each community college district shall establish a unique budget identifier code to separately account for all funds provided pursuant to this subchapter. The district shall certify through fiscal and accounting reports prescribed by the Chancellor that all funds were expended in accordance with the requirements of this subchapter.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310-12 and 84850, Education Code.

HISTORY

1. New section filed 3-29-88; operative 4-28-88 (Register 88, No. 16).
2. Repealer and new section filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56076. Other Resources.

As a condition of receiving funds pursuant to this subchapter, each community college district shall certify that reasonable efforts have been made to utilize all funds from federal, state, or local sources which are available for serving students with disabilities.

NOTE: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: Sections 67310-12 and 84850, Education Code.

HISTORY

1. New section filed 3-29-88; operative 4-28-88 (Register 88, No. 16).
2. Repealer and new section filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56078. Average Daily Attendance Apportionment (ADA) for Classes Offered Through DSP&S.

NOTE: Authority cited: Sections 71020, 78600 and 84850, Education Code. Reference: Sections 78600 and 84850, Education Code.

HISTORY

1. New section filed 3-29-88; operative 4-28-88 (Register 88, No. 16).
2. Repealer filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56080. Determination of Direct Excess Costs.

NOTE: Authority cited: Sections 71020, 78600 and 84850, Education Code. Reference: Sections 78600, and 84850, Education Code.

HISTORY

1. Repealer and new section filed 3-29-88; operative 4-28-88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56082. Adjustments to Allocation.

NOTE: Authority cited: Sections 71020, 78600 and 84850, Education Code. Reference: Sections 78600 and 84850, Education Code.

HISTORY

1. Repealer and new section filed 3-29-88; operative 4-28-88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56084. District Fiscal Responsibility and Contribution.

NOTE: Authority cited: Sections 71020, 78600 and 84850, Education Code. Reference: Sections 78600 and 84850, Education Code.

HISTORY

1. Repealer and new section filed 3-29-88; operative 4-28-88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56088. Expenses Not Funded.

NOTE: Authority cited: Sections 71020, 78600 and 84850, Education Code. Reference: Sections 78600 and 84850, Education Code.

HISTORY

1. New section filed 3-29-88; operative 4-28-88 (Register 88, No. 16).
2. Repealer filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56088. Other Support Funds.

NOTE: Authority cited: Sections 71020, 78600 and 84850, Education Code. Reference: Sections 78600 and 84850, Education Code.

HISTORY

1. Repealer and new section filed 3-29-88; operative 4-28-88 (Register 88, No. 16). For prior history, see Register 83, No. 18.
2. Repealer filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

Subchapter 2. Extended Opportunity Programs and Services*

NOTE: Authority cited: Sections 66948, 66952, 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42 of the Education Code.

HISTORY

1. Repealer of Chapter 2 (Sections 56100-56198) filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46). For prior history, see Registers 78, No. 3; 74, No. 26; 73, No. 26; 72, No. 29; 71, No. 8; and 70, No. 50.

*Chapter 2 (Sections 56100-56198) superseded by provisions of Chapter 2.5 (Sections 56200-56296) as of 7-1-77.

Subchapter 2.5. Extended Opportunity Programs and Services

Article 1. General Provisions and Definitions

§ 56200. Implementation.

This chapter implements, and should be read in conjunction with, Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code. The definitions in this article apply to the requirements of this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New Chapter 2.5 (Sections 56200-56296, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).
2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).
3. Repealer of Chapter 2.5 (Sections 56200-56296, not consecutive) and new Chapter 2.5 (Sections 56200-56293, not consecutive) filed 8-10-79; effective thirtieth day thereafter (Register 79, No. 32). For prior history, see Registers 77, No. 34; 77, No. 45; 78, No. 26 and 78, No. 39.
4. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
5. Repealer of Subchapter 1 heading, amendment of Article 1 heading, and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
6. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56201. Waiver.

The Chancellor is authorized to waive any part or all of Articles 3 and 5. Waiver requests must be submitted to the Chancellor in writing by the district superintendent/chancellor setting forth in detail the reasons for the request and the resulting problems caused if the request were denied.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56202. Full-Time Student.

"Full-Time Student" means a student, who during a regular semester or quarter, is enrolled in a minimum of 12 credit units or the equivalent in community college courses. Full-time student for a summer or inter session shall be defined by the college district.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56203. Participation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56204. Student Served.

For purposes of allocating EOPS funds, conducting audits and evaluations, an EOPS student served is a person for whom, at minimum, the EOPS program has documentation in the student's file of an EOPS application, Educational Plan, and Mutual Responsibility Contract developed pursuant to Section 56222(c).

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Registers 83, No. 18 and 81, No. 3.

§ 56206. EOPS Information.

The Chancellor shall require districts receiving EOPS funds to identify students served and the level and type of programs and services each student received.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56208. Advisory Committee.

Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The purpose of the advisory committee is to assist the college in developing and maintaining effective extended opportunity programs and services. The term of each committee member shall be for two years, July 1 of the year of appointment to June 30 of the second succeeding year. Members may serve more than one term. The committee shall consist of no fewer members than the members of the local Board of Trustees. Members shall serve without compensation. Members may be reimbursed for necessary expenses incurred in performing their duties. The advisory committee should include representation from college personnel, EOPS students, local or feeder high schools, community and business sectors, and four-year colleges where possible. The Advisory Committee shall meet at least once during each academic year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56210. Comparable Level of Services.

Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three-year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.
2. Editorial correction of NOTE (Register 97, No. 46).

§ 56211. Evaluation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56215. Effect of Article.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

§ 56216. Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

§ 56217. Income Ceiling Adjustment.

NOTE: Authority cited: Sections 69648, 69652, and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY

1. New section filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19). For prior history, see Register 81, No. 3.
2. Repealer of Article 3 heading and Section 56217 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

(The next page is 361.)

§ 56218. Curriculum Development.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56219. Depressed Area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 2. Student Eligibility and Responsibility

§ 56220. Eligibility for Programs and Services.

To receive programs and services authorized by this chapter, a student must:

(a) be a resident of California pursuant to the provisions of Part 41 commencing with Section 68000 of the Education Code.

(b) be enrolled full-time when accepted into the EOPS program. The EOPS director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units.

(c) not have completed more than 70 units of degree applicable credit coursework in any combination of post-secondary higher education institutions.

(d) qualify to receive a Board of Governors Grant pursuant to Section 58620(1) or (2).

(e) be educationally disadvantaged as determined by the EOPS director or designee. In making that determination the EOPS director shall consider one or more of the following factors:

(1) not qualified at the college of attendance for enrollment into the minimum level English or mathematics course that is applicable to the associate degree.

(2) not have graduated from high school or obtained the General Education Diploma (G.E.D.).

(3) graduated from high school with a grade point average below 2.50 on a 4.00 scale.

(4) been previously enrolled in remedial education.

(5) other factors set forth in the district's plan submitted to the Chancellor pursuant to Section 56270 of this part.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56221. Encumbrance.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56222. Student Responsibility.

To remain eligible to receive programs and services, students shall:

(a) apply for state and/or federal financial aid pursuant to the applicable rules and procedures of the college of attendance.

(b) maintain academic progress towards a certificate, associate degree, or transfer goal pursuant to the academic standards established by the college of attendance applicable to all credit enrolled students.

(c) file an initial EOPS application and complete and adhere to a student educational plan and an EOPS mutual responsibility contract for programs and services.

(d) within two months of acceptance into the EOPS program, provide income documentation from state or federal income tax forms, or public assistance documentation pursuant to Section 58620 (2) of this part, or other documentation as required for financial aid by the college of attendance.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Section 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56223. EOPS Student.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56224. Eligibility for EOPS Financial Aid.

To receive EOPS financial aid a student shall:

(a) be eligible for and receive programs and services pursuant to Sections 56220 and 56222 above.

(b) demonstrate financial need according to the rules and procedures established for financial aid at the college of attendance.

(c) have need for EOPS financial aid in accordance with Sections 56252 and 56254 of this Chapter.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56225. Governing Board.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

§ 56226. Limitations on Eligibility.

A student who has met the eligibility requirements of Sections 56220 and 56222, and who participates without term-to-term interruption, shall continue to be eligible until the student:

(a) has completed 70 degree applicable credit units of instruction, or has completed consecutively six semester terms or nine quarter terms of enrollment. Time spent by the student enrolled in remedial courses, including remedial level English as a Second Language courses, shall not be included when computing the requirements of this sub-section. The EOPS Director may waive this limitation only in cases where students are enrolled in programs which require more than 70 units, or which require prerequisites that would exceed the limitations.

(b) has failed to meet the terms, conditions, and follow-up provisions of the student education plan and/or the EOPS mutual responsibility contract.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56227. Multicultural Studies.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56228. Grandfather Provision.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
3. Repealer filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 56229. Program.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 3. Program Standards

§ 56230. Full-Time EOPS Director.

Each college receiving EOPS funds shall employ a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities. Colleges having less than full-time EOPS director positions may continue such positions upon approval of the Chancellor. The Chancellor shall consider the number of students served, the size of the EOPS staff and budget, and the scope and level of services offered when approving requests for less than full-time EOPS director positions.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56231. Special Projects.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56232. Outreach, Orientation, and Registration Services.

Each college receiving EOPS funds shall provide access services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:

- (a) outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college.
- (b) orientation to familiarize EOPS eligible students with: the location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology (e.g., grade points, units), course add and drop procedures and related rules; financial aid application procedures; and transfer procedures to four-year institutions.
- (c) registration assistance for priority enrollment pursuant to Section 58108 of this Part.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56233. Student Contact Hours.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56234. Assessments.

Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the college president certi-

fies are reliable, valid, and appropriate for students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum, include:

- (a) course and placement tests in reading, comprehension, vocabulary, writing, and computations.
- (b) diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.
- (c) study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.
- (d) support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extracurricular pursuits).

(e) assessment instruments that are not culturally or linguistically biased.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56235. Target or High Priority Area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56236. Counseling and Advisement.

Each college receiving EOPS funds shall provide counseling and advisement to EOPS-eligible students of at least three contact sessions per term for each student as follows:

- (a) a contact session which combines interview interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.
- (b) an in-term contact session to ensure the student is succeeding adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success.
- (c) a term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes; or to make future plans if students are leaving the EOPS program or the college.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment of subsection (b) filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. New Article 2 heading and amendment of subsection (c) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56237. Independent Student Criteria.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69506, 69640, 69641, 69642 and 69650, Education Code.

HISTORY

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Amendment of section heading and subsection (a)(2) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

3. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56238. Basic Skills Instruction and Tutoring Services.

Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment of subsection (d) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56239. Priority in Serving Students.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56240. Transfer and Career Employment Services.

Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate college and EOPS staff shall attempt to articulate coursework and support services needed by EOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to EOPS.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56241. Outline.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56243. Deadlines.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56244. Applications.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56245. Scope and Appropriateness.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56246. Maintenance of Effort.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56247. Advisory Committee.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56248. Evaluation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649 and 69650, Education Code.

HISTORY

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56250. Effect.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer of Article 2 heading and Section 56250 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56251. Evaluation by Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

Article 4. EOPS Financial Aid Standards

§ 56252. Purpose.

Financial assistance in the form of EOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to EOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after Pell grants and other state, federal or institutional financial aid has been awarded to the student.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56253. Approved Plan Required.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56254. EOPS Grants and Workstudy Awards.

(a) Grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.

(b) Workstudy awards shall not exceed \$1,800 per academic year, or the amount of a student's unmet need, whichever is less. Contracts with private industry may be utilized to place EOPS workstudy students.

(c) No combination of EOPS grant and workstudy awards may exceed \$1,800 or exceed the amount of a student's unmet need, whichever is less in an academic year.

(d) EOPS grants shall be disbursed to each student equally among terms in the college academic year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56255. Priority in Funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56256. Award Procedures.

(a) Financial aid offices shall award and disburse EOPS grant and workstudy funds according to college procedures upon the authorization of the EOPS office.

(b) EOPS offices shall authorize EOPS grant and workstudy awards such that:

- (1) Awards are distributed as evenly as possible between dependent and independent students.
- (2) Priority in awards is given to dependent or independent students having the lowest family or personal incomes, respectively.

(c) EOPS offices may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56257. Funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69648 and 69652, Education Code.

HISTORY

1. Amendment of subsection (b) filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Amendment of subsection (c) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56258. Emergency Loans.

EOPS programs may establish an emergency loan program for EOPS students to meet unexpected or untimely costs for books, college supplies, transportation and housing, subject to the following provisions:

(a) loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.

(b) loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.

(c) the total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No.40). For prior history, see Register 83, No. 18.

§ 56259. Effective Program Experience.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 5. Staffing Standards

§ 56260. Staff.

EOPS shall be provided by certificated director, instructors and counselors and other support staff employed by the governing board of the community college district. All staff funded by EOPS who are not super-

vised by the EOPS Director shall be accountable to the EOPS Director for the services rendered to EOPS students pursuant to the approved EOPS program plan.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56262. Director Qualifications.

(a) The EOPS Director must meet the minimum qualifications for a student services administrator as specified in section 53420 of this part, or must possess a Community College Supervisor Credential.

(b) In addition, an EOPS Director hired after October 24, 1987, must have, within the last four years, two years of experience or the equivalent:

(1) In the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or,

(2) As a community college EOPS counselor or EOPS instructor, or have comparable experience in working with disadvantaged clientele.

(c) In addition, an EOPS director hired after October 24, 1987, shall have completed a minimum of six units of college-level course work predominantly relating to ethnic minorities or persons handicapped by educational, language, or social disadvantages.

NOTE: Authority cited: Sections 69648, 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
2. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code, section 70901.5(b).
3. Editorial correction of printing error in subsection (a) (Register 91, No. 29).

§ 56264. Counselor Qualifications.

(a) EOPS "Counselors" are those persons designated by the community college to serve as certificated counselors in the EOPS program and must possess the Community College Counselor Credential or possess a master's degree in counseling, rehabilitation counseling, clinical psychology, counseling psychology, guidance counseling, educational counseling, social work, or career development, or the equivalent, and

(b) In addition, EOPS counselors hired after October 24, 1987, shall:

(1) Have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages or,

(2) Have completed six semester units or the equivalent of a college-level counseling practicum or counseling field-work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social, or economic disadvantages and,

(c) In addition, an EOPS counselor hired after October 24, 1987, shall have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
2. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Article 6. Plans and Priorities

§ 56270. Contract Plan.

(a) Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of this chapter for each college within the district which intends to conduct an EOPS pro-

gram. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor. Changes to the program plan may be made only with the prior written approval of the Chancellor.

(b) The Chancellor will notify in writing those districts which submit plans on or before the deadline set pursuant to section 56274 of this part within ninety (90) days of that deadline whether the district's plan is complete and whether the plan is approved or disapproved. If the plan is disapproved, the Chancellor will notify the district how the plan is deficient. If a district plan is disapproved, the district may resubmit the plan and the Chancellor will approve or disapprove the resubmitted plan within ninety (90) days of its receipt.

(c) The Chancellor's median, minimum and maximum times for approving district plans for EOPS, from the receipt of the initial plan to final approval of the plan, for fiscal years 1984-85 and 1985-86 are 245 days, 43 days and 610 days respectively. These times may include repeated resubmissions of plans by some community college districts. The estimated time lapse from initial receipt to the first action of approval or disapproval is estimated to be 87 days.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.
2. Editorial correction of printing error restoring section heading (Register 91, No. 29).

§ 56271. Approved Programs and Services.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56272. Outline.

Each plan shall address the following:

- (a) the long-term goals of the EOPS program in supporting the goals of the college and the goals adopted for EOPS by the Board of Governors.
- (b) the objectives of the EOPS program to be attained in the fiscal year for which EOPS funds are allocated.
- (c) the activities to be undertaken to achieve the objectives, including how the college plans to meet the standards set forth in Articles 3, 4, and 5 of this Chapter.
- (d) an operating budget which indicates the planned expenditures of EOPS funds, and of other district funds to be used to finance EOPS activities.
- (e) the number of students to be served.
- (f) an evaluation of the results achieved in the prior year of funding.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56274. Deadlines.

The Chancellor's Office shall annually establish a final date for the submission of EOPS plans and shall notify districts of this date and distribute the forms for the submission of the plan not less than 90 days prior to that date. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56276. Review and Approval of District Plans.

All plans and requests for funding submitted on or before the deadline shall be reviewed and evaluated by the Chancellor. The Chancellor shall approve plans for funding in whole or in part.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Registers 83, No. 18 and 81, No. 3.

§ 56277. Necessity of Subchapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

§ 56278. Program Evaluation by the Chancellor.

Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56279. Accrual Basis.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56280. Priorities in Serving Students.

Each plan shall incorporate the priorities of this Section in the order presented when serving students from among those who are eligible pursuant to Section 56220. The purpose of these priorities is to ensure that colleges strive to achieve and maintain a racial, ethnic, and gender composition among income eligible students served which matches the racial, ethnic, and gender composition by income group of eighteen years and above who reside in the college service area.

(a) priority in outreach and recruitment services shall be directed towards correcting the greatest underrepresentation among students served. Additional priority among underrepresented students shall be given to serving individuals who are the first in their family to attend college.

(b) priority in serving students enrolled at the college shall be:

- (1) serving continuing EOPS students with the lowest income.
- (2) serving continuing EOPS students with the lowest income who are transferring from another EOPS program conducted by a community college.
- (3) serving first-time EOPS students with the lowest income.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56281. Accounting Procedures.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56282. State Sources.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer of Article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56283. Other Sources.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56284. Expenditures.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56285. Direct Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56286. Income Ceiling Adjustment.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56287. Indirect Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56288. Purpose of Indirect Expense Account.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56289. Capital Outlay Expenditures.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 7. Funding and Expenditures**§ 56290. Income and Expenditure Accountability.**

Districts shall maintain separate accounts for monies provided for, and expended in, support of EOPS activities by specific line item.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Renumbering of former Article 3 to Article 5 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56291. Discretionary Funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69651, and 69652, Education Code.

HISTORY

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56291.1. Direct Aid to Students.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69650 and 69652, Education Code.

HISTORY

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56291.2. Curriculum Development.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56292. Adjustment to Allocations.

The Chancellor may adjust the allocation to any college during a fiscal year for one or more of the following reasons:

(a) to correct over or under allocated amounts in any of the three prior fiscal years.

(b) to correct for over or under utilization of allocated amounts in the current fiscal year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment of subsection (e) filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56293. District Fiscal Responsibility and Contribution.

Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide to EOPS students who need them the same programs and services the college offers to all of its credit enrolled students. The district shall fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. Districts accepting EOPS funds will be required to pay the salary of the EOPS director at the rate of at least 50% of salary and benefits for 1987-88 and 100% of salary and benefits for 1988-89 and every year thereafter.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56294. EOPS Supplemental Costs.

Colleges shall expend EOPS funds only for programs and services which are over, above, and in addition to the costs which are the district's responsibility as defined in Section 56293.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56295. Expenditures Allowed.

(a) Colleges may expend EOPS funds to meet the EOPS supplemental costs as defined in Section 56294 for personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-6000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less.

(b) Requests to purchase computer hardware and/or software shall be approved by the district superintendent/president prior to transmittal for approval by the Chancellor.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56296. Expenditures Not Allowed.

EOPS funds shall not be expended for the following:

- (a) college administrative support costs (e.g., staff of the business office, bookstore, reproduction, staff at the dean salary level and above).
- (b) indirect costs (e.g., heat, lights, power, janitorial service).
- (c) political or professional association dues and/or contributions.
- (d) costs of furniture (chairs, desks, coat hangers, etc.)

[The next page is 367.]

(e) costs of construction, remodeling, renovation, or vehicles.

(f) travel costs other than travel costs of EOPS staff and students for EOPS activities or functions.

Except for items (a) through (c) above, waivers may be approved by the Chancellor on a case-by-case basis.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56297. Special Projects and Incentives.

(a) The Chancellor may allocate funds for recommended special projects which seek to benefit the statewide, regional, or local conduct of EOPS programs, provided that no special project duplicates college or EOPS activities.

(b) Special projects shall be recommended by the advisory committee established pursuant to Section 69643 of the Education Code.

(c) Funding for special projects shall consist of amounts set aside for this purpose in the Governor's Budget. The Chancellor may redirect funds released pursuant to Section 56292 to fund additional special projects.

(d) Colleges which demonstrate outstanding effectiveness based upon evaluations conducted pursuant to Section 56278 of this Chapter shall receive priority consideration for use of special project funds or other funds which may be released pursuant to Section 56292.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56298. EOPS Financial Aid Restriction.

In each fiscal year the colleges shall expend for EOPS grants and work-study an amount equal to that expended in the prior fiscal year, unless waived by the Chancellor, for the following reasons:

- (a) to establish a book service program.
- (b) the college allocation was corrected pursuant to Section 56292.
- (c) to meet the requirements of Article 3.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

Subchapter 3. Educational Programs and Services for Students with Learning Disabilities

§ 56350. Purpose.

NOTE: Authority cited: Section 71020, Education Code. Reference: Sections 71023, 78012, 78440, 78441, 78442 and 78600, Education Code.

HISTORY

1. New Chapter 3 (Sections 56350-56360, not consecutive) filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19). For prior history, see Registers 72, No. 44 and 76, No. 51.
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 3-29-88; operative 4-28-88 (Register 88, No. 16).

§ 56352. Definitions.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 71023, 76320, 78012, 78405 and 78440, Education Code.

HISTORY

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 3-29-88; operative 4-28-88 (Register 88, No. 16).

§ 56354. Programs Operated Pursuant to Education Code Section 78440.

NOTE: Authority cited: Sections 71020, 76300, 78405 and 78440, Education Code. Reference: Sections 78403, 78405 and 78440, Education Code.

HISTORY

1. Amendment of subsection (b) filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 3-29-88; operative 4-28-88 (Register 88, No. 16).

§ 56356. Programs Operated Pursuant to Education Code Section 78012.

NOTE: Authority cited: Sections 71020, 76300 and 78405, Education Code. Reference: Sections 78012 and 78405, Education Code.

HISTORY

1. Amendment filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 3-29-88; operative 4-28-88 (Register 88, No. 16).

§ 56358. Programs Operated Pursuant to Education Code Section 78800 et seq.

NOTE: Authority cited: Sections 71020, 76300, Education Code. Reference: Chapter 797, Statutes of 1979.

HISTORY

1. Repealer filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).

§ 56360. Programs Operated Pursuant to Education Code Section 78600 et seq.

NOTE: Authority cited: Sections 71020, 76300, Education Code. Reference: Chapter 797, Statutes of 1979.

HISTORY

1. Repealer filed 11-15-79; effective thirtieth day thereafter (Register 79, No. 46).

Subchapter 4. The Community College Real Estate Education Endowment Fund

§ 56600. Purpose.

The purpose of this chapter is to provide for the advancement of real estate education through the Real Estate Education Scholarship Program and the Real Estate Education Special Projects Program and to provide for the administration of those programs.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 10450.6 and 10451.5, Business and Professions Code.

HISTORY

1. New chapter 4 (sections 56600-56628, not consecutive) filed 10-30-75; effective thirtieth day thereafter (Register 75, No. 44).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 4 (subchapters 1 and 2, sections 56600-56628, not consecutive) and new chapter 4 (sections 56600-56617, not consecutive) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section and NOTE filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 56602. Chancellor's Community College Real Estate Education Endowment Fund Advisory Committee.

The number of individuals on the Advisory Committee shall be determined by the Real Estate Commissioner and the Chancellor. The Chancellor shall appoint the Advisory Committee.

Membership on the Advisory Committee shall include equal representation from the real estate licensees and California community colleges with consideration of geography, ethnicity and gender, the Real Estate Commissioner and the Chancellor or their authorized representative; and such additional representation as the Chancellor and Real Estate Commissioner deem appropriate.

EXHIBIT 5
COPIES OF EXECUTIVE ORDERS CITED

EOPS

(Extended Opportunity Programs & Services)

Implementing Guidelines



**January 2002
(revised)**

Chancellor's Office
California Community Colleges
Student Services Division

EOPS Implementing Guidelines For Title 5 Regulations

Overview

This document includes chapter 2.5 of Title 5, Regulations for EOPS, enacted in October of 1987 and the text of Implementing Guidelines including information concerning the documentation requirements for the Regulations developed by Chancellor's Office EOPS Staff.

For the purpose of organization, Title 5 text will be ***BOLD & ITALIC***. This will be followed by a policy section entitled "**IMPLEMENTATION**," and a policy section entitled "**DOCUMENTATION**".

The EOPS Title 5 Implementing Guidelines represent the consensus of the Chancellor's Office EOPS staff regarding interpretation of the current regulations with input from the EOPS programs statewide. The Guidelines are designed to provide direction and technical assistance in administering EOPS Programs. Keep in mind when using the guidelines that there are sections that overlap and need to be reference to have a full understanding of the program and requirements.

It is important to note that these Implementing Guidelines are not regulations. They represent the Chancellor's Office policies, and college staff are encouraged to utilize the guidelines in the administration of EOPS program activities. It is the responsibility of the Chancellor's Office to provide leadership and direction to EOPS college staff, and it is the responsibility of the individual colleges to establish local programs, policies and procedures in accordance with the requirements of these policies and other relevant statutes and state regulations.

College staff should also be aware that the Implementing Guidelines are subject to change as regulations and/or as interpretations change. Copies of any changes will be distributed to the colleges by the Chancellor's Office.

Additional copies of the EOPS Implementing Guidelines may be obtained by writing to:

California Community Colleges
Chancellor's Office, EOPS Unit
1102 "Q" Street, Third Floor
Sacramento, California 95814-6511

Or by accessing the Chancellor's Office website at www.cccco.edu

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**TITLE 5 REGULATIONS
CALIFORNIA COMMUNITY COLLEGES
(REGISTER 81, NO. 19-5-9-81)**

CHAPTER 2.5 E O P S

Article I. General Provisions and Requirements

56200. Implementation

This chapter implements, and should be read in conjunction with, Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code. The definitions in this article apply to the requirements of this chapter.

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code .*

IMPLEMENTATION

This section is a reference to Education Code Section 69640, the foundation for Title 5, Chapter 2.5 requirements.

5620L Waiver

The Chancellor is authorized to waive any part or all of Articles 3 and 5. Waiver requests must be submitted to the Chancellor in writing by the district superintendent/chancellor setting forth in detail the reasons for the request and the resulting problems caused if the request is denied.

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

This section gives colleges the opportunity to request a waiver pertaining to the minimum standards set forth in Article 3, Program Standards, and Article 5, Staffing Standards. Waivers are granted for a one-year period. All waivers will be valid through the end of the academic year in which they are granted. For specific waiver criteria, please review the appropriate section of interest.

DOCUMENTATION

If you cannot meet any or all of the minimum program standards requirements in Article 3, or the staffing standards outlined in Article 5, **YOU MUST SUBMIT A WAIVER REQUEST**. If you do not submit a formal waiver request, your college's EOPS Program will be held accountable for providing all of Articles 3, and staffing standards in Article 5. All waiver requests must be submitted in writing setting forth in detail the reasons for the request and the resulting problems caused if the request is denied. (Reference: Waiver criteria document by consultation).

56202. Full-Time Student.

"Full-time student" means a student who during a regular semester or quarter is enrolled in a minimum of 12 units or the equivalent in community college courses. Full-time student for a summer or inter-session shall be defined by the college district.

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

This section defines the term "Full-time Student" and takes into consideration both semester and quarter colleges. At least 90% of those students accepted into the EOPS Program at your college must be enrolled in a minimum of 12 units or the equivalent, at the time of acceptance. Equivalent is interpreted to include certain vocational programs, such as nursing, cosmetology, and some court recording programs, etc. EOPS may consider as full-time any course work, or combination of course work and lab time that the college considers full-time. Summer "Full-time equivalent" may also be defined by local policy, i.e., whatever your college has declared to be full-time equivalent may also be used by EOPS. Example: colleges may define 4 summer units as "full-time," while others use 6 units. EOPS programs should provide reasonable accommodations and allow program admittance for a disabled student whose disability prevents or limits full-time enrollment. For additional information on disabled students who are less than full-time and require accommodation, refer to the documentation section on page 5.

DOCUMENTATION

Verification of "Full-Time student enrollment" should be placed in each student's file (hard copy or electronic) in the form of enrollment sheets or transcripts. Chancellor's Office staff will accept whatever resource document that is compatible with campus procedures and meets the verification requirement. However, the document should represent an official college document verifiable at the Admissions and Records Office or the computer system the college maintains. Student documentation may be in hard copy or electronic form.

For those colleges on a quarter system, EOPS students must enroll in at least 8 units to be considered enrolled three-quarter time (equivalent to 9-11.5 units for semester unit students). For reporting purposes, colleges with EOPS Programs will have to identify their program as a quarter system program so that students' reports in 8 units will not be deleted from MIS Student Data Reports by the Chancellor's Office.

The documentation for those **disabled students** whose education plan limits full-time enrollment, should include: a description of the disability, the limiting effects of the disability which prevents or limits full-time enrollment, and verification of the disability by an appropriate certificated campus professional. Both the Education plan and information should be coordinated with the Disabled Student Services Office. In general, disabled students should be referred to the EOPS Office after they have received special assistance from the Disabled Student Services Office. Disability documentation does not have to be in the EOPS Office. However, documentation should be made available to the Chancellor's Office staff upon request and maintained somewhere on campus. The recommended academic fulltime equivalent based on disability should be stated on the student's Educational Plan. Disabled students who qualify for the EOPS Program who are less than full-time are not considered as part of the 10% limit.

56204. Students Served.

For purposes of allocating EOPS funds, conducting audits and evaluations, an EOPS student served is a person for whom, at minimum, the EOPS Program has documentation in the student's file of an EOPS application, Educational Plan, and Mutual Responsibility Contract developed pursuant to Section 56222 (c).

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

A student does not have to receive EOPS direct aid to be counted as "served." However, the student's file must contain the required documents. In addition, to be counted as "served", the student must attend at least one class during the term. Enrollment does not necessarily equate to actual attendance. If the student receives an EOPS service, such as a book voucher, but does not attend any classes, that student cannot be counted as "served" for that term.

Each program must have an EOPS application. The information contained in the application should assist with the eligibility determination.

In general, an Educational Plan addresses specific needs of educationally disadvantaged students and is one of the basic foundations of over-and-above services offered by the EOPS program. The comprehensive educational plan is important to the EOPS/CARE students and should include a long-term sequence of courses to be taken and a specific timeframe for their completion. It is not just a list of standard course requirement. **To be optimally beneficial to EOPS students, the Educational Plan should include a sequenced multi-term road map of all courses agreed upon by both the student and counselor necessary to meet the student's educational needs and goals.**

The plan should offer students a visual timeline of required coursework needed to complete their individualized educational goals, including certificate, associate degree, transfer objective, or a combination of any of the above. The EOPS Educational Plan must be developed/monitored from term-to-term with a trained and certificated counselor as needed, in response to student accomplishments, achievements, and challenges. However, a student's Educational Plan may be completed in the Counseling Center, Disabled Student Services Office or elsewhere on campus; a copy must be maintained in the EOPS Office.

As a start, a two or three semester Educational Plan might be appropriate for students who are undecided about their educational goals. However, it is expected that after a maximum of two semesters, and with the assistance of certificated counselors and resources available on campus, the student should be able to identify their educational goals. The number of semesters that the plan will require will vary depending on the student's (1) educational needs and goals; (2) the student's progress toward obtaining their

educational goals; and (3) the number of degree applicable units that the student completed prior to enrolling in the program.

The Mutual Responsibility Contract is a binding document in which both parties, the EOPS program and the student, must agree to the terms and conditions of the contract. The intent of the Mutual Responsibility Contract is to demonstrate the intended level of involvement and commitment of both parties toward the achievement of the student's educational goal. The Mutual Responsibility Contract specifies what services the student may receive and the roles, responsibilities, and expectations of both parties.

- (a) The EOPS student agrees to meet with a counselor to establish an educational goal and to develop an Education Plan.
- (b) The EOPS student agrees to adhere to the Education Plan and the Mutual Responsibility Contract.
- (c) The student agrees to make academic progress toward an education goal.
- (d) The student agrees to meet with EOPS staff, e.g., the EOPS Counselor, the Director, or peer advisors in order to comply with the program standard of at least three (3) counseling and/or advisement sessions per term.
- (e) The student agrees to provide income documentation as required by local financial aid verification policy, within two (2) months of acceptance into the EOPS Program if the student is to receive an EOPS grant or workstudy.
- (f) The EOPS program agrees to provide support services to assist the EOPS students in meeting their educational goals (i.e. counseling, tutoring, priority registration, books, orientation, transportation, meal, referral, transfer assistance).
- (g) The Mutual Responsibility Contract should include a date of acceptance into the EOPS Program and a place for both EOPS staff and student to sign.

Unfortunately, students targeted through early outreach functions who are not enrolled in college, or fail to complete the minimum documents required in this section, may NOT be counted as served. Also, students who completed the necessary documentation, and may have received additional services (i.e. orientation, book vouchers) but fail to attend at least one class during the term, cannot be counted as "served."

A student who was initially accepted into the EOPS program and subsequently disqualified during verification and/or re-evaluation of their application, and therefore ineligible for EOPS, cannot be counted as "served."

DOCUMENTATION

For purposes of verifying a student as "served," the appropriate documentation must be available in each student's EOPS file. The documentation should be signed by the appropriate college personnel, (e.g., EOPS Director, EOPS Counselor) along with the signature of the student served.

56206. EOPS Information.

The Chancellor shall require districts receiving EOPS funds to identify students served and the level and type of programs and services each student received.

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

This section sets forth basic requirements for each college's responsibility to provide the Chancellor's Office with program data for annual and periodic program evaluation to demonstrate statewide progress and the need for state funds.

56208. Advisory Committee.

Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The purpose of the advisory committee is to assist the college in developing and maintaining effective extended opportunity programs and services. The term of each committee member shall be for two years, July of the year of appointment to June 30 of the second succeeding year. Members may serve more than one term. The committee shall consist of no fewer members than the members of the local Board of Trustees. Members shall serve without compensation. Members may be reimbursed for necessary expenses incurred in performing their duties. The Advisory Committee should include representation from college personnel, EOPS students, local or feeder high schools, community and business sector, and four-year colleges where possible. The Advisory Committee shall meet at least once during each academic year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

In order to operate effectively and in the best interest of the EOPS Program, the advisory committee should be representative of the people with whom EOPS staff and students are in contact on a regular basis. Regulations require that the committee meet at least once each academic year. To be effective, we recommend that the committee meet twice or more during that time. Travel costs incurred by an advisory committee member related to their function as a committee member may be paid for out of EOPS funds.

DOCUMENTATION

Advisory committee meeting minutes are recommended. It is in your best interest to maintain minutes of committee meetings, as a means to measure actual committee activities and effectiveness. Minutes may be utilized to verify that the committee met at least once during the academic year. Colleges are no longer required on an annual basis to submit minutes from their advisory committee meeting or to provide a list identifying each member of the committee and their affiliations; however, such information should be available for on-site program reviews.

56210. Comparable Level of Services.

Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline.

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

The Chancellor's Office defines District Contribution as general and vocational education fund expenditures for personnel, discretionary items and financial support that are "above, beyond and in addition to" general services or functions which benefit the college's EOPS Program. Any service or function that is considered district contribution must be included in and approved as part of your program plan and also reported in your A1 Budget Report. In addition, college staff functions that are considered district contribution must be "above, beyond and in addition to" general campus functions and those EOPS functions must be either directly supervised by the EOPS Director or accountable to the EOPS Director. More specifically, a formal reporting relationship must exist between any staff providing a district contribution function to the EOPS program and the EOPS Director.

District contribution will be calculated by averaging the amount of non-EOPS funds utilized in salaries and benefits of EOPS supportive staff, along with contributions toward discretionary costs incurred in the operation of the program for the past three academic years. District funds provided as direct aid to EOPS students in the form of either grants, loans, or work-study are not included in calculations of district contributions. The reason for this is that these funds are available to all financially needy students and are not specifically earmarked for EOPS students. District contributions should not include either college administrative support costs as defined in Section 56296 or indirect costs, e.g., heat, lights, power, janitorial service, phone equipment.

When the Chancellor's Office has determined the amount of the minimum obligation toward district contribution, the college will be notified in writing. If, after calculating the college's funding obligation based on the procedures in this section, the obligation is found to be less than the EOPS Director's salary and benefits, the district will still be required to pay the director's full salary and benefits.

Article 2. Student Eligibility and Responsibility

56220. Eligibility for Programs and Services.

To receive programs and services authorized by this chapter, a student must:

- (a) *be a resident of California pursuant to the provisions of Part 41 commencing with Section 68000 of the Education Code.*
- (b) *be enrolled full-time when accepted into the EOPS Program. The EOPS Director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units.*
- (c) *not have completed more than 70 units of degree applicable credit course work in any combination of post secondary higher education institutions.*
- (d) *qualify to receive a Board of Governors Grant pursuant to Section 58620 (1) or (2).*
- (e) *be educationally disadvantaged as determined by the EOPS Director or designee. In making that determination, the EOPS Director shall consider one or more of the following factors:*
 - (1) *not qualified at the college of attendance for enrollment into the minimum level English or mathematics course that is applicable to the associate degree.*
 - (2) *not have graduated from high school or obtained the General Education Diploma (G.E.D).*
 - (3) *graduated from high school with a grade point average below 2.50 on a 4.00 scale.*
 - (4) *been previously enrolled in remedial education.*
 - (5) *other factors set forth in the district's plan submitted to the Chancellor pursuant to Section 56270 of this part.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

- (a) California residence requirements include the following:

Section 68017 of the California Education Code requires a student to have established residence "in the state for more than one year immediately preceding the residence determination date." Although both the Board of Governors Grant application (BOGG) and the FAFSA application include a statement designed to certify state residency, it should not conflict with the residence status determined by the Admissions and Records Office.

DOCUMENTATION

Verification of state residency for EOPS applicants is determined by Admissions and Records where documentation is on file. If the student is required to pay out of state tuition for the current term, he or she is not a California resident and not eligible for the EOPS Program. If a student has been determined

to be a California resident and the Admissions and Records Office at a later date changes his/her residency status, that student is no longer eligible for EOPS, nor counted as "served".

IMPLEMENTATION

- (b) Full-time enrollment requirements, (see Section 56202 "Full-Time student") also includes the following:

When determining a student's enrollment status, all units are counted, e.g., if a student enrolls in 3 units of remedial education, 3 units of ESL, and 6 units of degree applicable course work, the student is considered full-time (12 units). A student who is accepted into the program in the appropriate number of units (12 or more for full-time, and 9-11.5 for part-time), and who then drops below 9 units may still receive services and may be counted as an eligible EOPS student for reporting purposes. EOPS students may drop to 6 units, and continue to receive EOPS and/or other financial aid, in keeping with the policies of the financial aid office. In addition, if the student is on financial aid probation, and that policy differs from college academic probation, the student may continue to receive EOPS grant funds as deemed appropriate by the EOPS Director.

DOCUMENTATION

A student's enrollment status should be determined at the time he/she is accepted into the program, and may not be changed within the same reporting year. The number of eligible students accepted into the program enrolled part-time (9-11.5 units) may not exceed 10% of the program's total eligible population that same year. For example, if a student is admitted into the program when enrolled in 9-11.5 units, that student's status may not be changed to full-time for reporting purposes for that year, even if he/she subsequently enrolled in 12 or more units that same year. Similarly, students who are accepted into the program as full-time, but who subsequently enroll in less than 12 units within the same year should be reported as full-time for that year. **REMEMBER:** Students must continue to adhere to their Educational Plans, and any program changes must be approved by an EOPS counselor.

IMPLEMENTATION

- (c) not have completed more than 70 degree applicable units includes the following requirements:

A student may not be accepted into the EOPS Program if they have completed more than 70-degree applicable college units. All degree applicable credit units earned at any college, including units earned during summer sessions, must be counted toward the 70-unit limit. In addition, students who have been issued a foreign degree are not to be considered EOPS eligible, unless the community college does not accept any or all of that degree as equivalent to college credit. If the college of attendance accepts the units in question toward the completion of any degree requirements offered, then those designated units must be included in computation of units toward the 70 unit restriction for EOPS eligibility. More specifically, the term "degree applicable" does not include basic skills, remedial ESL courses unless those courses can be utilized toward meeting any degree unit requirements. Also, this sub-section defines any and all degree applicable units to include those units completed, even when a student changes his/her major or educational goal. Remember, it is the unit restriction which prohibits

acceptance into the program, which is different than the limit of 70 units after acceptance into the program.

The program may have a policy limiting the number of units completed to less than 70 for eligibility purposes, but not one for allowing more. A written policy may be appropriate and included as part of your EOPS consumer information.

DOCUMENTATION

Transcripts maintained and received by the college Admissions and Records Office should be utilized to verify the number of degree applicable units at the time of acceptance into the EOPS Program. The Chancellor's Office staff will accept the designation of units determined by the college's authorized policy of evaluation for degree level course work. The college catalog should assist EOPS staff in determining degree applicable units; however, please refer any question you may have to your college staff person assigned to course evaluation or articulation functions.

IMPLEMENTATION

(d) qualify for a Board of Governors Grant (BOGG) under Method A or B:

There are two different ways an EOPS applicant may be determined eligible using Board of Governors Grant (BOGG) criteria:

Method A

A student is eligible if, at the time of enrollment, he or she receives public assistance and specifically is:

1. A recipient of benefits under the TANF or CalWORKs program (formally the AFDC program);
or
2. A recipient of benefits under the Supplemental Security Income (SSI) program or SSP; or
3. A recipient of benefits under the General Assistance program (GA).

DOCUMENTATION

Method A: Documentation verifying the receipt of public assistance benefits must be provided as required by your local college policy concerning the BOGG-Program. However, acceptable documentation may include but not be limited to the following:

TANF or SSI recipients may provide:

- ◆ Medi-Cal Card with the appropriate agency code, indicating service for TANF or SSI, issued in the student's name (or the parent's name) for the same month in which the BOGG-or EOPS application is filed or one calendar month before; or
- ◆ TANF or SSI Warrant or check issued in the student's name (or the parent's name) for the same month in which the EOPS or BOGG-application is filed or one calendar month before;
or

- ◆ Agency Certification or Untaxed Income Verification Form. This form may be obtained from the Financial Aid office and must be completed by the Welfare Office/Social Services or Social Security Office.

General Assistance recipients may provide:

- ◆ Agency Certification or Untaxed Income Verification Form. This form may be obtained from the Financial Aid Office, and must be completed by the Welfare Office or Social Services.
- ◆ (Please note that it is possible to use other documentation that is agreed upon between your community college/district and the local County Social Services or Welfare Office. Ask the Financial Aid Office for details.)

Method B

A student is eligible if he or she is:

1. A single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of one; or
2. A married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less of two; or
3. A student who is dependent, married or a single head of household, in a family having a total income in the prior year of equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size; or
4. A student is determined to have a zero EFC.

The following chart includes the income standards for 2001-02. Please reference the Board of Governors Fee Waiver Program Manual for updated information or contact your Financial Aid Office.

| 2001-02 Income Standards | |
|-------------------------------|-------------|
| Family Size | 2000 Income |
| 1 | \$12525 |
| 2 | \$16875 |
| 3 | \$21225 |
| 4 | \$25575 |
| 5 | \$29925 |
| 6 | \$34275 |
| 7 | \$38625 |
| 8 | \$42975 |
| each additional family member | \$4350 |

There are allowances for the use of "professional judgment" in determining the dependency status of EOPS applicants. To determine eligibility for EOPS the dependency status of a student may be based on the use of professional judgment as determined by the Financial Aid Office at the college. Please note that professional judgment cannot be used for income.

DOCUMENTATION

Documentation required to verify taxable and/or untaxed income must be provided in accordance with the Financial Aid Office policy of the college of attendance. Financial Aid procedures generally require the verification of income based upon the 1040 Federal Tax Form or the Certification of Non-Filing of Taxes through Income Certification or Untaxed Income Verification forms. Students accepted in the EOPS Program are given two (2) months to obtain this information and/or documentation and provide it to the Financial Aid office. EOPS staff should not collect income documentation. This is the responsibility of the Financial Aid office staff.

After a student receives a BOGG and the student's fees are waived, the EOPS Office should assist the student in their responsibility for having the minimum documentation required by your respective campus policy for financial aid income verification to be on file on campus after the two month grace period. If the Financial Aid Office requires no more than self-certification, the self-certification will be sufficient for EOPS. The FAFSA application should be on file in the Financial Aid Office for students receiving Part C funds. If, for some reason a student has a completed financial aid file and meets BOGG eligibility criteria for Method A or B, the information in the file in the Financial Aid office may be used in lieu of a BOGG application. Please be aware that in the event of an EOPS validation, for those colleges who practice self-certification, students may be required to provide income documentation at the time of the validation review. Certification statements are included on both the BOGG and FAFSA application which stipulate "if asked by an authorized official, I agree to give proof of the information that I have given on this form."

Please note that students who qualify for a BOGG under Method C may be considered EOPS eligible if they meet the criteria out-lined for Method A or B. It does not matter what kind of BOGG method a student receives a grant under. What matters is whether the student meets the criteria outlined for Method A or B. In addition, if a financial aid program moves to anything less than 100% verification of student records, EOPS will not be expected to collect income-related documentation for any students whose files are not selected or not included in the verification process identified by the Federal Department of Education or EOPS Validation process.

A student who has been determined eligible for Board of Governors Waiver (BOGW) A or B and subsequently determined to be ineligible for a BOGW in the next academic year or term, continues to be eligible for EOPS services within the specified eligibility limitations, e.g., 6 consecutive semesters or 70 degree applicable units. This interpretation does not apply if the student supplied false information or is determined to be a non-California resident at a later date.

IMPLEMENTATION

(e) educational disadvantaged requirements include the following:

A student is educationally disadvantaged if:

1. he/she does not qualify for the minimum level English or Mathematics course work required for an associate degree at the college of attendance (i.e. English Composition or Algebra); or
2. he/she did not graduate from high school or obtain the general Education Diploma (GED) or Proficiency Certificate; or
3. he/she graduated from high school with a grade point average below 2.50 on a 4.00 scale; or

4. he/she was previously enrolled in remedial education courses; or
5. if he/she meets other factors as set forth in accordance with the district's approved program plan.

An EOPS applicant needs only to meet one of the five criteria to be considered educationally disadvantaged. *"It is the intent and purpose of the Legislature in establishing the California Community College Extended Opportunity Programs and Services (EOPS) to encourage local community colleges to establish and implement programs directed to identifying those students affected by language, social, and economic handicaps."*

To date, the only factors approved by the Chancellor's Office for criteria #5 are:

- A. The student is a first generation college student (neither parent has successfully attended college); or
- B. The student is a member of an underrepresented group targeted by district/college student equity goals; or
- C. The student and/or the parents are non-native English speakers.
- D. The student is an emancipated foster youth.

Criteria #5 may be considered for eligibility determination only if the student does not meet one of the first four criteria. College may choose not to use any factors in #5. If colleges choose to not use #5 or only part of #5, they need to have a written policy to such, and all students must be treated equitably.

DOCUMENTATION

For Criteria #1, EOPS staff should rely on college assessment and placement scores, as stipulated in Section 56234.

For Criteria #2 & #3, documentation may be transcripts from high school or other educational institutions (i.e. Adult Education, Correctional Institutions, Armed Forces). If the information is not available, it is the responsibility of the EOPS Office to obtain a copy of high school transcripts or adequate documentation from another official source (college admissions application or certification of education level) in order to document a student's eligibility for Criteria #2 and #3.

For Criteria #4 Staff must have a copy of high school or other educational institution transcripts to document student enrollment in previous remedial education courses. This documentation must be in the student's EOPS file or available through other resources on campus.

Note: for those students whose high school records are unavailable (e.g., refugees or re-entry students), self-certification, along with a written explanation and EOPS Director's sign-off, is acceptable.

Criteria #5 should be used only in exceptional cases. Directors must attempt to make a student eligible by utilizing the first four criteria before applying any situations under Criteria #5. When considering criteria #5, the EOPS Director should also consider what the student brings to the community college environment, not what would happen as a result of not qualifying for the program.

In addition, the student's file must include documentation to show how the student's eligibility was determined. When EOPS staff assess a student's eligibility, they should be aware that a student should be in need of EOPS services which are necessary to assist them in overcoming educational barriers, not merely to provide them with grants or book services

The following are acceptable definitions for Criteria #5:

- A. Definition of First Generation College Student is neither parent has earned a Bachelor's degree. An EOPS program may adopt a policy that is more restrictive (i.e. neither parent has received an Associate degree or certificate). The student may self certify their parents level of education (i.e. parents highest level of education – grade school, high school, AA/AS, Certificate, BA/BS; post graduate).
- B. The student self certifies their ethnicity and the EOPS Director compares this to the local student equity goals to determine the underrepresented group(s) on their campus.
- C. The student may self certify that English is not the native (first) language of their parents and/or themselves.
- D. The student must provide either a legal document or certification from Department of Social Services identifying them as an emancipated foster youth.

56222. Student Responsibility

To remain eligible to receive programs and services, students shall:

- (a) apply for state and/or federal financial aid pursuant to the applicable rules and procedures of the college of attendance.
- (b) maintain academic progress towards a certificate, associate degree, or transfer goal pursuant to the academic standards established by the college of attendance applicable to all credit enrolled students.
- (c) file an initial EOPS application and complete and adhere to a student educational plan and an EOPS mutual responsibility contract for programs and services.
- (d) Within two months of acceptance into the EOPS program, provide income documentation from state or federal income tax forms, or public assistance documentation pursuant to Section 58620 (2) of this part, or other documentation as required for financial aid by the college of attendance.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.

All students must meet the requirements specified in this section without exception. It is important to have standard procedures of application and acceptance so students know exactly what is expected of them and what their program responsibilities are. To remain eligible to receive programs and services, students shall:

IMPLEMENTATION

- (a) apply for state and federal aid pursuant to the applicable rules and procedures of the college of attendance.

While students are encouraged to apply for all local, state, and federal aid they may be eligible for, they are not required to file a FAFSA to be eligible for EOPS services. Applying for the BOGW application meets the requirement of this section. Also the completion of a FAFSA application will satisfy this requirement.

DOCUMENTATION

Verification must be on file in the student's EOPS file or Financial Aid file. A copy of the application does not need to be kept in the EOPS file, but must be available upon request.

IMPLEMENTATION

- (b) maintain academic progress towards a certificate, associate degree, or transfer goal pursuant to the academic standards established by the college of attendance applicable to all credit enrolled students.

The EOPS mutual responsibility contract should indicate the importance of academic progress for individual students and that his/her continued eligibility for services is conditional upon progress toward their educational goals. A student may drop below 9 units and still be served by the program. However, a student should enroll in the Educational Plan's indicated number of units in subsequent semesters to remain in the program.

DOCUMENTATION

Documentation for this section may include course grades or progress reports on file in the EOPS Office. Notations on the counselor or advising log in student files should indicate student progress toward the individual student's educational goal. Improvement of a student's skill level or the completion of course components or increased learning capacity may be documented in the student's file to indicate progress. This information is most important to the student for his/her personal reassurance and satisfaction. Any information concerning student progress may be useful to both the program operation and its on going evaluation along with valuable information for the student.

IMPLEMENTATION

- (c) file an initial EOPS application, and complete and adhere to a student Educational Plan an EOPS Mutual Responsibility Contract for programs & services.

Overall, each EOPS student must make a commitment to the program and demonstrate his/her intended level of involvement by completing an EOPS application, along with meeting with a counselor and going over the rules, roles, and program responsibilities. The EOPS Director may, at his/her discretion, make the contract more or less prescriptive based upon the student's need. If a student does not adhere to the conditions of this section or the mutual responsibility contract, the director has the option of discontinuing program services. In addition, one Mutual Responsibility Contract may be used for the student's entire tenure in the program. The student's Mutual Responsibility Contract may be updated as deemed necessary by the EOPS Director.

DOCUMENTATION

The Mutual Responsibility Contract must be signed by both the student and the EOPS Director, EOPS counselor or EOPS para-professional and be maintained in the student's file. The Mutual Responsibility Contract should provide documentation indicating the date the student was accepted into the EOPS Program and act as the reference point for computing the limitations on eligibility. The student must be provided a copy of the Mutual Responsibility Contract.

IMPLEMENTATION

- (d) within two months of acceptance into the EOPS Program, provide income documentation as required for financial aid by the college.

This section pertains to all EOPS students who receive services, not just those who receive direct aid. The process of obtaining income documentation from students may take weeks before a student's file may be considered complete. This section allows students to receive EOPS services first and provide financial aid resource documentation for EOPS eligibility at a later date but not to exceed two months.

DOCUMENTATION

The documentation required to verify taxable and/or untaxed income must be provided, in accordance with the Financial Aid Office policy of the college of attendance.

56224. Eligibility for EOPS Financial Aid.

To receive EOPS financial aid a student shall:

- (a) be eligible for and receive programs and services pursuant to Sections 56220 and 56222 above.*
- (b) demonstrate financial need according to the rules and procedures established for financial aid at the college of attendance.*
- (c) have need for EOPS financial aid in accordance with Sections 56252 and 56258 of this Chapter.*

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

Students must meet the following requirements **each academic year** that they apply for and receive EOPS financial aid. EOPS direct aid recipients are those EOPS students recommended for an EOPS direct grant, which also may include EOPS workstudy and book grants. All EOPS grant recipients must submit the required income documentation to verify the information on their FAFSA application and undergo need analysis to demonstrate financial need. The intent of this section is to administer EOPS direct aid to eligible EOPS students in a consistent and uniform manner as stipulated in the *Education Code*.

Demonstrated need is determined by utilizing standardized criteria to compute a student's available income and resources (e.g., total family contribution), to assist with meeting the cost of education and compares the amount of those available resources with the cost of attendance at your institution. Financial need is determined after a student's available resources (total family contribution) are determined and subtracted from the cost of attendance at your institution, which ultimately determines the amount of a student's unmet financial need. This process meets the requirements outlined in this section of Title 5 and reflects the basic rules and procedures established for packaging eligible students with campus based aid.

An EOPS Director must adhere to Title 5 Section 56252 (EOPS Financial Aid Standards) and 56254 (EOPS Grants and Workstudy Awards) when a recommendation to award EOPS funds is made. EOPS financial aid must be awarded for the purpose of reducing potential student loan indebtedness or to reduce unmet financial need, after Pell grants and other state, federal or institutional financial aid has been awarded to the student. EOPS financial aid must not exceed a total amount of \$1,800 in any combination of EOPS grant, book grant, or workstudy, with a specific limit of \$900 for grant money awarded per academic year or the amount of a student's unmet need, whichever is less.

DOCUMENTATION

The documentation required in this section must be in accordance with policies and procedures established by the local Financial Aid Office and retained in the Financial Aid Office. Adequate documentation to demonstrate eligibility for EOPS direct aid, and may include the following examples:

- ◆ A Pell Student Aid Report (SAR) showing an eligible student aid index (PGI and/or EFC); or
- ◆ A FAFSA with a programmable PC Calculation, calculator tape, or hand calculation with supporting evidence verifying need analysis and income; or
- ◆ An award notice showing a student has been offered federal or state need-based aid in accordance with the college's financial aid awarding policy and income verification policy.

Income verification may include the following: an appropriate 1040 tax form, a certificated IRS tax account information transcript, an acknowledgment letter of Non-Filing of Income-tax, or an Untaxed Income Verification form.

56226. Limitations on Eligibility.

A student who has met the eligibility requirements of sections 56220 and 56222, and who participates without term-to-term interruption, shall continue to be eligible until the student:

- (a) has completed 70 degree applicable credit units of instruction, or, has completed six consecutive semester terms or nine quarter terms of enrollment. Time spent by the student enrolled in remedial courses, including remedial level English as a Second Language (ESL) courses, shall not be included when computing the requirements of this sub-section. The EOPS Director may waive this limitation only in cases where students are enrolled in programs which require more than 70 units, or which require prerequisites that would exceed the limitations.*
- (b) has failed to meet the terms, conditions, and follow-up provisions of the student Education Plan and/or the EOPS mutual responsibility contract.*

NOTE: Authority cited 69640, 69648.7 and 710920 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

Students may **NOT** exceed the 70-unit limit or exceed six semesters of continuous participation in EOPS and continue to receive services. This section identifies those EOPS students who participate in the EOPS Program without term-to-term interruptions. This section also gives EOPS Directors the authority to disqualify any student from the program who is not making academic progress as required in reference to his/her education plan. "Term-to-term" interruption does **NOT** apply to the summer breaks. If a student drops out of school for one full semester, after being accepted into EOPS and attending at least one full semester, the six consecutive semester count begins at the time the student is again determined eligible for and is accepted into the EOPS Program. However, all previously completed degree applicable units are counted toward the 70-unit limit. All degree applicable credit units earned at any college, including units earned during summer session or any other accredited colleges, must be counted toward the 70-unit limit.

The 70 unit limit may be waived by the EOPS Director, in cases where the limit would be exceeded by the units required for a student's associate degree or specific transfer program, including units for prerequisites to general education courses required for achievement of that student's education goal or program.

The time limit associated with six consecutive semesters of enrollment may be extended or waived if a student was enrolled in remedial ESL courses. Remedial courses should be defined by the college of attendance in their catalog or indicated in the course listings available to students and staff. If the number of units enrolled in remedial ESL, Basic Skills, and remedial courses, is 50% or more of the student's coursework in any given term, then that term is not included in calculating the six consecutive semesters.

For those students with a certified disability which prevents them from enrolling fulltime may exceed the six semester time limit. However, they may not exceed the 70 degree applicable unit limit. Furthermore, students with certified disability must show progress to their educational goal.

DOCUMENTATION

The Mutual Responsibility Contract should provide documentation indicating the date the student was accepted into the EOPS Program and act as the reference point for computing the limitations on eligibility. EOPS staff should develop appropriate office procedures to track student participation and all the necessary information must be included in the EOPS student's file. If a student is close to their 70-unit limit, EOPS staff should monitor the student's progress and educational plan closely. Once official notification is received indicating the amount of completed units beyond 70, the student should be removed from the program and all services should be stopped, with the exception of the special majors. Students enrolled in a special major must have documentation as such in their files, outlining the required number of units, justifying the exception.

56228. Grandfather Provision
~~(Not applicable at this time ending 6/89)~~
(No longer applicable)

Students who were served by EOPS prior to the effective date of this Article (10/87) and who would otherwise become ineligible, may continue to be eligible for one academic year after the effective date of this Article.

**NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.**

Article 3. Program Standards

IMPLEMENTATION

The intent of Article 3 is to provide the framework and program structure in which EOPS Programs may operate. Colleges may request a written waiver, as stipulated in Section 56201, submitted by the district Superintendent/Chancellor setting forth detailed information including the rationale necessary to indicate to what extent problems would result if the waiver request was denied, and how service to eligible students would be maintained.

DOCUMENTATION

If you cannot meet all of the minimum program standard requirements in Article 3 or any specific section of Article 3, **YOU MUST SUBMIT A WAIVER REQUEST.** If you do not submit a formal waiver request, your college's EOPS Program will be held accountable for the entire text of Article 3.

56230. Full-Time EOPS Director.

Each college receiving EOPS funds shall employ a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities. Colleges having less than full-time EOPS director positions may continue such positions upon approval of the Chancellor. The Chancellor shall consider the number of students served, the size of the EOPS budget, and the scope and level of services offered when approving requests for less than full-time EOPS director positions.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

- (a) This provision is necessary to establish and articulate the importance of full-time direction and supervision of EOPS program activities and services. Colleges must request waivers from the Chancellor's Office prior to initiating any change in the EOPS Director's position. Waiver requests must be submitted and approved each fiscal year to be valid.

DOCUMENTATION

In order to receive a waiver for a less than full-time director, a college or district must submit a waiver request which meets the following conditions and standards, as approved by consultation:

Waiver for Section 56230, Full-Time Director, will be approved or granted if the college meets any one of the three (3) criteria stated below:

1. The program has two or more of the following characteristics:
 - (a) The number of EOPS students served in the most recent academic year for which final year-end data reported to the Chancellor's Office is less than the statewide median.
 - (b) The ratio of full-time equivalent (FTE) certificated positions within or assigned to EOPS to the ratio of students served be at the standard levels as stated below:

| Students Served | Full-Time Cert. Employees |
|-----------------|------------------------------|
| 1-150 | 1.0 |
| 151-300 | 2.0 |
| 301-450 | 3.0 |

- (c) The college's EOPS allocation for the academic year prior to the year for which the waiver is being considered is less than the statewide median.

2. Based on fiscal conditions, the District should be considered to be in fiscal distress, as classified by the Chancellor's Office Fiscal Services.
3. The EOPS Program has a full-time assistant director, coordinator position that is assigned full-time to EOPS that reports to the EOPS Director, and the job duties and responsibilities are clearly designated as the position that administers the program in conjunction with, or in the absence of a Full-Time Director. If the part-time director is assigned to EOPS for less than 50% of his/her time, then the assistant director, or coordinator position must be certificated.

56232. Outreach, Orientation, and Registration Services.

Each college receiving EOPS funds shall provide access services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:

- (a) outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college.*
- (b) orientation to familiarize EOPS eligible students with: the location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology (e.g., grade points, units), course add and drop procedures and related rules; financial aid application procedures; and transfer procedures to four-year institutions.*
- (c) registration assistance for priority enrollment pursuant to Section 58108 of this Part.*

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

IMPLEMENTATION

- a. Outreach and recruitment efforts may include services, such as, summer bridge, readiness, and extension programs that are provided to elementary and secondary students to assist in achieving statewide student equity goals.
- b. Matriculation minimum standards very closely parallel the standards outlined in this section. You should become familiar with your college's matriculation plan, and work to ensure that what you are providing EOPS students is "**above and beyond**" and in addition to those activities and services that are the responsibility of the college.
- c. EOPS Programs should provide early registration for all of its students. Early registration is allowed as stated in Title 5 (Reference Section 58108). EOPS must provide priority registration if it is providing outreach and recruitment services. Priority registration should NOT be limited to just new EOPS students. If all students on your campus are virtually guaranteed access to the courses of their choice, priority registration may not be necessary. In this case, a decision should be made that is in the best interests of your EOPS students.

Note that policy adopted by the local Board of Trustees takes precedence as established by the Education Code. A waiver for this sub-section will be granted if the local Board policy specifically, does not allow priority registration for any student.

DOCUMENTATION

- (a) Outreach and Recruitment. NO waiver available at this time.

- (b) Orientation. The program must provide one or more orientation sessions specifically for EOPS-eligible students that cover all of the topics specified in this sub-section 56232 (b).
- (c) Registration Assistance for Priority Enrollment. The college must provide services which allow EOPS eligible students the ability to enroll in the courses and/or sections recommended by their EOPS counselor(s) and which appear on the education plan developed with the counselor. Quantitative data may be requested by the Chancellor to substantiate waiving this service.

56234. Assessments.

Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the college president certifies are reliable, valid, and appropriate for students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum, include:

- (a) *course and placement tests in reading, comprehension, vocabulary, writing, and computations.*
- (b) *diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.*
- (c) *study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.*
- (d) *support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extra-curricular pursuits).*
- (e) *assessment instruments that are not culturally or linguistically biased.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

This section provides direction concerning the program services which involve assessment. The intent of this section is to provide the frame work for a minimum program structure in which assessment may take place and the process in which the EOPS Programs may operate assessment services. At minimum, EOPS Programs have an obligation to provide all the assessments listed in this section. However, if your EOPS Program or the college cannot provide one or more of the assessments outlined in this section, a waiver must be requested. Most Matriculation services include assessment.

In addition "assessment instruments, methods or procedures" means one or more assessment instruments, assessment methods, or assessment procedures, or any combination thereof. These include, but are not limited to, interviews, standardized tests, holistic scoring processes, attitude surveys, vocational or career aptitude and interest inventories, high school or college transcripts, specialized certificates or licenses, educational histories, and other measures of performance.

DOCUMENTATION

Documentation of assessment services should be noted in the files of each EOPS eligible student served or accessible on computer. A student's assessment information is extremely important in developing an effective education plan, the student's educational disadvantage status, and documenting progress.

EOPS staff may rely on assessment scores obtained by other departments or offices on campus, as long as the scores are available on campus. Prior assessment information may also be utilized if the information is on file at the college of attendance and considered up-to-date by campus standards. However, new students who are in need of assessment and placement information must receive assessment services as stipulated and outlined in this section to insure compliance.

If your college or district fails to submit a waiver, the EOPS Program will be held accountable for providing assessment services as required in this section.

If the campus matriculation process provides assessment, it is not necessary to request a waiver. However, if the EOPS program or college does not provide one or more of the assessments, colleges need to request a waiver.

56236. Counseling and Advisement.

Each college receiving EOPS funds shall provide counseling and advisement to EOPS eligible students of at least three contact sessions per term for each student as follows:

- (a) A contact session which combines interview and other interpretation of assessment results to prepare a student's educational plan, and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.*
- (b) An in-term contact session to insure the student is succeeding adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success.*
- (c) A term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting the student's needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS Program or the college.*

*NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.*

It has been proven that students are more successful in achieving their educational goals when they have a connection with the college, other than just attending classes. Contact with EOPS staff and counselors are an integral part of the students' success.

Counseling services are key in identifying and removing educational barriers for eligible EOPS students. The intent of this section is to provide the framework for a minimum program structure in which EOPS Programs may offer necessary counseling and advisement services effectively. Colleges do not have the option of requesting a waiver for this specific section of article 3. Programs that receive funding for this area are required to provide at least three (3) counseling and/or advising contacts per semester (two per quarter) for each student. Not all counseling contacts have to be with a certificated counselor, however, at least two (2) contacts each semester must be with a certificated counselor, particularly for developing and updating an education plan with a student. Peer-advisors and para-professionals may provide follow-up contacts and preliminary progress checks to eligible EOPS students along with informal advising. For those programs operating on the quarter system, they should provide at least two contacts per term, for a total of six for the year. For those colleges that have a summer program, they should provide at least one contact with a certificated counselor for the summer session.

For the purpose of addressing these 3 contacts per semester, the following are not to be used: general orientation sessions, workshops, scheduling appointments, release of vouchers, mail correspondence, and any other activities that do not comply with a, b, and c, above.

The EOPS program on your campus should not duplicate college counseling efforts, however, counseling services provided by the college should be available to all students, including EOPS students.

For those students taking distance education courses in which the proximity of the student's residence in relation to the EOPS Office prevents in person contacts with the counselor, the EOPS program may

Choose to provide counseling in another format other than face-to-face, such as documented telephone conversations, online contact, email, or teleconference, but not by correspondence through the US mail, FedEx, etc.

IMPLEMENTATION

- (a) a contact session which combines interview and other interpretation of assessment results to prepare a student's educational plan and a mutual responsibility contract specifying what programs and services the student may receive and what the student is expected to accomplish.

DOCUMENTATION

All counseling and advising contacts must be documented. The student's file must have an EOPS application, Educational Plan, and mutual responsibility contract. The documentation in an EOPS student's file should have the necessary information cited above, and it should be signed by the appropriate college staff, i.e., EOPS director, EOPS counselor or regular college counselor, along with the signature of the student to whom services were provided.

The Educational Plan should address the specific needs of educationally disadvantaged students and is one of the basic foundations of over-and-above services offered by the EOPS program. The comprehensive educational plan is important to the EOPS/CARE students and should include a long-term sequence of courses to be taken and a specific timeframe for their completion. It is not just a list of standard course requirement. **To be optimally beneficial to EOPS students, the Educational Plan should include a sequenced road map of all courses agreed upon by both the student and counselor necessary to meet the student's educational needs and goals.**

This first contact each term with a certificated counselor is to create, review and/or revise the student's educational plan. The plan should offer students a visual timeline of required coursework needed to complete their individualized educational goals, including certificate, associate degree, transfer objective, or a combination of any of the above. A student's Educational Plan may be completed in the Counseling Center, Disabled Student Services Office or elsewhere on campus, with a copy must be maintained in the EOPS Office.

This contact should also include reviewing the Mutual Responsibility Contract. See Section 56204 for more details pertaining to the Educational Plan and Mutual Responsibility Contract.

IMPLEMENTATION

- (b) an in-term contact session to insure the student is succeeding adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success.

DOCUMENTATION

All counseling and advising contacts must be documented. The student's counseling file should indicate a notation description of what transpired during an in-term contact session, the services provided, track student progress, and the need to change goals or plans. If the student is succeeding adequately and appears to have no challenges that need to be addressed, peer advisors or paraprofessional may provide this contact. Peer-advisors and paraprofessionals may provide follow-up contacts and preliminary progress checks to eligible EOPS students along with informal advising.

IMPLEMENTATION

- (c) a term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS program or the college.

DOCUMENTATION

All counseling and advising contacts must be documented. A term-end or program exit counseling contact session *is* necessary to assess the success of students in reaching the objectives of that term. To provide assistance to help them prepare for the next term of classes, or make future plans if they are leaving the program or the college.

The quality of all EOPS services is dependent upon adequate documentation of counseling or advisement provided by your program staff. If there is poor accountability concerning counseling services, then one cannot adequately track the quality of services provided, nor can staff effectively track individual EOPS student's progress.

56238. Basic Skills Instruction and Tutoring Services.

Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code.
Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

EOPS Basic skills instruction and tutoring services are an integral part of retention program services for eligible EOPS students. If an EOPS student, on the basis of assessments and counseling, is determined to be in need of special services, then EOPS Programs are obligated to provide such services.

If EOPS is providing a basic skill course for EOPS students, and the class is generating FTES for the college, EOPS may NOT pay for the instructor's time. If FTES does not cover the entire cost of providing the class, EOPS may pay for the difference. In addition, EOPS may pay for in-class tutoring time provided to EOPS eligible students.

If the college provides tutoring services to all enrolled students, then the EOPS program should be working toward providing those services at a level that is considered to be "above and beyond" services available to the general population. A good example of providing "above and beyond" may be tutoring services provided for EOPS eligible students that includes a 1-to-3 tutor-student ratio with unlimited hours of access per week, and the college tutoring services are limited to 2 hours per week and offered only on a group basis.

DOCUMENTATION

Programs may utilize basic skills course lists to document attendance of EOPS students or individual class schedules. Sign-in sheets or tutor time sheets indicating to whom and when services were rendered may be used to track tutoring services. Also, progress reports from the provider of support services may prove to be extremely helpful. Such documentation is important in evaluating the effectiveness of services and also to determine if and when students actually receive these special services.

In order to receive a waiver for any section of basic skills instruction or tutorial services, your college or district must submit a waiver request that meets the conditions and standards in accordance with approved waiver criteria as stated below:

It is recommended that a waiver be granted if the EOPS program can document that the tutoring and/or basic skills instruction needed by EOPS students is provided by the overall college basic skills instruction or tutoring program at a level which meets the special needs EOPS eligible students.

56240. Transfer and Career Employment Services.

Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate college and EOPS staff shall attempt to articulate course work and support services needed by EOPS students with four-year institutional staff, particularly four year institutional staff who are responsible for programs and services that are similar to EOPS.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

Implementation of these transitional services is critical to the effectiveness of the EOPS program on your campus and meeting EOPS student educational goals. If a Transfer Center is available on campus, EOPS should not duplicate the center's services, however, EOPS should coordinate its activities with that of the Transfer Center to provide "above and beyond" services to EOPS students. The same can be said for career employment transition services. If neither transfer nor career employment services are available on campus, EOPS should provide both, or submit a waiver request indicating services in one area. If one of the services is available on campus, EOPS need only provide the other services and submit a waiver request for the service it does not intend to administer.

A waiver may be granted if the college certifies that existing non-EOPS-funded services meet the needs of EOPS students. Quantitative data may be requested by the Chancellor to substantiate the waiver request.

DOCUMENTATION

All significant program services provided to, or contacts made with eligible EOPS students, especially concerning transfer and career employment services, should be documented. These services may be provided during the term-end or program exit counseling contact session.

EOPS Program staff may also keep sign-in sheets of workshops, presentations or special events including tours EOPS conducted in these specific program service areas. Other tangible proof may take the form of newsletters or flyers which indicate special programs that are offered by EOPS to provide transfer assistance or career employment services on specific dates and times along with proof of attendance by eligible EOPS students.

In order to receive a waiver for any section of transfer and career employment services, your college or district should submit a waiver request that meets the following conditions and standards:

It is recommended that a waiver be granted if one or both of the services (transfer or career employment) are adequately provided by the college.

Article 4. EOPS Financial Aid Standards

56252. Purpose.

Financial assistance in the form of EOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to EOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after PELL grants and other state, federal, or institutional financial aid has been awarded to the student.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

EOPS Grants and workstudy are to be awarded after PELL grants and other state, federal, and institutional financial aid and should be awarded for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need. CARE grants are to be awarded after EOPS grants.

Book grants (object code 7000, part c) are awarded in this manner. However, if you have a Book services program, and the funding source is Object Code 7000, Part B, books may be provided to students without regard to financial aid packaging. You must notify your Financial Aid Office when EOPS students receive book services, since books are considered a resource and part of the cost of education (e.g., student budget) and may cause an adjustment in the student's financial budget or cost of education.

DOCUMENTATION

The financial award policy should be in writing and included in the Financial Aid Handbook or Consumer Guide. The financial aid award letters for EOPS grant recipients should provide proof of how the policy works in accordance with this section and also how it works in a consistent manner.

56254. EOPS Grants and Workstudy Awards.

- (a) *Grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.*
- (b) *Workstudy awards shall not exceed \$1,800 per academic year, or the amount of a student's unmet need, whichever is less. Contracts with private industry may be utilized to place EOPS workstudy students.*
- (c) *No combination of EOPS grant and workstudy awards may exceed \$1,800 or exceed the amount of a student's unmet need whichever is less in an academic year.*
- (d) *EOPS grants shall be disbursed to each student equally among terms in the college academic year.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

EOPS Financial Aid must not exceed \$1,800 in any combination of EOPS grant or workstudy, with a limit of \$900 for direct grant money awarded per academic year or the amount of a student's unmet need, whichever is less. There is a limit of \$1,800 for EOPS workstudy awards or the amount of a student's unmet need, whichever is less. EOPS Grants shall be disbursed equally among terms, during the academic year. This means that a student should not receive his/hers EOPS grant all in one award or all at once. EOPS workstudy awards do not have to be distributed evenly among terms; this section applies to EOPS grants only.

EOPS Directors in coordination with the Financial Aid Office may develop a system where EOPS staff recommends the amount of the EOPS grant (whenever possible to reduce potential loan indebtedness, or unmet need), and the Financial Aid Office determines the disbursement level and date, in line with other aid program disbursements scheduled throughout the academic year. The \$1,800 limit on workstudy and workstudy plus grants applies to EOPS funds only, and does not apply to the awarding of additional college workstudy moneys.

An EOPS Director may NOT award an entire year's EOPS grant amount in a single semester, unless a student is eligible to be awarded at the end of the academic year. For awarding purposes, a student's unmet need is normally determined by financial aid personnel, NOT by EOPS.

Although students may be served by EOPS prior to completing a financial aid file, direct financial aid through either the Financial Aid Office or EOPS is dependent upon the completion of a student's EOPS file and the completion of the student's financial aid file. If the student has provided the necessary information and documentation for EOPS eligibility and need analysis has been done, EOPS may ask for early disbursement of EOPS moneys to eligible students. In addition, EOPS moneys should be awarded AFTER all other forms of financial aid have been considered, except loans, and student eligibility should coincide with the fiscal year in which the funds are authorized to be administered.

DOCUMENTATION

The financial award policy should be in writing and included in the Financial Aid Handbook or Consumer Guide. Financial aid award letters for EOPS grant recipients should provide proof of how the policy works in a consistent manner and in accordance with this section. An award notice showing a student has been offered federal or state need-based aid in accordance with the college's financial aid awarding policy and income verification policy will meet EOPS requirements concerning appropriate documentation for this section.

56256. Award Procedures.

- (a) *Financial aid offices shall award and disburse EOPS grant and workstudy funds according to college procedures upon the authorization of the EOPS office.*
- (b) *EOPS offices shall authorize EOPS grant and workstudy awards such that:*
 - (1) *Awards are distributed as evenly as possible between dependent and independent students.*
 - (2) *Priority of awards is given to dependent or independent students having the lowest family or personal incomes, respectively.*
- (c) *EOPS offices may authorize an EOPS grant to reduce packaged student employment awards on a case-by-case basis.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

It is important to be consistent when awarding EOPS direct grant moneys. This section of Article 4 provides direction which stipulates that the disbursement of EOPS direct grants must be done in agreement and coordination with the Financial Aid Office in a standardized manner. If a student is enrolled in between 6 and 11.5 units, the EOPS award does not have to be pro-rated; that is a policy decision that the EOPS Director may establish (if he/she deems it appropriate) in coordination with the financial aid officer. In any event, EOPS awards may be made in accordance with the agreed upon established college procedures and policies concerning awarding financial aid upon the authorization of the EOPS office. The interpretation of this statement means the EOPS Director should authorize EOPS awards to eligible EOPS students, and the Financial Aid Office should follow the established awarding policies and procedures in the packaging and the disbursement of those authorized EOPS awards.

EOPS is entirely responsible for determining who among their eligible student population will receive EOPS direct grant awards, and the amount of the award, in keeping with the criteria stated in this section. However, EOPS may not award any amount over an eligible EOPS student's unmet need as determined by the Financial Aid Office.

In prioritizing your awards for dependent and independent students, you should consider total family and personal income, respectively. Your policy should also include a section for distributing awards as evenly as possible between these two populations of students. The EOPS policy on priority in awarding grant moneys to eligible students should be available to the general student population to insure consistency and to provide staff guidance in the event of a request by an EOPS student applicant for an explanation or the possibility of a student's formal grievance or petition concerning an award adjustment.

EOPS may award a grant to a student who has dropped below 9 units as long as EOPS awarding procedures are consistent and compatible with the agreed upon established awarding policies of the financial aid office.

DOCUMENTATION

The financial aid awarding policy should be in writing and included in either the Financial Aid Handbook/Consumer Guide or EOPS Information Guide. The financial aid award letters of EOPS grant recipients should provide sufficient proof of how the awarding policy works in a consistent manner and provide proof of compliance with this section. An award notice, showing that an EOPS student has been offered federal or state need-based aid in accordance with the college's financial aid and EOPS requirements for this section.

56258. Emergency Loans.

EOPS programs may establish an emergency loan program for EOPS students to meet unexpected or untimely costs for books, college supplies, and transportation, subject to the following provisions:

- (a) *loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.*
- (b) *loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.*
- (c) *the total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

Although a specific section covering collection or repayment of loans was not included in Title 5 regulations, all student loan procedures must be handled in a consistent manner on each campus; this includes "due diligence" sections followed by your Business or Financial Aid Office. Funds may not be taken out of the emergency loan account for any expenditure other than for the section of an emergency loan for an eligible EOPS student. You may not use emergency loan funds to pay for any costs associated with processing or bookkeeping incurred by the college Business Office, e.g., the cost of processing loans or the collection of loan debts. However, any costs associated with the state approved COTOP Program may be allowed with the proper documentation indicating the amount collected and the state administrative cost incurred for each individual EOPS student.

DOCUMENTATION

Emergency loan dollars carried over into the next fiscal year are to be kept separate from the new EOPS budget, and will not show up as part of the new year's Part C allocation. Any additions to the emergency loan fund, either by accrued interest or budget transfers with Part C, should not exceed three (3) times the original amount utilized originally to establish the fund.

Article 5. Staffing Standards

56260. Staff.

EOPS shall be provided by certificated directors, instructors and counselors and other support staff employed by the governing board of the community college district. All staff funded by EOPS who are not supervised by the EOPS Director shall be accountable to the EOPS Director for services rendered to EOPS students pursuant to the approved EOPS program plan.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

This section of Title 5 requires EOPS Directors to have direct interaction with any and all staff associated with the EOPS Program; this statement also applies to staff functions considered to be funded by the district.

All staff funded by EOPS are not necessarily directly supervised by the EOPS Director. However, they must be accountable to the EOPS Director for the services they provide to EOPS students, i.e., for any EOPS specific activities they engage in. A reporting relationship must exist between any staff assigned EOPS specific duties regardless of funding, and the EOPS Director, to insure that activities paid for by EOPS are in fact EOPS specific, and that program information is readily shared. This includes District Contribution as the EOPS allocation is based in-part on the District Contribution amount submitted.

DOCUMENTATION

Appropriate documentation of EOPS staff supervision and accountability may be accomplished through job specifications or descriptions explaining specific duties, functions and reporting responsibilities. In addition, an organizational chart for EOPS should be developed and kept up-to-date, indicating the staffing areas and levels of responsibility along with reporting functions for the entire EOPS staff which includes extended or marginal EOPS staff in the student services area.

56262. Director Qualifications. (revision July 1990)

- (a) *the EOPS Director must meet the minimum qualifications for a student services administrator as specified in Section 53420 of this part, or must possess a Community College Supervision Credential.*
- (b) *In addition, an EOPS Director hired after October 24, 1987 must have, within the last four years, two years of full-time experience or the equivalent:*
 - (1) *in the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages*
or,
 - (2) *as a community college EOPS counselor or EOPS instructor, or have comparable experience in working with disadvantaged clientele.*
- (c) *In addition, an EOPS director hired after October 24, 1987, shall have completed a minimum of six units of college-level course work predominantly relating to ethnic minorities or persons handicapped by educational, language or social disadvantages.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

This section establishes important qualifications necessary to direct an effective program. The regulations do not state specifically what courses will be acceptable when addressing Part (c) of this section. However, when developing the specifications for an EOPS Director position, colleges should use their own good judgment in determining what course work would be appropriate beyond survey courses in **Human Behavior or Sociology**, in order to meet the needs of EOPS students and the requirements of this section. If you need further assistance, please call the Chancellor's Office. In addition, any director positions for EOPS advertised after October 24, 1987, must include the minimum qualifications outlined in this section.

DOCUMENTATION

In order to receive a waiver for any section concerning the qualifications of the EOPS Director on your campus, the college or district must submit a waiver request which meets the following conditions and standards:

Subsection (a):

There is no waiver granted for this subsection 56262 (a). The EOPS director must possess a Community College Supervisor Credential or meet the minimum qualifications for a student services administrator as specified in Section 53420 of this part.

Subsections (b) and (c):

A waiver may be granted for one (1) year for these subsections. After one year, all qualifications must be met or, at a minimum, "reasonable" progress must be demonstrated.

56264. Counselor Qualifications. (revision July 1990)

- (a) *EOPS "Counselors" are those persons designated by the community college to serve as certificated counselors in the EOPS Program and must possess a Community Counselor Credential required by Education Code Section 87274, or possess a master's degree in counseling, rehabilitation counseling, clinical psychology, counseling psychology, guidance counseling, educational counseling, social work, or career development, or the equivalent, and*
- (b) *In addition, EOPS counselors hired after October 24, 1987, shall:*
- (1) *have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social or economic disadvantages or*
 - (2) *six semester units or equivalent of a college-level counseling practicum or counseling field work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages and,*
- (c) *In addition, an EOPS counselor hired after October 24, 1987, shall have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social or economic disadvantages.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

This section established qualifications necessary to provide effective counseling services to EOPS students. These qualifications also include certain background experiences and education levels, in line with the philosophy of the EOPS Program and the degree of responsibility.

The regulations do not state what courses will be acceptable when addressing Part (b) (1) of this section. When developing the specifications for an EOPS counselor position, colleges should use their own good judgment in determining what course work would be appropriate beyond survey courses in **Human Behavior or Sociology**. Any counselor positions for EOPS advertised after October 24, 1987, must include the minimum qualifications outlined in this section.

DOCUMENTATION

In order to receive a waiver for any section concerning the qualifications of the EOPS counselor on your campus, the college or district must submit a waiver request which meets the following conditions and standards:

Sub-section (a):

There will be no waivers granted for this subsection (a). The EOPS counselor must possess a Community College Counselor Credential or Masters degree as required by the Education Code, Section 87274.

Sub-sections (b) and (c):

A waiver may be granted for one (1) year for these subsections. After one year, all qualifications must be met or, at a minimum, "reasonable" progress must be demonstrated.

Article 6. Plans and Priorities

56270. Contract Plan.

- (a) *Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of this Chapter for each college within the district which intends to conduct an EOPS Program. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor. Changes to the program plan may be made only with the prior written approval of the Chancellor.*
- (b) *The Chancellor will notify in writing those districts which submit plans on or before the deadline set pursuant to Section 56274 of this part within ninety (90) days of that deadline whether the district's plan is complete and whether the plan is approved or disapproved. If the plan is disapproved, the Chancellor will notify the district how the plan is deficient. If a district plan is disapproved, the district may resubmit the plan and the Chancellor will approve or disapprove the resubmitted plan within ninety (90) days of its receipt.*
- (c) *The chancellor's median, minimum and maximum times for approving district plans for EOPS, from the receipt of the initial plan to final approval of the plan, for fiscal years 1984-85 and 1985-86 are 245 days, 43 days and 610 days, respectively. These times may include repeated re-submissions of plans by some community college districts. The estimated time lapse from initial receipt to the first action of approval or disapproval is estimated to be 87 days.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

These standards will assist the Chancellor's Office and the colleges in their efforts to complete the annual task of submitting and approving EOPS Program plans.

The EOPS Program Plan is considered to be a contract between the District and the Chancellor's Office.

56272. Outline.

Each plan shall address the following:

- (a) the long-term goals of the EOPS Program in supporting the goals of the college and of the goals adopted for EOPS by the Board of Governors.*
- (b) the objectives of the EOPS Program to be attained in the fiscal year for which EOPS funds are allocated.*
- (c) the activities to be undertaken to achieve the objectives, including how the college plans to meet the standards set forth in Articles 3, 4, and 5 of this Chapter.*
- (d) an operating budget which indicates the planned expenditures of EOPS funds, and of other district funds to be used to finance EOPS activities.*
- (e) the number of students to be served.*
- (f) an evaluation of the results achieved in the prior year of funding.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

The annual EOPS Program Plan that is submitted to the Chancellor's Office does not include the long-term goals. Each college should have their program's long-term goals in some format for reference. These goals are to be kept by the program.

56274. Deadlines.

The Chancellor's Office shall annually establish a final date for the submission of EOPS plans and shall notify districts of this date and distribute the forms for the submission of the plan not less than 90 days prior to that date. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

The Chancellor's Office will distribute the annual EOPS Program Plan forms each year. When the program allocations are released, the Chancellor's Office will establish the due date for submission of the plan. It will be no less than 90 days from the time the forms are distributed to the colleges.

There are no extensions to the due date. Plans postmarked after the deadline may be returned to the district without evaluation or consideration.

56276. Review and Approval of District Plans.

All plans and requests for funding submitted on or before the deadline shall be reviewed and evaluated by the Chancellor. The Chancellor shall approve plans for funding in whole or in part.

NOTE: Authority Cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

This section gives the Chancellor the authority to review and evaluate all plans that are submitted on time or reject those submitted after the deadline. This section also gives the Chancellor the authority to approve plans in whole or in part.

56278. Program Evaluation by the Chancellor.

Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

The evaluation process may take three (3) different forms. However, only measurements of student success in achieving their educational goals may be required on an annual basis. The remaining two (2) forms of evaluation, i.e., Audits/Validations and Program Reviews (on-site and/or Survey) may be conducted on a six-year cycle (accreditation schedule) basis which entails conducting approximately 20 evaluations per academic year.

56280. Priorities in Serving Students.

Each plan shall incorporate the priorities of this Section in the order presented when serving students from among those who are eligible pursuant to Section 56220. The purpose of these priorities is to ensure that colleges strive to achieve and maintain a racial, ethnic, and gender composition among income eligible students served which matches the racial, ethnic, and gender composition by income group of eighteen years and above who reside in the college service area.

- (a) Priority in outreach and recruitment services shall be directed towards correcting the greatest underrepresented among students served. Additional priority among under-represented students shall be given to serving individuals who are the first in their family to attend college.*
- (b) priority in serving students enrolled at the college shall be:
 - (1) serving continuing EOPS students with the lowest income.*
 - (2) serving continuing EOPS students with the lowest income who are transferring from another EOPS program conducted by a community college.*
 - (3) serving first-time EOPS students with the lowest income.**

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

Each EOPS program is encouraged to prioritize services to eligible students. When prioritizing eligible students for services, use total family or personal income [AGI = adjusted gross income]. Do not use unmet need. In addition, the EOPS director may establish priorities in outreach and recruitment services to correct under-representation among students served and to assist colleges in achieving EOPS local and/or statewide student equity goals.

Article 7. Funding and Expenditures

56290. Income and Expenditure Accountability.

Districts shall maintain separately accounts for monies provided for, and expended in, support of EOPS activities by specific line item.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655 Education Code.

IMPLEMENTATION

All accounting procedures concerning the utilization of EOPS Program funds must be in accordance and compliance with the California Community College Budget and Accounting Manual. If you have any questions, please contact your district's Business Officer.

56292. Adjustment After Allocations.

The Chancellor may adjust the allocation to any college during a fiscal year for one or more of the following reasons:

- (a) to correct over or under allocated amounts in any of the three prior fiscal years.*
- (b) to correct for over or under utilization or allocated amounts in the current fiscal year.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

This section gives the Chancellor the authority to make adjustments to program allocations. In general, adjustments are made resulting from corrected approved final claims, district audit citing, Chancellor's Office validations, audits, and comprehensive program reviews.

56293. District Fiscal Responsibility and Contribution.

Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide to EOPS students who need them the same programs and services the college offers to all of its credit enrolled students. The district shall fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. Districts accepting EOPS funds will be required to pay the salary of the EOPS director at the rate of at least 50% of salary and benefits for 1987-88 and 100% of salary and benefits for 1988-89 and every year thereafter.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

This section outlines district responsibilities concerning required fiscal contributions and college resources. Overall, districts are required to provide EOPS students with the same level of support, be it fiscal or direct services, as any other credit enrolled student. All districts have the responsibility of providing services to all matriculating students equally. In addition, it is the responsibility of EOPS programs to provide program related services in a manner that is considered to be "over-and-above, and in addition to" those services available to credit enrolled students.

This section also requires districts to pay for the EOPS directors salary and benefits. Specifically, all districts and/or colleges who accept EOPS funds are required to pay the full salary and benefits of the EOPS director; this section may not be waived. However, a waiver may be possible to allow colleges to have a part-time EOPS director.

56294. EOPS Supplemental Costs.

Colleges shall expend EOPS funds only for programs and services which are over, above, and in addition to the costs which are the district's responsibility as defined in Section 56293.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

EOPS Programs are required to provide services that are considered to be "over-and-above, and in addition to" wherever EOPS and/or district contribution funds are utilized. "Over and above" services are those program services that are provided to EOPS students in a manner that is "over-and-above" in quality and/or quantity. For example, more tutoring hours may be provided over those available to non-EOPS students, or one to one tutoring sessions are available to EOPS students only rather than group tutoring.

56295. Expenditures Allowed.

- (a) *Colleges may expend EOPS funds to meet the EOPS supplemental costs as defined in Section 56294 for personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000 - 6000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less.*
- (b) *Requests to purchase computer hardware and/or software shall be approved by the district superintendent/president prior to transmittal for approval by the Chancellor.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

This section restricts the amount of EOPS funds that may be spent on discretionary costs, those expenses charged to object codes 4000, 5000, and 6000 (except for category C expenditures). The EOPS budget cannot show planned expenditures or actual expenditures exceeding 10% of the allocation or \$50,000, whichever is less. There are no waivers available for this section.

In addition, when purchasing computer hardware and/or software, the expenditure must receive local approval from the district superintendent/president first, then submit the pre-approved request to the Chancellor's Office for approval. This process requires EOPS programs to coordinate the purchase of computer equipment with the campus-wide operation and to assure the compatibility of equipment and efforts.

56296. Expenditures Not Allowed.

EOPS funds shall not be expended for the following:

- (a) college administrative support costs (e.g., staff of the business office, bookstore, reproduction, staff at the dean salary level and above).*
- (b) indirect costs (e.g., heat, lights, power, janitorial service)*
- (c) political or professional association dues and/or contributions.*
- (d) costs of furniture (chairs, desks, coat hangers, etc.)*
- (e) costs of construction, remodeling, renovation, or vehicles.*
- (f) travel costs other than travel costs of EOPS staff and students for EOPS activities or functions.*

Except for items (a) through (c) above, waivers may be approved by the Chancellor on a case-by-case basis.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

Items a, b and c cannot be waived. Items d, e, and f may be waived on a case-by-case basis. All waiver requests must be submitted in writing prior to expending monies for the costs outlined. Waivers will be granted only for expenses directly associated with EOPS functions and operations.

DOCUMENTATION

Whenever the EOPS program would like to expend program funds for items listed in sub-sections d, e, or f, a waiver request must be submitted first to the Chancellor's Office for approval. This process requires EOPS programs to coordinate the expenditure with the Chancellor's Office to insure the compatibility with program activities and Title 5.

56297. Special Projects and Incentives.

- (a) *The Chancellor may allocate funds for recommended special projects which seek to benefit the statewide, regional, or local conduct of EOPS programs, provided that no special project duplicates college or EOPS activities.*
- (b) *Special projects shall be recommended by the advisory committee established pursuant to Section 69643 of the Education Code.*
- (c) *Funding for special projects shall consist of amounts set aside for this purpose in the Governor's Budget. The Chancellor may redirect funds released pursuant to Section 56292 to fund additional special projects.*
- (d) *Colleges which demonstrate outstanding effectiveness based upon evaluations conducted for use of special project funds or other funds which may be released pursuant to Section 56292.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

Colleges that demonstrate effectiveness based upon evaluations conducted or positive performance observed may be eligible to receive priority consideration for receipt of special project funds or reallocated funds. Specifically, those colleges who have recently experienced mandatory reductions, adjustments or returned unexpended funds in excess of 5% of their allocation, will not be eligible to receive priority consideration. In addition, funds returned from mandatory reductions, adjustments, or returned unexpended funds may be reallocated.

56298. EOPS Financial Aid Restrictions.

In each fiscal year the colleges shall expend for EOPS grants and workstudy an amount equal to that expended in the prior fiscal year, unless waived by the Chancellor, for the following reasons:

- (a) to establish a book service program.*
- (b) the college allocation was corrected pursuant to Section 56292.*
- (c) to meet the requirements of Article 3.*

NOTE: Authority cited: Sections 69648, 69648.7 and 71020 Education Code. Reference: Sections 69640 through 69655, Education Code.

IMPLEMENTATION

This section requires the level of EOPS grant money obligated to the prior year levels. This level of funding, i.e. Part C obligation, is determined by the amount expended in Part C in the prior year as reported on the final expenditure report.

DOCUMENTATION

EOPS programs must maintain the prior year expenditure level for direct aid to eligible EOPS students. Waivers are available if programs meet the standards stated in this section. Waivers must be submitted prior to any budget transfers or reductions to Part C (direct aid) monies. If you do not submit a waiver, your program budget may not receive approval until a waiver is submitted.

Note: The definition of EOPS Book Service program activity is as follows. An EOPS Book service provides EOPS eligible students with books necessary for their success in obtaining their educational goal and objectives. This pertains to textbooks and workbooks only. EOPS students are not required to have unmet need to participate in this program activity, therefore, this activity is a service and not part of a student's financial aid package. Also, it is important that the Financial Aid Office is informed in a timely manner of any EOPS students receiving EOPS Book Services as it may affect their financial aid package.



DEPARTMENT OF
FINANCE

ARNOLD SCHWARZENEBGER, GOVERNOR

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

February 9, 2004

RECEIVED

FEB 13 2004

**COMMISSION ON
STATE MANDATES**

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

Dear Ms. Higashi:

The Department of Finance has received and reviewed Commission on State Mandates Test Claim No. 02-TC-29, Extended Opportunity Programs and Services, submitted by the West Kern Community College District (WKCCD). Based on our review of the claim and the relevant State statutes, we believe that a community college district's participation in the Community College Extended Opportunity Programs and Services (program) is the result of a discretionary action taken by the governing board of the district. As a result, we must conclude that the State laws and regulations at issue in this test claim do not create a State-mandated reimbursable activity, and we therefore request that the test claim be denied in its entirety.

We note that the test claim identifies specific requirements for both community college districts and the Board of Governors. However, activities related to the Board of Governors are not reimbursable because the Board is not an eligible claimant.

Relying on the test claim summary, we note that it appears that the claimant is seeking reimbursement for costs to districts incurred as a result of changes to program requirements since 1975. Nevertheless, the choice of a district to participate in this discretionary program remains discretionary as the program's internal requirements change, because the authority to establish a program in statute has remained unchanged over time. The claimant therefore could withdraw from the program and not be subject to any altered requirements if the claimant believes available funding from the discretionary program exceeds the costs of participating in the program. It is also appropriate to emphasize that funding is specifically provided in the annual budget for districts who apply for funding, which then triggers the requirements of the program. So, it is clear that any activities related to requirements of the voluntary program have a specific fund source dedicated to offset district costs.

Education Code Section (ECS) 69640, the first section in the series of code sections establishing the program, states:

"...It is the intent and purpose of the Legislature in establishing the Community College Extended Opportunity Programs and Services (EOPS) to **encourage** local community colleges to establish and implement programs..."

Additionally, ECS 69649 governing the specific establishment of a program on a community college campus, states:

"...The governing board of a community college district *may*, with the approval of the board, establish an extended opportunity program..."

Furthermore, ECS 69652 states:

"The governing board of a community college district *may* apply to the board for an allowance to meet all or a portion of the cost of establishing and operating extended opportunity programs or services authorized by this article. The application shall contain a detailed plan or plans for use of the allowance. The plan or plans shall be submitted in accordance with rules and regulations adopted by the board. The board may also adopt rules and regulations relating to the form and content of applications and procedures for review, evaluation, and approval thereof."

Finally, ECS 69653 states:

"Applications shall be subject to the approval of the board. Upon approval by the board, it shall certify an apportionment or apportionments to the Controller. The Controller shall draw warrants on the State Treasury in the amounts certified in favor of the governing board of the community college district which has jurisdiction over the applicant district in accordance with a schedule of payments established by the board and approved by the Department of Finance."

The plain language of ECS 69640 indicates the Legislature's intent to simply encourage the establishment of such programs, and ECS 69649 clearly indicates that a district may establish such a program with the approval of the board. Given that the decision to establish a program lies with the individual districts, and is not specifically compelled by language in these statutes, we find that the requirements for which the claimant seeks reimbursement are not State-mandated activities. Additionally, ECS 69652 and ECS 69653 establish mechanisms that authorize districts to apply to the Board of Governors for funding, rather than requiring them to do so, and requiring the BOG to apportion funding for approved plans. We note that if the Board denied a district request to establish a program, a district would have no legal obligation to operate a program. However, if the Commission on State Mandates finds the test claim to result in any State-mandated activities, we again note funding in the annual Budget Act for this discretionary program exists and has increased considerably over time, mirroring any increased requirements.

A recent decision by the Commission on State Mandates lends additional support to the arguments offered in the preceding paragraph. In Test Claim 97-TC-14 (January 25, 2001), a school district challenged the statutes requiring districts to bear all costs associated with a request for an emergency apportionment. Although the claimant argued that the financial position of some districts made submitting a request necessary, rather than optional, the Commission rejected their argument. Instead, the Commission concluded, "Based on upon the plain language of the test claim statute it is clear that districts may request an emergency apportionment. However, they are not required to do so. The test claim legislation merely provides a procedure for school districts to borrow funds. Thus, the school district, and not the state, imposes the requirements of the test claim legislation by requesting an emergency apportionment."

This decision clearly parallels the statutory language, program framework, and circumstances of the present test claim submitted by WKCCD. The reimbursements sought by the WKCCD are

triggered only after the district decides to apply to the Board to establish a program. The test claim statutes governing the program provide a template to districts for establishing local programs, and a process to request state funding, but these statutes are operative only for districts choosing to participate in the program.

Further support for this conclusion is provided by the courts in the following cases:

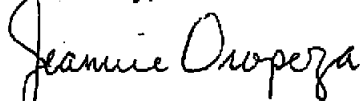
(1) Department of Finance v. Commission on State Mandates (2003) 30 Cal. 4th 727; (2) City of Merced v. State of California (1984), 153 Cal. App. 3d 777; and (3) Contra Costa County v. State of California (1986), 177 Cal. App. 3d, 62, 79. Specifically, in Department of Finance v. Commission on State Mandates (2003), the court found that if a school district elects to participate in any underlying voluntary education-related funded program, the obligation to comply with the requirements related to that program does not constitute a reimbursable state mandate. The court went further, stating that even if program participation is legally compelled, claimants were not entitled to reimbursement from the state of the costs of required activities under that program because there were free at all times to use funds provided by the State for that program to pay required program expenses.

Based on the findings of the court in this case, it is clear that because participation in the program at issue in the present test claim is undertaken at local option, no reimbursable state mandate can be established. However, should the Commission find such a mandate, claimant has also failed to establish that funds provided in the annual Budget Act for this program cannot be used to cover the costs of activities identified in the test claim, and that any such costs exceed the amount of funds made available.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 29, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst, at (916) 445-0328, or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF PETE CERVINKA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-29

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

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

2/5/2004
at Sacramento, CA


Pete Cervinka

PROOF OF SERVICE

Test Claim Name: Extended Opportunity Programs and Services
Test Claim Number: CSM-02-TC-29

I, the undersigned, declare as follows:

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

On February 9, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

G-01
California Community Colleges
Attention: Thomas J. Nussbaum
1102 Q Street, Suite 300
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

West Kern Community College District
Attention: William Duncan
29 Emmons Park Drive
Taft, CA 93268

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Education Mandated Cost Network
Attention: Carol Berg, Ph.D.
1121 L Street, Suite 1060
Sacramento, CA 95814

Mandated Cost Systems
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

SixTen & Associates
Attention: Keith B. Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento CA 95825

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

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds
P.O. Box 987
Sun City, CA 92586

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2004, at Sacramento, California.

Chad Roberts for

Jennifer Nelson

SixTen and Associates

Mandate Reimbursement Services

EXHIBIT C

WILLIAM B. PETERSEN, MPA, JD, President
22 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

March 4, 2004

RECEIVED

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

MAR 08 2004

**COMMISSION ON
STATE MANDATES**

Re: Test Claim 02-TC-29
West Kern Community College District
Extended Opportunity Programs and Services

Dear Ms. Higashi:

I have received the response of the Department of Finance ("DOF") dated February 9, 2004, to which I now respond on behalf of the test claimant.

A. The Response of the DOF is Incompetent and Should be Excluded

Test claimant objects to the response of the DOF, in total, as being legally incompetent and move that it be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The DOF response does not comply with this essential requirement. Since the Commission cannot use unverified comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments of the DOF not be included in the Staff's Analysis.

B. The Program is Not Optional

The main thrust of the DOF's comments is that Extended Opportunity Programs and Services are optional and, therefore, none of the claimed activities are mandated.

On September 24, 1987 (operative October 24, 1987), the Board of Governors of the California Community Colleges enacted Section 56210 of Title 5, California Code of Regulations:

"Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the amount if enrollment in the EOPS program decline."

Therefore, even if DOF is correct on all or a portion of its "optional program" argument, beginning with the 1987-1988 academic year and every year thereafter, each college is required to maintain EOPS programs at a minimum level. If these programs were "optional" prior to then, they became mandatory beginning with the 1987-1988 academic year. This, of course, totally rebuts DOF's statement that "The claimant therefore could withdraw from the program..." This brings into play the provisions of Government Code Section 17565 which provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the district for those costs incurred after the operative date of the mandate.

C. EOPS Programs are Compulsory

By January 1, 1986, the Board of Governors of the California Community Colleges were required to adopt rules and regulations necessary to implement the Education Code provisions relating to EOPS. Education Code section 69648 These rules and regulations were required to prescribe the procedure by which a district shall identify a student eligible for EOPS on the basis of the student's language, social, or economic disadvantages [subdivision (a)] and establish minimum standards for the establishment and conduct of EOPS [subdivision (b)].

The governing board of a community college district may, with the approval of the Board, establish an EOPS. However, in order to eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of

section 69648. Education Code section 69649(a) Therefore, in order to determine whether the program is subject to non-legal compulsion, the usual "carrot and stick" analysis must be made.

The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

(a) *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(b) *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566

so coercive as to constitute a "mandate of the federal government" under Section 9(b).¹

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion".

(c) *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2778 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to "compulsion".

(d) *Sacramento II* "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving *Sacramento I*, the court explained:

"If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

"However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ... The alternatives

¹ Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

"Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(e) Statutory Compulsion is not Required

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736, the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

"For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining added)

Therefore, "carrot and stick" situations must still be determined on a case by case basis. The test for determining whether there is a mandate is whether compliance with the test claim legislation is a matter of true choice, that is whether participation is truly voluntary. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582 Here, the Legislature has challenged California community colleges to recognize the

need and accept the responsibility for extending the opportunities to all who may profit therefrom regardless of economic, social, and educational status. To ignore available funding to help recognize these needs and to ignore their responsibility is so far beyond the realm of practical reality, that it leaves community college districts without any rational discretion. California community colleges have no true choice, but to perform their duty and comply with the EOPS program.

D. State Funding Does Not Bar the Finding of a Mandate

DOF argues that Education Code sections 69652 and 69653 "establish mechanisms that authorize districts to apply to the Board of Governors for funding...and requiring the BOG to apportion funding for approved plans...we again note funding in the annual Budget Act for this discretionary program exists..."

First of all, section 69652 provides that under unspecified circumstances, districts may apply for an allowance to meet all or only a portion of the costs of establishing and operating their EOPS. Secondly, section 69654 provides that the Board shall include "an estimate" of the need for state funds. Thirdly, section 56210 of the California Code of Regulations (*supra*) requires a minimum expenditure of "non-EOPS" funds. Finally, in these "budget crises years", any funding from the annual Budget Act is not a given.

Implicitly, DOF relies on subdivision (e) of Government Code Section 17556:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:....

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or 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."

It is quite apparent, then, that the conditions of subdivision (e) of Government Code section 17556 are not a bar to a finding of this mandate because there is no showing that the additional revenue is in an amount sufficient to fund the cost of the state mandate. Any revenues actually received can be considered in the parameter and guidelines phase to offset the actual costs of providing EOPS.

Test claimant also points out that this possibility was provided for in the test claim:

"Community colleges may receive dedicated grant and categorical funding

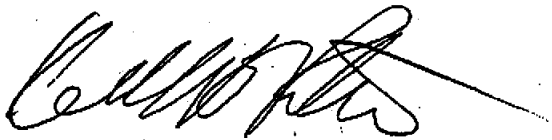
for some of the activities included in this test claim. To the extent that the funding is provided each year, and to the extent that the dedicated funds are applied to activities mandated by the state, the amounts received and applicable to mandated activities will reduce the amount of costs mandated by the state. The test claimant is informed and believes that the Chancellor of the California Community Colleges has the documentation necessary to determine the amounts of these special purpose funds allocated to each college year, and the purposes for which the funds were intended. This information can be utilized to determine the revenue offset amounts each year." (Test Claim, page 67, line 7 through page 68, line 3)

Clearly then, the possibility of some state funding does not bar a finding of a reimbursable mandate.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Extended Opportunity Programs and Services 02-TC-29
CLAIMANT: West Kern Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of Mach 4, 2004, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278

- U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.
- OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:
- _____ (Describe)
- FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.
- A copy of the transmission report issued by the transmitting machine is attached to this proof of service.
- PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 3/4/04, at San Diego, California.



Diane Bramwell

Original List Date: 6/26/2003

Mailing Information: Other

Last Updated:

List Print Date: 09/17/2003

Mailing List

Claim Number: 02-TC-29

Issue: Extended Opportunity Programs and Services

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
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Claimant Representative

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Claimant

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STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES

CHANCELLOR'S OFFICE

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SACRAMENTO, CA 95814-6511

(916) 445-8752

HTTP://WWW.CCCCO.EDU



RECEIVED

March 11, 2004

MAR 11 2004

COMMISSION ON
STATE MANDATES

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

Re: Test Claim: Extended Opportunity Programs and Services, 02-TC-29

Dear Ms. Higashi:

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

- Do the provisions [Ed. Code, §§ 69640, et seq. and Cal. Code Regs., tit. 5, §§ 56200 et seq., and the EOPS Implementing Guidelines (January 2002)] impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

We see no need to go through the test claimant's exhaustive analysis of the law since 1969, as well as the regulations of the Board of Governors, that are required to be consistent with section 69640 et seq.,¹ or to track the exact year in which each minimum condition and requirement with regard to the receipt of EOPS funding was enacted into law, as a recent California Supreme Court is dispositive of the issues raised by claimant. Even assuming, for the sake of argument, that all of the requirements of the EOPS were not in law prior to 1975, the test claim fails for the reasons set forth below.

¹ Education Code section 69640 provides that, "The rules and regulations of the Board of Governors of the California Community Colleges shall be consistent with this article." Section 69648 provides that, "the board shall adopt rules and regulations necessary to implement this article, including rules and regulations which do all of the following. . . ." See also section 69641.5.

A. There are no state-mandated costs that can be claimed, as the Extended Opportunity Programs and Services (EOPS) are voluntary and not compulsory.

Education Code section 69640 states in pertinent part that, "It is the intent of the Legislature in establishing the Community College [EOPS] to *encourage local community college district to establish and implement programs* directed to identifying those students: . . ." (Emphasis added.)

Education Code section 69649 states, in pertinent part, that, "The governing board of a community college district *may*, with the approval of the board [of Governors of the California Community Colleges], establish an extended opportunity program." (Emphasis added.)

Education Code section 69650 states, in pertinent part, that, "The governing board of a community college district *may*, with the approval of the board [of Governors of the California Community Colleges], establish extended opportunity services." (Emphasis added.)

Education Code section 69652 states, in pertinent part, that, "The governing board of a community college district *may apply to the board for an allowance to meet all or a portion of the cost* of establishing and operating extended opportunity programs or services authorized by the article." (Emphasis added.)

Education Code section 69653 states, in pertinent part, that, "*Applications* shall be subject to approval of the board." (Emphasis added.)

It is clear that nothing in the law requires districts to have EOPS; indeed, approval of the board is necessary for a district to establish such a program. (Ed. Code, § 69653.) Nor does the law provide that the entire cost of establishing and operating EOPS will be covered, if a district has secured the required approval. (Ed. Code, § 69652.) It is discretionary on the part of districts whether or not to apply for the establishment of such a program, and thus come under the requirement to comply with Education Code sections 69640 et seq. and the implementing regulations promulgated by the Board of Governors. (Cal. Code Regs., tit. 5, §§ 56200 et seq.)

The California Supreme Court recently ruled in a matter that was brought by the Department of Finance against the Commission. In that case, the real parties in interest were two public school districts and a county that:

"participate in various education-related programs that are funded by the state and, in some instances, by the federal government. Each of these underlying funded programs in turn requires participating public school districts to establish and utilize specified school councils and advisory committees. Statutory provisions enacted in the mid-1990's require that such school councils and advisory committees provide notice of meetings, and post agendas for those meetings." (*Department of Finance v. Commission on State Mandates [Kern High School District, et al., Real Parties in Interest]* (2003) 30 Cal.4th 727, 730.)

The Supreme Court ruled that:

"[c]laimants have not been legally compelled to participate in those programs, and hence cannot establish a reimbursable state mandate as to those programs based upon a theory of legal compulsion. . . ." (*Id.*, at p. 731.)

As is clear from the language of the EOPS statutes themselves, these programs are voluntary and not mandatory. The Court's ruling went further to state that:

"Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur . . . related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion--for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program--claimants here faced no such practical compulsion. Instead, although claimants argue that they have had 'no true option or choice' other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs 'too good to refuse'--even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate." (*Ibid.*)

There are no fines or penalties or other forms of compulsion if a district does not choose to voluntarily establish EOPS and receive state funding for the programs and services. If a district chooses to receive EOPS funding, compliance with the EOPS statutes and regulations merely amounts to "the cost of compliance with conditions of participation in these funded programs." Thus there is no reimbursable state mandate.

B. There is no state-mandated cost that can be claimed, even where districts had existing Extended Opportunity Programs and Services (EOPS) programs in place prior to various changes in statute.

Claimant alleges that districts had existing voluntary programs prior to changes in law, and the imposition of minimum standards in order to receive state funding had created a state mandated program. Claimant states that, "Prior to this time [1984 amendments], a district's participation in Extended Opportunity Programs and Services was discretionary." (Test Claim 02-TC-29, at p. 20.) As has been stated above, the plain language of the EOPS statutes shows that EOPS programs *are* discretionary. Assuming, *arguendo*, that the minimum conditions required for the receipt of state funding have changed over the years, the Supreme Court ruled that:

" In essence, claimants assert that their participation in the education-related programs here at issue is so beneficial that, as a practical matter, they feel they

must participate in the programs, accept program funds, and--by virtue of [the statutes at issue]--incur expenses necessary to comply with the procedural conditions imposed on program participants. Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary. [Fn. omitted.] (See *County of Sonoma, supra*, 84 Cal.App.4th 1264 [art. XIII B, § 6, provides no right of reimbursement when the state *reduces* revenue granted to local government].) We reject the suggestion, implicit in claimants' argument, that the state cannot legally provide school districts with funds for voluntary programs, and then effectively reduce that funding grant by requiring school districts to incur expenses in order to meet conditions of program participation." (*Id.*, at pp. 753-754.)

Thus, even if the districts could prove by a preponderance of their evidence and analysis that there were new requirements in that law that did not exist prior to 1975, claimants have failed to establish that they are entitled to reimbursement under article XIII B, section 6 of the California Constitution, with regard to the program costs herein at issue.

Funds earmarked for the community colleges for fiscal year 2003-04 are \$94,892,000.

Sincerely,



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

SixTen and Associates

Mandate Reimbursement Services

Exhibit E

W. B. PETERSEN, MPA, JD, President
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Telephone: (858) 514-8605
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April 23, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

APR 28 2004

COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-29
West Kern Community College District
Extended Opportunity Programs and Services

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11¹, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

¹ Although dated March 11, 2004, these comments were received by e-mail on March 16, 2004, along with comments for 13 other test claims.

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since CCC has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be included in the Staff's analysis.

B. The Program is Not Discretionary

The main thrust of the CCC's comments is that Extended Opportunity Programs and Services are discretionary and, therefore, none of the claimed activities are mandated.

On September 24, 1987 (operative October 24, 1987), the Board of Governors of the California Community Colleges enacted Section 56210 of Title 5, California Code of Regulations:

"Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline."

Therefore, even if CCC is correct on all or a portion of its "discretionary program" argument, beginning with the 1987-1988 academic year and every year thereafter, each college is required to maintain EOPS programs at a minimum level. If these programs

were "optional" prior to then, they became mandatory beginning with the 1987-1988 academic year. This brings into play the provisions of Government Code Section 17565 which provides that if a district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the district for those costs incurred after the operative date of the mandate.

C. EOPS Programs are Compulsory

CCC sees "no need to go through the test claimant's exhaustive analysis of the law...as a recent California Supreme Court (sic) is dispositive of the issues raised by claimant." CCC cites Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727 (hereinafter "Kem").

The governing board of a community college district may, with the approval of the Board, establish an EOPS. However, in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648. Education Code section 69649(a). Therefore, in order to determine whether the program is subject to non-legal compulsion, the usual "carrot and stick" analysis must be made.

The controlling case law on the subject of non-legal compulsion is still City of Sacramento v. State of California (1990) 50 Cal.3rd 51 (hereinafter referred to as Sacramento II).

(a) Sacramento II Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws

accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(b) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter Sacramento I) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).²

In other words, Sacramento I concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion."

(c) Sacramento II Litigation

After remand, the case proceeded through the courts again. In Sacramento II, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court also overruled that portion of Sacramento I which held that the loss of federal funds and tax credits did not amount to "compulsion."

² Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

(d) Sacramento II "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving Sacramento I, the court explained:

"If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

"However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation.

The Supreme Court in Sacramento II concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

"Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(e) The "Kem" Case Did Not Change the Standard

In "Kem", the Supreme Court made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

"For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6,³ because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Opinion, at 736, emphasis in the original, underlining added)

Therefore, "carrot and stick" situations must still be determined on a case by case basis. The test for determining whether there is a mandate is whether compliance with the test claim legislation is a matter of true choice, that is whether participation is truly voluntary. Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1582

The process for such a determination is found in Sacramento II, that is, the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.

Here, the Legislature has challenged California community colleges to recognize the need and accept the responsibility for extending the opportunities to all who may profit therefrom regardless of economic, social, and educational status. To ignore available funding to help recognize these needs and to ignore their responsibility is so far beyond the realm of practical reality, that it leaves community college districts without any real discretion. These are also "other legal and practical consequences of nonparticipation, noncompliance, or withdrawal" which negates an argument that participation is truly

³ This Kem disclaimer that "we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement" refutes CCC's interpretation of Kem that legal compulsion is necessary for a finding of a mandate.

voluntary. California community colleges have no true choice but to perform their duty and comply with the EOPS program.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Extended Opportunity Programs and Services 02-TC-29
CLAIMANT: West Kern Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 23, 2004, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278

- | | |
|---|--|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____ (Describe)</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |
|---|--|

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/23/04, at San Diego, California.



Diane Bramwell

Original List Date: 6/26/2003

Mailing Information: Other

Last Updated:

List Print Date: 09/17/2003

Mailing List

Claim Number: 02-TC-29

Issue: Extended Opportunity Programs and Services

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Claimant Representative

Tel: (858) 514-8605

Fax: (858) 514-8645

Mr. William Duncan
West Kern Community College District
29 Emmons Park Drive
Taft, CA 93268

Claimant

Tel: (861) 763-7700

Fax:

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

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Fax: (916) 646-1300

Ms. Harneet Barkschat
Mandate Resource Services
6325 Elkhorn Blvd. #307
Sacramento, CA 95842

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Fax: (916) 727-1734

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Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

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Fax: (916) 669-0889

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

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Fax: (909) 672-9963

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517
Fax: (916) 446-2011

Mr. Arthur Palkowitz
San Diego Unified School District
4100 Normal Street, Room 3159
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Mr. Michael Hevey
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Fax: (866) 481-5383

Mr. Keith Gmelinder
Department of Finance (A-15)
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Sacramento, CA 95814

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Fax: (916) 327-0225

Mr. Thomas J. Nussbaum
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

(G-01)

Tel: (916) 445-2738
Fax: (916) 323-8245



DEPARTMENT OF FINANCE

ARNOLD SCHWARZET

915 L STREET ■ SACRAMENTO CA ■ 95814

Exhibit F

June 9, 2004

RECEIVED

JUN 15 2004

COMMISSION ON STATE MANDATES

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

Dear Ms. Higashi:

The Department of Finance has received and reviewed the April 23, 2004 response by SixTen and Associates (SixTen) to the California Community Colleges' (CCC) comments regarding Test Claim No. 02-TC-29, Extended Opportunity Programs and Services, submitted by the West Kern Community College District (WKCCD). Based on our review of the claim and the relevant State statutes, as well as the points raised by SixTen in its response to the CCC, we believe that a community college district's participation in the Extended Opportunity Programs and Services Program (program) is the direct result of a discretionary action taken by the governing board of the district. As a result, we continue to conclude that this program is not a mandate, and that the State laws and regulations at issue in this test claim do not result in a State-mandated reimbursable activity. We therefore repeat our earlier request that the Commission on State Mandates (Commission) deny this test claim in its entirety.

SixTen's response to comments submitted by CCC cites Section 56210 of Title 5 of the California Code of Regulations. This section, in part, as cited in SixTen's response, requires that "Beginning with the 1987-88 academic year, and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years." However, this section applies only to those colleges *choosing* to operate a program. If a district chooses to operate a program, then these regulations require the described maintenance of dollar level support. Second, nothing prevents a district from discontinuing its program and its associated maintenance of effort requirement. In 2003, the California Supreme Court confirmed the merit of this argument in *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727. The court ruled that the costs of Brown Act public notice and agenda posting requirements that attach to meetings of school site councils and advisory committees of nine voluntary education programs were not reimbursable by the State. Additionally, the court found that a district could decline to participate or stop participating if the costs of program compliance outweigh funding benefits derived from the program. The Chancellor's Office concurs with these points. Unfortunately, SixTen fails to note these important distinctions in its response.

The remainder of SixTen's response to the CCC comments consists of a plea that the "usual 'carrot and stick' analysis must be made." We disagree. As stated in our original comments to the Commission dated February 9, 2004, a finding that this program is discretionary and therefore not a mandate is clearly supported by the statutes and statements of legislative intent establishing the program. The claimant has failed to identify any negative consequence that

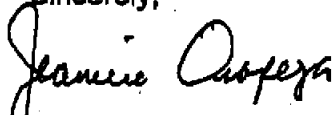
would result from non-participation in the program, other than the loss of funding to implement the program itself.

It is clear that because participation in the program at issue in the present test claim is undertaken at local option, no reimbursable state mandate can be established. However, should the Commission find such a mandate, claimant has also failed to establish that funds provided in the annual Budget Act for this program cannot be used to cover the costs of activities identified in the test claim, and that any such costs exceed the amount of funds made available. The claim should therefore be denied in its entirety.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 29, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst, at (916) 445-0328, or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF PETE CERVINKA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-29

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

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

June 9, 2004
at Sacramento, CA


Pete Cervinka

PROOF OF SERVICE

Test Claim Name: Extended Opportunity Programs and Services
 Test Claim Number: CSM-02-TC-29

I, the undersigned, declare as follows:

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

On June 9, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-8

State Controller's Office
 Division of Accounting & Reporting
 Attention: Michael Havey
 3301 C Street, Room 500
 Sacramento, CA 95816

G-01

California Community Colleges
 Attention: Thomas J. Nussbaum
 1102 Q Street, Suite 300
 Sacramento, CA 95814

San Diego Unified School District
 Attention: Arthur Palkowitz
 4100 Normal Street, Room 3159
 San Diego, CA 92103-8363

West Kern Community College District
 Attention: William Duncan
 29 Emmons Park Drive
 Taft, CA 93268

Shields Consulting Group, Inc.
 Attention: Steve Shields
 1536 36th Street
 Sacramento, CA 95816

Education Mandated Cost Network
 Attention: Carol Berg, Ph.D.
 1121 L Street, Suite 1060
 Sacramento, CA 95814

Mandated Cost Systems
 Attention: Steve Smith
 11130 Sun Center Drive, Suite 100
 Rancho Cordova, CA 95670

SixTen & Associates
 Attention: Keith B. Petersen
 5252 Balboa Avenue, Suite 807
 San Diego, CA 92117

Spector, Middleton, Young & Minney, LLP
 Attention: Paul Minney
 7 Park Center Drive
 Sacramento CA 95825

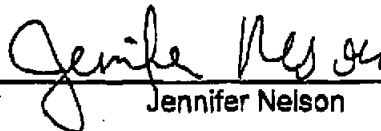
Mandate Resource Services
 Attention: Harmeet Barkschat
 5325 Elkhorn Blvd. #307
 Sacramento, CA 95842

Reynolds Consulting Group, Inc.
 Attention: Sandy Reynolds
 P.O. Box 987
 Sun City, CA 92586

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 9, 2004, at Sacramento, California.



Jennifer Nelson



SixTen and Associates Mandate Reimbursement Services

EXHIBIT G

WITH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

July 6, 2004

RECEIVED

JUL 08 2004

COMMISSION ON
STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 02-TC-29
West Kern Community College District
Extended Opportunity Programs and Services

Dear Ms. Higashi:

I have received the second response of the Department of Finance ("DOF") dated June 9, 2004¹, to which I now respond on behalf of the test claimant.

A. The Response of the DOF is Incompetent and Should be Excluded

Test claimant objects to the second response of the DOF, in total, as being legally incompetent and move that it be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

The DOF second response continues to ignore this essential requirement. Since the Commission cannot use unverified comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that these additional comments of the DOF also not be

¹ Although the proof of service attached to this second response swears that the document was mailed on June 9, 2004, the envelope in which it was enclosed indicates that it was mailed on June 16, 2004.

included in the Staff's Analysis.

B. DOF's Second Comments Do Not Raise Any New Issues

DOF first filed comments to this test claim by letter dated February 9, 2004. Test Claimant filed its rebuttal to those comments by letter dated March 4, 2004.

The Chancellor's Office of the California Community Colleges filed comments to this test claim by letter dated March 11, 2004. Test Claimant filed its rebuttal to the comments of the Chancellor's Office by letter dated April 23, 2004.

This second round of comments by DOF does not raise any new issues in addition to those raised in its original comments of February 9, 2004, or in the comments of the Chancellor's Office dated March 11, 2004. Test claimant has already replied to these issues in its rebuttals of March 4, 2004 and April 23, 2004. Therefore, Test Claimant will not reply here in detail, will only make brief comments when it may be useful to the Commission, and will make appropriate references to its prior rebuttals made to issues repeated in the comments of the DOF dated June 9, 2004.

C. Further Clarification of Issues

1. The Program is More Than a Maintenance of Effort

DOF argues that Section 56210 of Title 5 of the California Code of Regulations "applies only to those colleges choosing to operate a program" and "nothing prevents a district from discontinuing its program and its associated maintenance of effort requirement." DOF, apparently, has not read the regulation. It states:

"Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the amount if enrollment in the EOPS program decline."

The regulation clearly states that each college "shall maintain" the same dollar level of services "with non-EOPS funds" as the average of its prior three years, or 15% of its

three year average allocation, whichever is greater. The clear language of the regulation does not allow for any ability to discontinue the program; on the contrary, it is clearly a mandate to continue the program. As further evidence of this reading, any reductions in the program must be approved by the Chancellor, and then only upon a showing of declining enrollment.

The fact that the program may have been optional prior to the enactment of Section 56210 is irrelevant. Section 17565 of the Government Code provides that if a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

2. "Kem" Has Been Fully Discussed

DOF makes reference to "Kem"² and makes the comment that "[U]nfortunately, SixTen fails to note these important distinctions in its response." Test Claimant refers DOF to pages 2 through 6 of its rebuttal dated March 4, 2004, and to pages 3-7 of its rebuttal dated April 23, 2004, for a full analysis of the "Kem" decision.

3. "Sacramento II" Requires the "Carrot and Stick" Analysis

DOF states that the "remainder of SixTen's response...consists of a plea that the 'usual carrot and stick' analysis must be made." The "carrot and stick" metaphor in the context of "legal" versus "non-legal" compulsion was used by the California Supreme Court in "Sacramento II,"³ Whether reference is made to the metaphor, or to phrases such as "government incentives," when the issue arises, the California Supreme Court, at page 76 of its opinion, has required that the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.

Therefore, when DOF states it "disagree[s]" with SixTen's argument, it also disagrees with the California Supreme Court.

² Department of Finance v. Commission on State Mandates (2003) 30 Cal.4th 727

³ City of Sacramento v. State of California (1990) 50 Cal.3d 51, 71

4. Budget Act Funding Has Been Fully Discussed

DOF also revisits its prior argument⁴ that "claimant has also failed to establish that funds provided in the annual Budget Act for this program cannot be used to cover the costs of activities defined in the test claim..."

Test Claim refers DOF to pages 67 through 68 of the test claim and pages 6 through 7 of its rebuttal dated March 4, 2004 where this issue was discussed and where it was previously rebutted.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

⁴ The Chancellor's Office did not raise this issue. This second attempt to raise the issue by DOF is no more than a second bite of the same apple.

DECLARATION OF SERVICE

RE: Extended Opportunity Programs and Services 02-TC-29
CLAIMANT: West Kern Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of July 6, 2004, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 7/6/04, at San Diego, California.



Diane Bramwell

Original List Date: 6/26/2003
Last Updated:
List Print Date: 09/17/2003
Claim Number: 02-TC-29
Issue: Extended Opportunity Programs and Services

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Taft, CA 93268

Claimant
Tel: (881) 763-7700
Fax:

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Spector, Middleton, Young & Minney, LLP
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Mr. Michael Havey

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Department of Finance (A-15)
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Tel: (916) 445-8913

Fax: (916) 327-0225

Mr. Thomas J. Nussbaum

California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

(G-01)

Tel: (916) 445-2738

Fax: (916) 323-8245

SixTen and Associates Mandate Reimbursement Services

EXHIBIT H

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 800
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

January 8, 2007

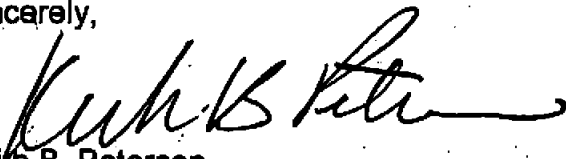
Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: No. CSM. 02-TC-29
Extended Opportunity Programs & Services

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor
Finance and Administration
State Center Community College District
1525 East Weldon
Fresno, CA 3268

1 Keith B. Petersen
2 SixTen and Associates
3 3841 North Freeway Blvd, Suite 170
4 Sacramento, CA 95834
5 Voice: (916) 565-6104
6 Fax: (916) 564-6103
7 kbpsixten@aol.com

8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

| | | | |
|----|--------------------------------|---|--|
| 11 | Supplement to the: |) | No. CSM. 02-TC -29 |
| 12 | |) | |
| 13 | Test Claim Filed June 13, 2003 |) | <u>Extended Opportunity Programs &</u> |
| 14 | |) | <u>Services</u> |
| 15 | |) | |
| 16 | |) | History Index for |
| 17 | |) | Title 5, California Code of Regulations |
| 18 | by West Kern Community College |) | |
| 19 | District |) | |
| 20 | |) | Section 56200 |
| 21 | |) | Section 56201 |
| 22 | |) | Section 56202 |
| 23 | |) | Section 56204 |
| 24 | |) | Section 56206 |
| 25 | |) | Section 56208 |
| 26 | |) | Section 56210 |
| 27 | |) | Section 56220 |
| 28 | |) | Section 56222 |
| 29 | |) | Section 56224 |
| 30 | |) | Section 56226 |
| 31 | |) | Section 56230 |
| 32 | |) | Section 56232 |
| 33 | |) | Section 56234 |
| 34 | |) | Section 56236 |
| 35 | |) | Section 56238 |
| 36 | |) | Section 56240 |
| 37 | |) | Section 56252 |
| 38 | |) | Section 56254 |
| 39 | |) | Section 56256 |
| 40 | |) | Section 56258 |
| 41 | |) | Section 56260 |
| 42 | |) | Section 56262 |

| | | |
|----|---|---------------|
| 1 |) | Section 56264 |
| 2 |) | Section 56270 |
| 3 |) | Section 56272 |
| 4 |) | Section 56274 |
| 5 |) | Section 56276 |
| 6 |) | Section 56278 |
| 7 |) | Section 56280 |
| 8 |) | Section 56290 |
| 9 |) | Section 56292 |
| 10 |) | Section 56293 |
| 11 |) | Section 56295 |
| 12 |) | Section 56296 |
| 13 |) | Section 56298 |
| 14 |) | |
| 15 |) | |

SUPPLEMENTAL INFORMATION

This supplement to the test claim provides an index and copy of each change to the Title 5, CCR, sections included in the test claim. The Registers cited are attached as Exhibit A. Amended language is underlined (new language) or stricken out (deleted language).

HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

- Register 76-41** New Chapter 2.5 added (§§ 56200 - 56296, not consecutive).
- Register 77-34** § 56200: Amendment to section.
- § 56223: Amendment to section.
- § 56234: Amendment to section.
- § 56235: Amendment to section.
- § 56235.1: Amendment to section.
- § 56281: Amendment to section.
- § 56282: Amendment to section.

1 § 56291: Repealed. Added a new section.

2 § 56292: Repealed. Added a new section.

3 **Register 79-32** Repealed Chapter 2.5 (§§ 56200 - 56296, not consecutive). Added
4 a new chapter 2.5 (§§ 56200 - 56293, not consecutive).

5 **Register 80-06** § 56237: Amendment of section.

6 § 56290: Amendment of section.

7 § 56292: Amendment of subsection (e).

8 **Register 81-03** § 56200: Repealed.

9 § 56204: Repealed.

10 § 56215: Repealed.

11 § 56216: Repealed.

12 § 56217: Repealed.

13 § 56220: Repealed.

14 § 56225: Repealed.

15 § 56276: Repealed.

16 § 56277: Repealed.

17 **Register 81-19** § 56217: New section added.

18 § 56230: Amendment to section.

19 § 56236: Amendment of subsection (b).

20 § 56257: Amendment of subsection (b).

21 § 56291: Amendment of section.

22 § 56291.1: Amendment of section.

1 § 56292: Amendment of section.

2 **Register 83-18** § 56200: Repealer of Subchapter 1 heading, amendment of Article
3 1 heading. Added a new section.

4 § 56201: Repealed.

5 § 56210: Repealer of Article 2 heading.

6 § 56211: Repealed.

7 § 56217: Repealer of Article 3 heading and section.

8 § 56221: Repealed.

9 § 56228: Amendment of section.

10 § 56236: New Article 2 heading and amendment of subsection (e).

11 § 56237: Amendment of section heading and subsection (a)(2).

12 § 56238: Amendment of subsection (d).

13 § 56240: Repealer of Subchapter 2 heading, and renumbering and
14 amendment of former Article 1 heading to Article 3.

15 § 56248: New section added.

16 § 56250: Repealer of Article 2 heading and section.

17 § 56251: Amendment of section.

18 § 56257: Amendment of subsection (c).

19 § 56270: Repealer of Article 3 heading and section.

20 § 56278: Repealer of Subchapter 3 heading, and renumbering and
21 amendment of former Article 1 heading to Article 4.

§ 56282: Repealer of Article 2 heading.

- 1 § 56284: Amendment of section.
- 2 § 56285: Repealed.
- 3 § 56286: Repealed.
- 4 § 56287: Repealed.
- 5 § 56290: Renumbering of former Article 3 to Article 5.
- 6 § 56294: New section added.
- 7 **Register 87-40** § 56200: Repealed, new section added.
- 8 § 56201: New section added.
- 9 § 56202: New section added.
- 10 § 56203: Repealed.
- 11 § 56204: New section added.
- 12 § 56206: New section added.
- 13 § 56208: New section added.
- 14 § 56210: Repealed, new section added.
- 15 § 56218: Repealed.
- 16 § 56219: Repealed.
- 17 § 56220: New section added.
- 18 § 56221: Repealed.
- 19 § 56222: Repealed, new section added.
- 20 § 56223: Repealed.
- 21 § 56224: Repealed, new section added.

- 1 § 56226: Repealed, new section added.
- 2 § 56228: Repealed, new section added.
- 3 § 56229: Repealed.
- 4 § 56230: Repealed, new section added.
- 5 § 56231: Repealed.
- 6 § 56232: Repealed, new section added.
- 7 § 56233: Repealed.
- 8 § 56234: Repealed, new section added.
- 9 § 56235: Repealed.
- 10 § 56236: Repealed, new section added.
- 11 § 56237: Repealed.
- 12 § 56238: Repealed, new section added.
- 13 § 56239: Repealed, new section added.
- 14 § 56240: Repealed, new section added.
- 15 § 56241: Repealed.
- 16 § 56243: Repealed.
- 17 § 56244: Repealed.
- 18 § 56245: Repealed.
- 19 § 56246: Repealed.
- 20 § 56247: Repealed.
- 21 § 56248: Repealed.

- 1 § 56250: Repealer of Article 2 heading and section repealed.
- 2 § 56251: Repealed.
- 3 § 56252: Repealed, new section added.
- 4 § 56253: Repealed.
- 5 § 56254: Repealed, new section added.
- 6 § 56255: Repealed.
- 7 § 56256: Repealed, new section added.
- 8 § 56257: Repealed.
- 9 § 56258: Repealed, new section added.
- 10 § 56259: Repealed.
- 11 § 56260: New section added.
- 12 § 56262: New section added.
- 13 § 56264: New section added.
- 14 § 56270: New section added.
- 15 § 56271: Repealed.
- 16 § 56272: Repealed, new section added.
- 17 § 56274: New section added.
- 18 § 56276: New section added.
- 19 § 56278: Repealed, new section added.
- 20 § 56279: Repealed.
- 21 § 56280: Repealed, new section added.

- 1 § 56281: Repealed.
- 2 § 56282: Repealed.
- 3 § 56283: Repealed.
- 4 § 56284: Repealed.
- 5 § 56285: Repealed.
- 6 § 56286: Repealed.
- 7 § 56287: Repealed.
- 8 § 56288: Repealed.
- 9 § 56289: Repealed.
- 10 § 56290: Repealed, new section added.
- 11 § 56291: Repealed.
- 12 § 56291.1: Repealed.
- 13 § 56291.2: Repealed.
- 14 § 56292: Repealed, new section added.
- 15 § 56293: Repealed, new section added.
- 16 § 56294: Repealed, new section added.
- 17 § 56295: New section added.
- 18 § 56296: New section added.
- 19 § 56297: New section added.
- 20 § 56298: New section added.
- 21 **Register 90-49** § 56262: Amendment filed 10-30-90 with Secretary of State by

1 Board of Governors, California Community Colleges.
2 Submitted to OAL for printing only pursuant to Education
3 Code section 70901.5(b).

4 § 56264: Amendment filed 10-30-90 with Secretary of State by
5 Board of Governors, California Community Colleges.
6 Submitted to OAL for printing only pursuant to Education
7 Code section 70901.5(b).

8 **Register 91-29** § 56262: Editorial correction of printing error in subsection (a).

9 § 56270: Editorial correction of printing error restoring section
10 heading.

11 **Register 97-46** § 56210: Editorial correction of NOTE.

12 **Subsequent Registers:** There may be changes to the regulations after the date the
13 test claim was filed, which are not included.

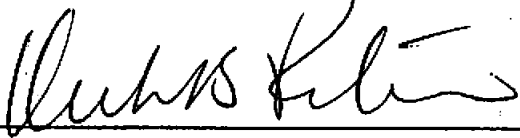
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2 CERTIFICATION

3 By my signature below, I hereby declare, under penalty of perjury under the laws
4 of the State of California, that the information in this document is true and complete to
5 the best of my own knowledge or information or belief, and that the attached regulations
6 are true and correct copies of documents from archives of a recognized law library.

7 EXECUTED this 8th day of January 2008, at Sacramento, California

8 

9 FOR THE TEST CLAIMANT

10 Keith Petersen, President

11 SixTen and Associates

12 ATTACHMENT

13 Exhibit A Title 5, CCR Registers

Register 76-41

| | | |
|---------|---------|---------|
| § 56200 | § 56238 | § 56278 |
| § 56201 | § 56240 | § 56280 |
| § 56202 | § 56252 | § 56290 |
| § 56204 | § 56254 | § 56292 |
| § 56208 | § 56256 | § 56293 |
| § 56210 | § 56258 | § 56295 |
| § 56210 | § 56260 | § 56296 |
| § 56220 | § 56260 | § 56298 |
| § 56224 | § 56262 | |
| § 56226 | § 56264 | |
| § 56230 | § 56270 | |
| § 56232 | § 56272 | |
| § 56234 | § 56274 | |
| § 56236 | § 56276 | |

CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

Article 1. Scope and Effect

56200. Implementation. The provisions of this chapter implement the provisions of Chapter 9 (commencing with Section 42000), Division 25, of the Education Code and govern the approval and funding of extended opportunity programs and services pursuant to the provisions of that chapter.

NOTE: Authority cited for Subchapter 2.5 (Sections 56200-56296, not consecutive): Sections 42008 and 42012, Education Code. Reference: Chapter 9 (commencing with Section 42000), Division 25, Education Code.

History: 1. New Chapter 2.5 (Sections 56200-56296, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).

56201. Plans Without Funding. Plans prepared for the approval of the board without a request for funds shall be governed by the provisions of Subchapters 1, 2, 3, and 4 of this chapter.

56202. Plans With Funding. Plans prepared for the approval of the board and containing a request for funds shall be governed by the provisions of all of the subchapters of this chapter.

56203. Participation. Participation by a student in an extended opportunity program or service shall not preclude his participation in any other program which may be offered in the college.

56204. Effective Date. The provisions of this chapter shall govern all extended opportunity programs undertaken on and after November 10, 1969.

Article 2. Special Reports

56210. Annual Ethnic Survey. An annual ethnic survey of the student population, instructional staff, administrative staff, supportive staff, and noncertificated staff shall be conducted by each college and submitted through the district to the Chancellor.

56211. Evaluation. Each college or district having an approved plan shall evaluate the same annually and report the results thereof to the Chancellor. The results shall be reported in the format mandated by the Chancellor for each year that the program is in operation.

Article 3. Definitions

56215. Effect of Article. For the purposes of this chapter, the definitions given in this article shall apply.

56216. Chancellor. "Chancellor" means the Chancellor of the California Community Colleges.

56217. College. "College" means a public Community College established pursuant to laws of this state.

56218. Depressed Area. "Depressed Area" means a geographic region in which all of the following factors are present:

- (a) The rate of unemployment is substantially above the national rate.
- (b) The median level of family income is significantly below the national median.
- (c) The level of housing, health, and educational facilities is substantially below the national level.
- (d) The economy of the area has been dominated traditionally by one or two industries which are in a state of long-term decline.
- (e) The rate of outmigration of labor or capital or both is substantial.
- (f) The area is affected adversely by changing industrial technology.
- (g) The area is affected adversely by change in national defense facilities or production.
- (h) The indexes of regional production indicate a growth rate substantially below the national average.

The identification of these factors shall be based on official census publications of the U.S. Department of Commerce, U.S. Department of Labor, the California Human Resources Development Department, Employment Development Department, Department of Interior or other government census agencies.

56219. District. "District" means any school district in California that maintains one or more colleges pursuant to the provisions of the Education Code.

56220. Encumbrance. "Encumbrance" means an accounting procedure consisting of a request made to the Chancellor enabling colleges to extend the use of EOPS funds throughout the summer. Such a request must be made prior to the end of the fiscal year and will not be valid without approval of the Chancellor's Office.

56221. Extended Opportunity Program and Service. An "Extended Opportunity Program and Service" means a program or service undertaken by, or grants made by, a community college district or a college in the form and in accordance with the procedures prescribed by this chapter. Such a program or service shall be over, above, and in addition to, the regular educational programs of the college and has as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college.

56222. EOPS Student. An "EOPS Student" means a student whose eligibility to participate in programs and services offered under this chapter has been certified according to Section 56234.

56223. Full-Time Student. "Full-time Student" means a student enrolled for a minimum of 12 units or a minimum of 14 student contact hours in Community College courses in which the student participates in an Extended Opportunity Program or Service and who is making continuous progress toward a goal, degree, or certificate as determined by the college.

56224. Governing Board. "Governing Board" means the governing body of a district.

56225. Ethnic Minority Groups. "Ethnic Minority Groups" means Afro American, Negro or Black, Mexican-American (including Chicanos, Latinos, Puerto Ricans, and other Spanish-surnamed individuals), Asian (including Chinese, and Japanese), Filipinos, American Indian, and other non-Caucasian peoples.

56226. Multicultural Studies. "Multicultural Studies" means separate organized courses of instruction which stress the cultural attributes and contributions of minority ethnic groups or that portion of other courses devoted to such material.

56227. Supplemental Educational Costs. "Supplemental Educational Costs" means student costs for other than the following: living costs, student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

56228. Plan. "Plan" means the proposed scheme of extended opportunity programs and services submitted for approval by the board pursuant to subchapter 2 (commencing with Section 56240) of this chapter.

56229. Program. "Program" means a special pattern or method of instruction designed to facilitate the language, educational or social development of a student and increase his potential for success in the college. Any instruction in a program shall be provided by instructors approved by the governing board for the district maintaining the college in which the program is given.

56230. Services. "Services" means a program of assistance, including the making of grants designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the education activities of the college. Instruction must be provided by instructors approved by the governing board for the district maintaining the college in which the program is given.

56231. Special Projects. "Special Projects" means those projects which (a) would benefit all colleges, (b) have special merit, or (c) are submitted by new colleges admitting students for the first time.

56232. Student Personnel Workers. "Student Personnel Workers" include but are not limited to certificated student service personnel, counselors, placement directors, and student financial aid officers, or classified personnel working in one of these capacities as identified by the college.

56233. Target or High Priority Area. "Target or High Priority Area" means a depressed area with high total unemployment rates, high youth unemployment rates, and large numbers of minority youth in the college or in the community population served by the college.

56234. "Dependent Student" Eligibility. To participate and receive financial assistance under EOPS, a dependent student shall meet all the following criteria:

(a) Must be eligible under current Federal Supplemental Educational Opportunity Grant guidelines.

(b) The family (student's parents or legal guardians) income shall not exceed \$7,500 for a family of four with an additional \$900 for each additional dependent. A dependent student from a family of three would qualify with a parental income of not more than \$6,600 and a family of two \$5,700. District student financial aid policies should be followed for income verification. In awarding aid to students the following priority scale must be used:

Parental Income

- (1) \$0-\$2,999
- (2) \$3,000-\$5,999
- (3) \$6,000-\$7,500

(c) Enroll full-time at a Community College as per Section 56223 of this article. Documentation and approval by the EOPS Director must be obtained for students who drop below full-time status during the school year. The EOPS Director may qualify a student enrolled for less than 12 units but not less than 9 units by providing enough contact hours in services for the remaining units. Financial aid should be withheld if a student drops below full-time status without the EOPS Program Director's approval.

(d) Those students receiving financial assistance from EOPS must also submit an application for the federal Basic Educational Opportunity Grant Program for the current year, or the Community College must certify that the student is ineligible for the Basic Educational Opportunity Grant.

56235. "Independent Student." An independent student is one who meets one of the following requirements:

(a) Has been determined to be self-supporting according to institutional procedures.

(b) Has not lived with either (parent or legal guardian) or received financial assistance exceeding \$600 from either (parent or legal guardian) for one year if a freshman, two years if a sophomore, prior to September 1 of the next academic year, and has not been claimed as an income tax exemption for the same period by anyone other than self or spouse.

(c) Has been a ward of the court (in which case appropriate court documents must be submitted).

(d) Is an orphan and not claimed as a tax dependent during the current tax year by any person other than self or spouse.

(e) Has been part of an extremely adverse home situation which is documented and supported by school or responsible community personnel which leads to estrangement from the family under circumstances where the student has not received a contribution in cash or kind from his family for the preceding 12 months.

(f) Has been a veteran of the Armed Forces of the United States eligible for Veterans Benefits (and not receiving support from parents or legal guardians).

56235.1. "Independent Student Eligibility". To participate and receive financial assistance under EOPS, an independent student shall meet all the following criteria:

(a) Must be eligible under current Federal Supplemental Educational Opportunity Grant Guidelines.

(b) The family (student's parent or legal guardian) income shall not exceed \$7,500 for a family of four (not including the applicant) with an additional \$900 for each additional dependent. An independent student from a family of three (not including the applicant) would qualify with a parental income of no more than \$6,600 and a family of two (not including the applicant) \$5,700. District student financial aids policies should be followed for income verification. In awarding aid to students the following priority scale must be used:

Parental Income

- (1) \$0-\$2,999
- (2) \$3,000-\$5,999
- (3) \$6,000-\$7,500

(c) Enroll full-time at a Community College as per Section 56223 of this article. Documentation and approval by the EOPS Director must be obtained for students who drop below full-time status during the school year. The EOPS Director may qualify a student enrolled for less than 12 units but not less than 9 units by providing enough contact hours in services for the remaining units. Financial aid should be withheld if a student drops below full-time status without the EOPS Program Director's approval.

(d) Those students receiving financial assistance from EOPS must also submit an application for the federal Basic Educational Opportunity Grant Program for the current year, or the Community College must certify that the student is ineligible for the Basic Educational Opportunity Grant.

In instances where an applicant does not meet the criteria specified above, or the (parents/legal guardians) refuse to provide financial information, the student cannot be considered for an EOPS grant.

56236. Priority in Serving Students. An extended opportunity program or service shall benefit students in the following priority order:

- (a) First time or continuing freshmen
- (b) First time or continuing sophomores
- (c) Other students in the college

56237. Eligibility of Second-Year Student. A student who has completed the freshman program shall be making progress toward his educational objective in order to be eligible to receive financial aid. What constitutes progress other than full-time status shall be defined by the college.

SUBCHAPTER 2. PROCEDURE

Article 1. Submission of Plans

56240. Submitted by District. An application for approval of extended opportunity programs and services, for funding, or for both, shall be submitted by each district for individual colleges within the district. Each college will be considered as an independent entity. Districts with multiple campuses may submit a district-wide application. Consortiums, exchanges, or cooperative inter-district endeavors are permitted.

In the case of a district-wide application, the district will be considered the entity submitting the application.

56241. Outline. Each application shall conform to the following outline:

(a) Purpose.

(1) Goals. These are the long-term purposes of the EOPS program.

(2) Objectives. These are the short-term purposes of the EOPS program.

(b) Activities to be undertaken to accomplish the purpose.

(c) Techniques and methods of evaluation stated in qualitative or quantitative terms.

(d) Budget.

(e) Number of students projected to be served.

56242. New Colleges. New colleges that have admitted students for the first time may submit special projects or request minimal funds for planning grants. Requests for funds may be submitted any time during the year and will be subject to availability of funds.

56243. Deadline. All applications for approval of plans and requests for funds for plans for a given fiscal year shall be received at the Office of the Chancellor not later than the deadline date established by the Board for each fiscal year. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

The provisions of the prior paragraph do not apply to the approval or funding of special projects. Requests for approval of special projects, funding of special projects, or both, may be submitted at any time.

56244. Long Range Plans. Each plan shall be designed for at least a five-year period. It shall reflect a commitment to the Statement of Policy, Goals, and Guidelines of Board of Governors, California Community Colleges for extended opportunity programs and services. The plan shall be revised and brought up-to-date in each year in which approval or funding of the plan is requested.

56245. Scope and Appropriateness. Consideration shall be given to the scope and appropriateness of the activities planned. These activities may include tutorial services, multicultural studies, recruitment services, counseling and admission services, inservice training programs, grants to meet direct and supplemental educational costs, and grants to meet the costs of a student for student fees, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

56246. Maintenance of Effort. If the plan contains a request for funds, it shall give assurance that funds granted pursuant to this chapter shall supplement and, to the extent practicable, increase the amount of district funds used by the college for extended opportunity programs and services. Exceptions to this section may be given in those unusual circumstances which could not be anticipated by the district. Such exceptions require approval by the Chancellor.

Article 2. Evaluation of Plans

56250. Effect. Each plan shall be evaluated on the basis of the criteria listed in this article.

56251. Program Review and Recommendations. All plans and requests for funding submitted on or before the deadline date shall be reviewed and evaluated by the Chancellor and his staff. They shall recommend plans or portions thereof for board approval and funding. The recommendation for funding shall include a specific amount.

56252. Action by Board. The board shall consider all of the plans and requests for funding and the Chancellor's recommendations thereon and shall approve such plans and grant funds for such programs and services as it finds are in the best interests of the state, the communities, and persons from depressed areas.

56253. Approved Plan Required. No extended opportunity program or service, or any portion thereof, shall be funded unless the plan of which it is a part has been approved by the board.

56254. Matching Funds. No funds shall be granted on the condition that the college commit an equal amount of college or district funds.

56255. Priority in Funding. Programs and services will be funded in view of the following priority list:

- (a) Improvement or strengthening of programs or services.
- (b) Extension or expanding of programs or services.
- (c) Maintaining programs or services.
- (d) New programs or services.

56256. Adjustment After Funding. After the board has granted funds for a plan, the Chancellor may adjust the programs and services in the plan in view of the priorities established in Section 56255, if adjustment is necessary to correct an error or if there had been insufficient information at the time the programs and services in the plan were originally ranked by priority.

56257. Funding. Requests for funding shall be approved and funded in view of the following criteria:

(a) Plans for districts or colleges in target areas as defined in section 56233 of this chapter.

(b) Plans for districts or colleges with highest percentage or number of students with gross family incomes of \$7,500 or less.

(c) Plans for districts or colleges with the highest percentage of ethnic minority population in the community the college serves, the highest percentage of ethnic minority Community College students, and the highest number of ethnic minority Community College students.

(d) Plans for districts or colleges that serve students from areas that have a high total unemployment rate or a high youth unemployment rate, or both.

(e) Plans for districts or colleges that have the highest level of involvement of the total college and groups in the community in extended opportunity programs and services.

(f) Plans for districts or colleges developing consortiums or cooperative ventures or projects which combine state and district funds with other sources of funds.

56258. Low Priority. Plans and projects limited to research shall receive a low priority.

56259. Effective Program Experience. Consideration for priority funding shall be given to plans from those districts or colleges which have demonstrated effective program experience.

Article 3. Evaluation of College EOPS Programs and Services

56270. Effect. Programs and services offered under EOPS shall be evaluated on the basis of the criteria listed in this article.

56271. Approved Programs and Services. Programs and services offered under EOPS must comply with the approved plan for that year as well as with State statutes.

56272. Record Keeping. The following records must be kept up-to-date by Colleges offering programs and services under EOPS:

(a) Enrolled EOPS students for the current year under the following headings:

- (1) EOPS support services only.
- (2) EOPS direct aid only.
- (3) EOPS support services and direct aid.

(b) All EOPS-eligible applicants.

56273. Participation of Other Groups. Programs and services offered under EOPS shall reflect student, faculty and community involvement.

56274. Advisory Committee. Each EOPS Program shall include an Advisory Committee, members of which shall serve without compensation, with the permissible exception of reimbursement for necessary expenses incurred in performing their duties and responsibilities. The advisory committee should include representation from the college personnel, student, community and business sector.

SUBCHAPTER 3. FINANCIAL AND BUDGET REQUIREMENTS

Article 1. General Provisions

56276. Scope. The provisions of this subchapter apply to the budget required as a part of an application for plan approval and for expenditures made on the basis of plans approved pursuant to this chapter.

56277. Necessity of Subchapter. The regulations in this subchapter are necessary to assure proper disbursement of, and accounting for, Federal, State, district, and foundation funds designated for extended opportunity programs, grants, and services.

56278. Separate Accounts. All funds designated for extended opportunity programs, grants, and services shall be placed in a separate account established for that purpose by each district.

56279. Accrual Basis. District accounting shall be on an accrual basis. Expenditures shall be charged to the fiscal year in which the services are rendered or the goods received. Under the written authority of the Chancellor, expenditures for special summer work-study projects, special summer inservice training projects, or other special student services projects made for the purposes of the extended opportunity programs and services may be considered expended in the fiscal year for which the State's obligation to the district is created. In this case, the State's expenditure will be recorded for that year.

56280. Subsidiary Accounts. The district shall maintain fiscal control for each approved project by setting up subsidiary accounts. Each approved project shall have its own appropriate income and expenditure accounts.

56281. Accounting Procedures. The rules and regulations for district accounting applicable by virtue of Section 17199 of the Education Code shall apply to budgets and accounts prepared pursuant to this chapter.

Article 2. Budget Structure

56282. State Sources. The funds granted under the provisions of Chapter 9, (commencing with Section 42000) Division 25, of the Education Code, shall be recorded as income from State sources. In this account shall be recorded that amount allowed for each approved project. At the close of the fiscal year and whenever a final fiscal report is made on any completed project during the fiscal year, this account shall be reduced by the amount received from the State for a project grant in excess of proper expenditures. The amount of the reduction shall be recorded as Account Payable, State.

56283. Other Sources. The funds from Federal sources and grants and gifts shall be recorded separately according to the source.

56284. Expenditures. Expenditures shall be recorded as direct and indirect expenses.

56285. Direct Expenses. Direct expenses shall be recorded under the following required subordinate classes for each approved project:

- (a) Certificated Salaries.
- (b) Classified Salaries.
- (c) Grant Payments.
- (d) Transportation.
- (e) Other Direct Expenses.

56286. Travel. Travel with EOPS funds is limited to EOPS personnel and only for EOPS related activities. Any other travel must be approved by the Chancellor's Office.

56287. Indirect Expenses. Indirect expenses shall be recorded under appropriate subordinate classes for each approved project.

56288. Purpose of Indirect Expense Account. The account for indirect expenses is established in order that all elements of cost necessary for the programs, grants, and services may be recorded. These are the costs which are of such nature that they cannot be readily or accurately identified as specifically related service costs but which must be estimated or prorated in some reasonable manner for the purpose of entering the charge against a particular project.

56289. Capital Outlay Expenditures. Capital outlay expenditures shall be recorded under the following required subordinate classes:

- (a) Buildings, leasing.
- (b) Equipment, rented.
- (c) Books.
- (d) Other Equipment, rental.

Article 3. Award of Funds

56290. Expenses Not Funded. Funds shall not be provided for the following expenses:

- (a) Salaries of existing positions.
- (b) Administrative salaries (assistant dean level and above).
- (c) Administrative support costs.
- (d) Costs of furniture.
- (e) Indirect costs (e.g., heat, light, power, janitorial service).
- (f) Costs of construction, remodeling, and renovation.

56291. Discretionary Funding. Funds may be provided for the following expenses:

- (a) Clerical salaries up to 50% of EOPS clerical support only.
- (b) Student personnel workers' salaries for extended opportunity programs and services personnel up to 50%. These costs may not be utilized to support existing positions.
- (c) Cost of teaching materials of \$200 or less per unit of teaching materials.
- (d) Consultant costs, up to \$1,000.
- (e) Curriculum development cost for released time of staff, up to \$7,500.
- (f) Rental or lease of space for the conduct of extended opportunity programs and services, up to \$1,000.

(g) Hourly salaries for tutorial, work-study, and work experience education programs, up to \$3.00. That portion of hourly salaries which is greater than \$3.00 an hour may be paid by the college.

(h) Grants to meet direct or supplemental educational costs, up to \$850 per year per student. The college may provide other grants to students which are greater than \$850.

(i) A work-study student or work-experience student may receive up to \$850 a year from funds provided in this program to supplement grants to meet his living cost. A student who has not received a grant to meet his supplemental education costs may earn up to \$1,700 in work-study or work-experience programs a year from funds provided in this program. The college may provide other work-study or work-experience amounts to students which are greater than the above.

(j) (Reserved)

(k) Grants for EOPS students to meet the costs for student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

56292. Funding for Director. Funds may be provided for the full salary of the director in the first year in which support of the director is granted, for one-half of the salary of the director for the second and ensuing years in which support of the director is granted. For the purposes of this section, "director" means the person in the Community College with direct and specific authority for the administration and operation of extended opportunity programs and services in the Community College.

Article 4. Expenditure

56293. Period of Expenditure. Funds granted pursuant to this chapter shall be available for expenditure until June 30 of the fiscal year for which they were granted. The State shall allow only such expenditures for the fiscal year which have been committed by the district as of that date. Encumbrances for expenditures during the summer months shall be requested by the Colleges prior to June 30.

56294. Certification to Controller. The board shall certify to the Controller the amount and recipient for funds granted pursuant to this chapter.

56295. Claims. A district to which funds were granted for approved extended opportunity projects and services may submit an initial claim for an amount up to one-third of the funds granted and may submit quarterly claims thereafter until a final claim is made. Claims shall be made on forms provided by the Chancellor and shall be submitted to him for payment.

56296. Encumbered or Returned Funds. The Chancellor may recover unused, unencumbered or returned funds before the end of the fiscal year for which they were allocated and reallocate them to be encumbered during the same fiscal year.

Register 77-34

§ 56200
§ 56233
§ 56234
§ 56235
§ 56235.1
§ 56281
§ 56282
§ 56291
§ 56292

CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

Article 1. Scope and Effect

56200. Implementation. The provisions of this chapter implement the provisions of Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code and govern the approval and funding of extended opportunity programs and services pursuant to the provisions of that article.

NOTE: Authority cited for Chapter 2.5 (Sections 56200-56296, not consecutive): Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, Education Code.

History: 1. New Chapter 2.5 (Sections 56200-56296, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).

2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

56201. Plans Without Funding. Plans prepared for the approval of the board without a request for funds shall be governed by the provisions of Subchapters 1, 2, 3, and 4 of this chapter.

56202. Plans With Funding. Plans prepared for the approval of the board and containing a request for funds shall be governed by the provisions of all of the subchapters of this chapter.

56203. Participation. Participation by a student in an extended opportunity program or service shall not preclude his participation in any other program which may be offered in the college.

56204. Effective Date. The provisions of this chapter shall govern all extended opportunity programs undertaken on and after November 10, 1969.

Article 2. Special Reports

56210. Annual Ethnic Survey. An annual ethnic survey of the student population, instructional staff, administrative staff, supportive staff, and noncertificated staff shall be conducted by each college and submitted through the district to the Chancellor.

56211. Evaluation. Each college or district having an approved plan shall evaluate the same annually and report the results thereof to the Chancellor. The results shall be reported in the format mandated by the Chancellor for each year that the program is in operation.

Article 3. Definitions

56215. Effect of Article. For the purposes of this chapter, the definitions given in this article shall apply.

56216. Chancellor. "Chancellor" means the Chancellor of the California Community Colleges.

56217. College. "College" means a public Community College established pursuant to laws of this state.

56218. Depressed Area. "Depressed Area" means a geographic region in which all of the following factors are present:

(a) The rate of unemployment is substantially above the national rate.

(b) The median level of family income is significantly below the national median.

(c) The level of housing, health, and educational facilities is substantially below the national level.

(d) The economy of the area has been dominated traditionally by one or two industries which are in a state of long-term decline.

(e) The rate of outmigration of labor or capital or both is substantial.

(f) The area is affected adversely by changing industrial technology.

(g) The area is affected adversely by change in national defense facilities or production.

(h) The indexes of regional production indicate a growth rate substantially below the national average.

The identification of these factors shall be based on official census publications of the U.S. Department of Commerce, U.S. Department of Labor, the California Human Resources Development Department, Employment Development Department, Department of Interior or other government census agencies.

56219. District. "District" means any school district in California that maintains one or more colleges pursuant to the provisions of the Education Code.

56220. Encumbrance. "Encumbrance" means an accounting procedure consisting of a request made to the Chancellor enabling colleges to extend the use of EOPS funds throughout the summer. Such a request must be made prior to the end of the fiscal year and will not be valid without approval of the Chancellor's Office.

56221. Extended Opportunity Program and Service. An "Extended Opportunity Program and Service" means a program or service undertaken by, or grants made by, a community college district or a college in the form and in accordance with the procedures prescribed by this chapter. Such a program or service shall be over, above, and in addition to, the regular educational programs of the college and has as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college.

56222. EOPS Student. An "EOPS Student" means a student whose eligibility to participate in programs and services offered under this chapter has been certified according to Section 56234.

56223. Full-Time Student. "Full-time Student", for the purpose of this article only, means a student who is enrolled in a minimum of 12 units in Community College courses or a combination of no less than 9 units in Community College courses plus sufficient additional hours in programs and/or services to total 14 weekly student contact hours and who is making continuous progress toward a goal, degree, or certificate as determined by the college.

History: 1. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

56224. Governing Board. "Governing Board" means the governing body of a district.

56225. Ethnic Minority Groups. "Ethnic Minority Groups" means Afro American, Negro or Black, Mexican-American (including Chicanos, Latinos, Puerto Ricans, and other Spanish-surnamed individuals), Asian (including Chinese, and Japanese), Filipinos, American Indian, and other non-Caucasian peoples.

56226. Multicultural Studies. "Multicultural Studies" means separate organized courses of instruction which stress the cultural attributes and contributions of minority ethnic groups or that portion of other courses devoted to such material.

56227. Supplemental Educational Costs. "Supplemental Educational Costs" means student costs for other than the following: living costs, student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

56228. Plan. "Plan" means the proposed scheme of extended opportunity programs and services submitted for approval by the board pursuant to subchapter 2 (commencing with Section 56240) of this chapter.

56229. Program. "Program" means a special pattern or method of instruction designed to facilitate the language, educational or social development of a student and increase his potential for success in the college. Any instruction in a program shall be provided by instructors approved by the governing board for the district maintaining the college in which the program is given.

56230. Services. "Services" means a program of assistance, including the making of grants designed to aid students with socioeconomic handicaps to permit them to enroll in and participate in the education activities of the college. Instruction must be provided by instructors approved by the governing board for the district maintaining the college in which the program is given.

56231. Special Projects. "Special Projects" means those projects which (a) would benefit all colleges, (b) have special merit, or (c) are submitted by new colleges admitting students for the first time.

56232. Student Personnel Workers. "Student Personnel Workers" include but are not limited to certificated student service personnel, counselors, placement directors, and student financial aid officers, or classified personnel working in one of these capacities as identified by the college.

56233. Target or High Priority Area. "Target or High Priority Area" means a depressed area with high total unemployment rates, high youth unemployment rates, and large numbers of minority youth in the college or in the community population served by the college.

56234. "Dependent Student" Eligibility. To participate and receive financial assistance under EOF3, a dependent student shall meet all the following criteria:

(a) Must be eligible under current Federal Supplemental Educational Opportunity Grant guidelines.

(b) The family's (student's parents' or legal guardian's) previous year's gross income shall not exceed \$7,500 for a family of four with an additional \$900 for each additional dependent. A dependent student from a family of three would qualify if the family's previous year's gross income does not exceed \$6,600 and a family of two would qualify if the family's previous year's gross income does not exceed \$5,700. District student financial aid policies shall be followed for income verification.

(c) Enroll full-time at a Community College as per Section 56223 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(d) Those students receiving financial assistance from EOPS must also submit an application for the federal Basic Education Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS grant recipient student is not receiving a BEOG, the Community College must certify that the student is ineligible.

In instances where an applicant does not meet the criteria specified in this section, and/or the parents refuse to provide financial information, the student may not be considered for an EOPS grant or work study award.

History: 1. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

56235. Independent Student Definition. An "independent student" is one who meets one of the following criteria:

(a) Has been determined to be self supporting prior to June 30, 1977, according to the procedures of the Community College from which he or she is currently receiving an EOPS grant.

(b) Has not lived with either parent or legal guardian (for more than 2 consecutive weeks) or received financial assistance exceeding six hundred dollars (\$600) from either parent for three consecutive tax years prior to the academic period for which aid is requested, and has not been claimed as an income tax exemption for the same period of time by anyone other than self or spouse.

(c) Has been a ward of the court in which case appropriate court documents shall be provided.

(d) Is an orphan and not claimed as a tax dependent during the current tax year by any person other than self or spouse.

(e) Has been a part of an extremely adverse home situation which is documented and supported by school or responsible community personnel such as a minister or social worker, which situation has led to estrangement from the family under circumstances where the student has not received a contribution in cash or kind from his family for the preceding 12 months. All Community Colleges shall develop a procedure to allow students to appeal decisions on whether the student has been part of an adverse home situation.

As per Education Code Section 69506, a Community College shall not consider the income of an applicant's parents in the determination of the applicant's financial need if the applicant is determined to be an independent student.

History: 1. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

56235.1. "Independent Student Eligibility". To participate and receive financial assistance under EOPS, an independent student shall meet the following criteria:

(a) Must be eligible under current Federal Supplemental Educational Opportunity Grant Guidelines.

Income which is derived from A.F.D.C. benefits are exempt from this provision.

(b) Enroll as a full-time student at a Community College as per Section 56223 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(c) Those students receiving financial assistance from EOPS must also submit an application for the Federal Basic Educational Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS student is not receiving a BEOG, the Community College must certify that the student is ineligible.

In instances where an applicant does not meet the criteria specified in this section, the student may not be considered for an EOPS grant or work study award.

History: 1. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

56936. Priority in Serving Students. An extended opportunity program or service shall benefit students in the following priority order:

- (a) First time or continuing freshmen
- (b) First time or continuing sophomores
- (c) Other students in the college

56937. Eligibility of Second-Year Student. A student who has completed the freshman program shall be making progress toward his educational objective in order to be eligible to receive financial aid. What constitutes progress other than full-time status shall be defined by the college.

SUBCHAPTER 3. FINANCIAL AND BUDGET REQUIREMENTS

Article 1. General Provisions

56276. Scope. The provisions of this subchapter apply to the budget required as a part of an application for plan approval and for expenditures made on the basis of plans approved pursuant to this chapter.

56277. Necessity of Subchapter. The regulations in this subchapter are necessary to assure proper disbursement of, and accounting for, Federal, State, district, and foundation funds designated for extended opportunity programs, grants, and services.

56278. Separate Accounts. All funds designated for extended opportunity programs, grants, and services shall be placed in a separate account established for that purpose by each district.

56279. Accrual Basis. District accounting shall be on an accrual basis. Expenditures shall be charged to the fiscal year in which the services are rendered or the goods received. Under the written authority of the Chancellor, expenditures for special summer work-study projects, special summer inservice training projects, or other special student services projects made for the purposes of the extended opportunity programs and services may be considered expended in the fiscal year for which the State's obligation to the district is created. In this case, the State's expenditure will be recorded for that year.

56280. Subsidiary Accounts. The district shall maintain fiscal control for each approved project by setting up subsidiary accounts. Each approved project shall have its own appropriate income and expenditure accounts.

56281. Accounting Procedures. The rules and regulations for district accounting applicable by virtue of Section 84030 of the Education Code shall apply to budgets and accounts prepared pursuant to this chapter.

History: 1. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

Article 2. Budget Structure

56282. State Sources. The funds granted under the provisions of Chapter 2, Article 8 (commencing with Section 69640) Part 42, Division 5, of the Education Code, shall be recorded as income from State sources. In this account shall be recorded that amount allowed for each approved project. At the close of the fiscal year and whenever a final fiscal report is made on any completed project during the fiscal year, this account shall be reduced by the amount received from the State for a project grant in excess of proper expenditures. The amount of the reduction shall be recorded as Account Payable, State.

History: 1. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

56283. Other Sources. The funds from Federal sources and grants and gifts shall be recorded separately according to the source.

56284. Expenditures. Expenditures shall be recorded as direct and indirect expenses.

56285. Direct Expenses. Direct expenses shall be recorded under the following required subordinate classes for each approved project:

- (a) Certificated Salaries.
- (b) Classified Salaries.
- (c) Grant Payments.
- (d) Transportation.
- (e) Other Direct Expenses.

56286. Travel. Travel with EOPS funds is limited to EOPS personnel and only for EOPS related activities. Any other travel must be approved by the Chancellor's Office.

56287. Indirect Expenses. Indirect expenses shall be recorded under appropriate subordinate classes for each approved project.

56288. Purpose of Indirect Expense Account. The account for indirect expenses is established in order that all elements of cost necessary for the programs, grants, and services may be recorded. These are the costs which are of such nature that they cannot be readily or accurately identified as specifically related service costs but which must be estimated or prorated in some reasonable manner for the purpose of entering the charge against a particular project.

56289. Capital Outlay Expenditures. Capital outlay expenditures shall be recorded under the following required subordinate classes:

- (a) Buildings, leasing.
- (b) Equipment, rented.
- (c) Books.
- (d) Other Equipment, rental.

Article 3. Award of Funds

56290. Expenses Not Funded. Funds shall not be provided for the following expenses:

- (a) Salaries of existing positions.
- (b) Administrative salaries (assistant dean level and above).
- (c) Administrative support costs.
- (d) Costs of furniture.
- (e) Indirect costs (e.g., heat, light, power, janitorial service).
- (f) Costs of construction, remodeling, and renovation.

56291. Discretionary Funding. Funds may be provided for the following expenses:

- (a) Cost of instructional materials up to \$2,000 per year per college.

- (b) Consultant costs up to \$3,000 per year per college.
- (c) Total cost for curriculum development up to \$7,500 per year per college.
- (d) Rental or lease of space for the conduct of extended opportunity programs and services, up to \$200 per month.
- (e) Cost of equipment for EOPS up to \$3,000 per year per college.
- (f) Special cultural awareness activities and/or cultural enrichment events as submitted and approved in the EOPS plan.
- (g) EOPS grants to meet direct or supplemental educational costs, up to \$850 per fiscal year per student.
- (h) An EOPS eligible student may receive \$1,700 maximum annually from EOPS funds. If a student receives an EOPS grant, she/he may receive work study to meet supplemental educational costs up to the difference between the grant and \$1,700.

History: 1. Repealer and new section filed 8-16-77; effective thirtieth day thereafter (Register 77, No 34).

56292. Funding EOPS Personnel. Funds may be provided for personnel included in this section. In all personnel categories, funding provisions may not be used to support positions that have previously been supported by district funds.

(a) EOPS Director. Funds may be provided for the full salary of the director in the first year in which support of the director is granted, for one-half of the salary of the director for the second and ensuing years in which support of the director is granted. For the purposes of this section, "director" means the person in the Community College with direct and specific authority for the administration and operation of extended opportunity programs and services in the Community College.

(b) EOPS Program Assistant. Funds may be provided for the full salary of EOPS Program Assistants for up to three fiscal years, beginning with the year for which the position is first approved for funding, and for one-half salary in the fourth and ensuing years. For the purposes of this section, "EOPS Program Assistant" means a position in a community college which:

- (1) Is specifically described in the college plan as essential to the attainment of EOPS program objectives.
- (2) Is within the EOPS program and under the supervision of the EOPS director, and
- (3) Is approved by the Chancellor's Office in the annual budget approval process.

(c) Student Personnel Worker. Funds may be provided for one-half the salary of student personnel worker positions in EOPS as defined in Section 56232.

(d) Clerical Staff. Funds may be provided for up to one-half the salary of clerical positions in EOPS.

(e) Hourly Employees. Funds may be provided for hourly wages up to \$3.50 per hour. That portion of hourly wages which exceeds \$3.50 per hour may be paid by the college.

History: 1. Repealer and new section filed 8-16-77; effective thirtieth day thereafter (Register 77, No 34).

Article 4. Expenditure

56293. Period of Expenditure. Funds granted pursuant to this chapter shall be available for expenditure until June 30 of the fiscal year for which they were granted. The State shall allow only such expenditures for the fiscal year which have been committed by the district as of that date. Encumbrances for expenditures during the summer months shall be requested by the Colleges prior to June 30.

56294. Certification to Controller. The board shall certify to the Controller the amount and recipient for funds granted pursuant to this chapter.

56295. Claims. A district to which funds were granted for approved extended opportunity projects and services may submit an initial claim for an amount up to one-third of the funds granted and may submit quarterly claims thereafter until a final claim is made. Claims shall be made on forms provided by the Chancellor and shall be submitted to him for payment.

56296. Encumbered or Returned Funds. The Chancellor may recover unused, unencumbered or returned funds before the end of the fiscal year for which they were allocated and reallocate them to be encumbered during the same fiscal year.

Register 79-32

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|---------|---------|---------|---------|-----------|---------|
| § 56200 | § 56223 | § 56237 | § 56254 | § 56281 | § 56293 |
| § 56201 | § 56224 | § 56238 | § 56255 | § 56282 | |
| § 56203 | § 56225 | § 56239 | § 56256 | § 56283 | |
| § 56204 | § 56226 | § 56240 | § 56257 | § 56284 | |
| § 56210 | § 56227 | § 56241 | § 56258 | § 56285 | |
| § 56211 | § 56228 | § 56243 | § 56259 | § 56286 | |
| § 56215 | § 56229 | § 56244 | § 56270 | § 56287 | |
| § 56216 | § 56230 | § 56245 | § 56271 | § 56288 | |
| § 56217 | § 56231 | § 56246 | § 56272 | § 56289 | |
| § 56218 | § 56232 | § 56247 | § 56276 | § 56290 | |
| § 56219 | § 56233 | § 56250 | § 56277 | § 56291 | |
| § 56220 | § 56234 | § 56251 | § 56278 | § 56291.1 | |
| § 56221 | § 56235 | § 56252 | § 56279 | § 56291.2 | |
| | § 56222 | § 56236 | § 56253 | § 56292 | |

CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES**SUBCHAPTER 1. GENERAL PROVISIONS****Article 1. Scope and Effect****56200. Implementation.**

The provisions of this chapter implement the provisions of Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code and govern the approval and funding of extended opportunity programs and services pursuant to the provisions of that article.

NOTE: Authority cited for Chapter 2.5 (Sections 56200-56296, not consecutive): Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, Education Code.

HISTORY:

1. New Chapter 2.5 (Sections 56200-56296, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).
2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).
3. Repealer of Chapter 2.5 (Sections 56200-56296, not consecutive) and new Chapter 2.5 (Sections 56200-56293, not consecutive) filed 8-10-79; effective thirtieth day thereafter (Register 79, No. 32). For prior history, see Registers 77, No. 34, 77, No. 45, 78, No. 26 and 78, No. 39.

56201. Plans.

Plans prepared for the approval of the Board of Governors with or without a request for funds shall be governed by all the provisions of this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56203. Participation.

Participation by a student in an extended opportunity program or service shall not preclude his/her participation in any other program which may be offered in the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56204. Effective Date.

The provisions of this chapter shall govern all extended opportunity programs undertaken on and after November 10, 1969.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 2. Special Reports**56210. Annual Ethnic Survey.**

An annual ethnic survey of the student population, instructional staff, administrative staff, supportive staff, and noncertificated staff shall be conducted by each college and submitted through the district to the Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56211. Evaluation.

Each college or district having an approved plan shall evaluate the same annually and report the results thereof to the Chancellor. The results shall be reported in the format mandated by the Chancellor for each year that the program is in operation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Definitions

56215. Effect of Article.

For the purposes of this chapter, the definitions given in this article shall apply.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56216. Chancellor.

"Chancellor" means the Chancellor of the California Community Colleges.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56217. College.

"College" means a public Community College established pursuant to laws of this state.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56218. Curriculum Development.

"Curriculum Development" means the modification and/or the development of courses designed to increase the potential of students who have been handicapped by language, educational, financial or social disadvantages.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56219. Depressed Area.

"Depressed Area" means a geographic region identified by official census publication of the Department of Commerce, U.S. Department of Labor, Employment Development Department, Department of Interior or other government census agencies as being low income or depressed area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56220. District.

"District" means any community college district in California.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56221. Encumbrance.

"Encumbrance" means an accounting procedure consisting of a request made to extend the use of EOPS funds throughout the summer (July 1 to August 31). Such a request and commitment for expenditures must be made prior to the end of the fiscal year (June 30) and will not be valid without approval of the Chancellor's Office.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56222. Extended Opportunity Program and Service.

An "Extended Opportunity Program and Service" means a program or service undertaken by, or grants made by, a community college district or a college in the form and in accordance with the procedures prescribed by this chapter. Such a program or service shall be over, above, and in addition to, the regular educational programs of the college and has as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56223. EOPS Student.

An "EOPS Student" means a student whose eligibility to participate in programs and services offered under this chapter has been certified according to Section 56236, Section 56237 and Section 56238.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56224. Full-Time Student.

"Full-time Student", for the purpose of this article only, means a student who is enrolled in a minimum of 12 units in community college courses or a combination of no less than 9 units in community college courses plus sufficient additional hours in programs and/or services to total 14 directed student contact hours per week and who is making continuous progress toward a goal, degree, or certificate as determined by the governing board.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56225. Governing Board.

"Governing Board" means the governing board of a district.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56226. Ethnic Minority Groups.

"Ethnic Minority Groups" means Afro-American, (Negro or Black,) Alaskan Native, American Indian, Asian (including South East Asian, Pacific Asian, Chinese, and Japanese), Filipinos, Hispanic (including Mexican-American, Chicanos, Latinos, Puerto Ricans, and other Spanish-surnamed individuals), and other non-Caucasian peoples.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56227. Multicultural Studies.

"Multicultural Studies" means separate organized courses of instruction which stress the cultural attributes and contributions of minority ethnic groups or that portion of other courses devoted to such material.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56228. Plan.

"Plan" means the proposed scheme of extended opportunity programs and services submitted for approval by the board pursuant to Subchapter 2 (commencing with Section 56240) of this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56220. Program.

"Program" means a special pattern or method of instruction, approved by a local governing board and designed to facilitate the language, educational or social development of a student and increase his/her potential for success in the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56230. Services.

"Services" means a program of assistance, including the making of grants, designed to aid students with socioeconomic handicaps to permit them to enroll and participate in the education activities of the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56231. Special Projects.

"Special Projects" means those projects which (a) have the potential to benefit all colleges, (b) projects which the Board of Governors deem to have special merit.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56232. Student Personnel Workers.

"Student Personnel Workers" for the purposes of this article only include but are not limited to certificated EOPS student service personnel, EOPS counselors, EOPS placement support staff, and student financial aid support staff, or classified personnel working in one of these capacities as identified in the approved EOPS plan. The professional responsibilities of such personnel must be within the EOPS program and must be authorized by the EOPS Director in the approved EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56233. Student Contact Hours.

For the purpose of EOPS participants, directed student contact hours means the number of directed, documented hours per week spent in tutoring, counseling, instruction or similar activities as prescribed by the EOPS Director on the recommendation of a certificated counselor or instructor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56234. Supplemental Educational Costs.

For the purpose of this article only "Supplemental Educational Costs" means student educational costs for other than the following: living costs, student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56235. Target or High Priority Area.

"Target or High Priority Area" means a depressed area with high total unemployment rates, high youth unemployment rates, and large numbers of minority youth in high school, college or in the community population served by the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56236. "Dependent Student Eligibility".

To participate and receive financial assistance under EOPS, a dependent student shall meet all the following criteria:

(a) Must be eligible under all of the following Extended Opportunity Programs and Services guidelines.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at the institution.

(b) The family's (student's parents or legal guardians) previous year's gross income shall not exceed \$8,250 for a family of four with an additional \$900 for each additional dependent. A dependent student from a family of three would qualify if the family's previous year's gross income does not exceed \$7,350 and a family of two would qualify if the family's previous year's gross income does not exceed \$6,450. District student financial aid policies must be followed for income verification.

(c) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(d) Enroll as a full-time student at a community college as per Section 56224 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(e) Those students receiving financial assistance from EOPS must also submit an application for the Federal Basic Education Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS grant recipient is not receiving a BEOG, the community colleges must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's BEOG roster.

In instances where an applicant does not meet the criteria specified in this section, and/or the parents refuse to provide financial information, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56237. Independent Student Definition.

An "Independent Student" is one who meets one of the following criteria:

(a) Has been determined to be self-supporting prior to June 30, 1977, according to the procedures of the California postsecondary educational institution from which he or she is currently receiving need based, state-funded financial aid.

(b) Has not lived with either parent or legal guardian or received financial assistance exceeding six hundred dollars (\$600) from either parent for three consecutive tax years prior to the academic period for which aid is requested and has not been claimed as an income tax exemption for the same period of time by anyone other than self or spouse.

(c) Has been a ward of the court, in which case appropriate court documents shall be submitted.

(d) Is an orphan and not claimed as a tax dependent during the current tax year by any person other than self or spouse.

(e) Has been a part of an extremely adverse home situation, which is documented and supported by school or responsible community personnel such as a minister or social worker, which situation has led to estrangement from the family under circumstances where the student has not received a contribution in cash or kind from his/her family for the preceding 12 months. Public post-secondary educational institutions and the Student Aid Commission shall develop a procedure to allow students to appeal decisions on whether the student has been part of an adverse home situation.

(f) Is 30 years of age or older, unless there is substantial evidence of parental support of such applicant.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56238. "Independent Student Eligibility".

To participate and receive financial assistance under EOPS, an independent student shall meet all of the following criteria:

(a) Must be eligible under all the following Extended Opportunity Programs and Services Guidelines. Income which is derived from Aid to Families with Dependent Children (A.F.D.C.) and/or Supplemental Security Income (S.S.I.) benefits is exempt from this provision.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS Grant.

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(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at that institution.

(b) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(c) Enroll as a full-time student at a community college as per Section 56224 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(d) Those students receiving financial assistance from EOPS must also submit an application for the Federal Basic Educational Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS student is not receiving a BEOG, the community college must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's BEOG roster.

In instances where an applicant does not meet the criteria specified in this section, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56239. Priority in Serving Students.

An extended opportunity program or service shall benefit students in the following priority order:

(a) First time students with greatest need.

(b) Continuing students with greatest need.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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SUBCHAPTER 2. PROCEDURE

Article 1. Submission of Plans

56240. Submitted by District.

An application for approval of extended opportunity programs and services for funding, or for both, shall be submitted by each district for individual colleges within the district. Each college will be considered as an independent entity. Districts with multiple campuses may submit a district-wide application. Consortiums, exchanges, or cooperative inter-district endeavors are permitted.

In the case of a district-wide application, the district will be considered the entity submitting the application.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56241. Outline.

Each application shall conform to the following outline:

- (a) Purpose.
 - (1) Goals. These are the long-term purposes of the EOPS program.
 - (2) Objectives. These are the short-term measurable goals of the EOPS program.
- (b) Activities to be undertaken to accomplish the objectives.
- (c) Description of methods of evaluation.
- (d) Budget.
- (e) Number of students projected to be served.
- (f) Number of unduplicated students projected to be served.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56243. Deadlines.

The Chancellor's Office may not establish a deadline for the submission of EOPS plans which occurs sooner than 90 days from the date on which the manual of instructions and the appropriate application forms are mailed. All applications for approval of plans and requests for funds for plans for a given fiscal year shall be received at the Office of the Chancellor not later than the deadline date established by the Board of Governors for each fiscal year. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

The provisions of the prior paragraph do not apply to the approval or funding of special projects. Requests for approval of special projects, funding of special projects, or both, shall be submitted at a time designated by the Chancellor's Office.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

50244. Applications.

Each application shall contain a one year plan. It shall reflect a commitment to the Statement of Policy, Goals, and Guidelines of Board of Governors, California Community Colleges for extended opportunity programs and services. The plan shall be revised and brought up-to-date in each year in which approval or funding of the plan is requested.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

50245. Scope and Appropriateness.

Consideration shall be given to the scope and appropriateness of the activities planned. These activities may include, but not be limited to, tutorial services, multicultural studies, recruitment services, counseling, admission services, in-service training programs, programs which encourage active EOPS student participation, grants to meet direct and supplemental educational costs, and grants to meet the costs of a student for student fees, supplies, tools, equipment, instruments, uniforms, and transportation between home and college, and other activities to meet special needs.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

50246. Maintenance of Effort.

If the plan contains a request for funds, it shall give assurance that funds granted pursuant to this chapter shall supplement and, to the extent practicable, increase the amount of district funds used by the college for extended opportunity programs and services. Exceptions to this section may be given in those unusual circumstances which could not be anticipated by the district. Such exceptions require approval by the Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

50247. Advisory Committee.

Each EOPS Program shall include an Advisory Committee, members of which shall serve without compensation, with the permissible exception of reimbursement for necessary expenses incurred in performing their duties and responsibilities. The advisory committee shall include representation from the college personnel, EOPS students, community and business sector.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 2. Evaluation of Plans

50250. Effect.

Each plan shall be evaluated on the basis of the criteria listed in this article.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

50251. Program Review and Recommendations.

All plans and requests for funding submitted on or before the deadline shall be reviewed and evaluated by the Chancellor and his staff. They shall recommend plans or portions thereof for Board of Governors approval and funding. The recommendation for funding shall include a specific amount.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56252. Action by Board of Governors.

The Board of Governors shall consider all of the plans and requests for funding and the Chancellor's recommendations thereon and shall approve such plans and grant funds for such programs and services as it finds are in the best interest of the state, communities, and persons served.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56253. Approved Plan Required.

No extended opportunity program or service, or any portion thereof, shall be funded unless the plan of which it is a part has been approved by the Board of Governors.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56254. Matching Funds.

No funds shall be granted on the condition that the college commit an equal amount of college or district funds.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56255. Priority in Funding.

Programs and services will be funded in view of the following priority list:

- (a) Improvement or strengthening of programs or services.
- (b) Extension or expanding of programs or services.
- (c) Maintaining programs or services.
- (d) New programs or services.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56256. Adjustment After Funding.

After the Board of Governors has granted funds for a plan, the Chancellor may adjust the programs and services in the plan in view of the priorities established in Section 56255, if adjustment is necessary to correct an error or if there had been insufficient information at the time the programs and services in the plan were originally ranked by priority.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56257. Funding.

Requests for funding shall be approved and funded in view of the following criteria:

- (a) Plans for districts of colleges in target areas as defined in Section 56235 of this chapter.
- (b) Plans for districts or colleges with highest percentage or number of students with gross family incomes of \$8,250 or less.
- (c) Plans for districts or colleges with the highest percentage of ethnic minority population in the community the college serves, the highest percentage of ethnic minority Community College students, and the highest number of ethnic minority Community College students.
- (d) Plans for districts or colleges that serve students from areas that have a high total unemployment rate or a high youth unemployment rate, or both.

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(e) Plans for districts or colleges that have the highest level of involvement of the total college and groups in the community in extended opportunity programs and services.

(f) Plans for districts or colleges developing consortiums or cooperative ventures or projects which combine state and district funds with other sources of funds.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56258. Low Priority.

Plans and projects limited to research shall receive a low priority. Research projects will be considered as a priority if submitted for EOPS special project funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56259. Effective Program Experience.

Consideration for priority funding shall be given to plans from those districts or colleges which have demonstrated effective program experience.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Evaluation of College EOPS Programs and Services

56270. Effect.

Programs and services offered under EOPS shall be evaluated on the basis of the criteria listed in this article.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56271. Approved Programs and Services.

Programs and services offered under EOPS must comply with the approved plan for that year as well as with State statutes.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56272. Quantitative Data.

The following records must be kept up-to-date by colleges offering programs and services under EOPS:

(a) Enrolled EOPS students for the current year under the following headings:

- (1) EOPS support services only.
 - (2) EOPS direct aid only.
 - (3) EOPS support services and direct aid.
 - (4) EOPS services received by students authorized under Section 56240.
- (b) All EOPS-eligible applicants.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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SUBCHAPTER 3. FINANCIAL AND BUDGET REQUIREMENTS

Article 1. General Provisions

56276. Scope.

The provisions of this subchapter apply to the budget required as part of an application for plan approval and for expenditures made on the basis of plans approved pursuant to this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56277. Necessity of Subchapter.

The regulations in this subchapter are necessary to assure proper disbursement of, and accounting for, Federal, State, district, and foundation funds designated for extended opportunity programs, grants, and services.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56278. Separate Accounts.

All funds designated for extended opportunity programs, grants, and services shall be placed in a separate account established for that purpose by each district.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56279. Accrual Basis.

District accounting shall be on an accrual basis. Expenditures shall be charged to the fiscal year in which the services are rendered or the goods received. Under the written authority of the Chancellor, expenditures for special summer work-study projects, special summer inservice training projects, or other special student services projects made for the purposes of the extended opportunity programs and services may be considered expended in the fiscal year for which the State's obligation to the district is created. In this case, the State's expenditure will be recorded for that year.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56280. Subsidiary Accounts.

The district shall maintain fiscal control for each approved project by setting up subsidiary accounts. Each approved project shall have its own appropriate income and expenditure accounts.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56281. Accounting Procedures.

The rules and regulations for district accounting applicable by virtue of Section 84030 of the Education Code shall apply to budgets and accounts prepared pursuant to this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 2. Budget Structure

56282. State Sources.

The funds granted under the provisions of Chapter 2, Article 8 (commencing with Section 69640) Part 42, Division 5, of the Education Code, shall be recorded as income from State sources. In this account shall be recorded that amount allowed for each approved project. At the close of the fiscal year and whenever a final fiscal report is made on any completed project during the fiscal year, this account shall be reduced by the amount received from the State for a project grant in excess of proper expenditures. The amount of the reduction shall be recorded as Account Payable, State.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56283. Other Sources.

The funds from Federal sources and grants and gifts shall be recorded separately according to the source.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56284. Expenditures.

Expenditures shall be recorded as direct and indirect expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56285. Direct Expenses.

Direct expenses shall be recorded under the following required subordinate classes for each approved project:

- (a) Certificated Salaries.
- (b) Classified Salaries.
- (c) Grant Payments.
- (d) Transportation.
- (e) Other Direct Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56286. Travel.

Travel with EOPS funds is limited to EOPS students and personnel, as described in Sections 56223, 56224 and 56292, and only for EOPS related activities.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56287. Indirect Expenses.

Indirect expenses shall be recorded under appropriate subordinate classes for each approved project.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56288. Purpose of Indirect Expense Account.

The account for indirect expenses is established in order that all elements of cost necessary for the programs, grants, and services may be recorded. These are the costs which are of such nature that they cannot be readily or accurately identified as specifically related service costs but which must be estimated or prorated in some reasonable manner for the purpose of entering the charge against a particular project.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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56289. Capital Outlay Expenditures.

Capital outlay expenditures shall be recorded under the following required subordinate classes:

- (a) Buildings, leasing.
- (b) Equipment, rented.
- (c) Books.
- (d) Other Equipment, rental.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Award of Funds

56290. Expenses Not Funded.

Funds shall not be provided for the following expenses:

- (a) Administrative salaries (assistant dean beginning salary level for the district and above).
- (b) Administrative support costs.
- (c) Costs of furniture.
- (d) Indirect costs (e.g., heat, light, power, janitorial service).
- (e) Costs of construction, remodeling, and renovation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56291. Discretionary Funding.

Up to 10% (not to exceed \$25,000), of the campus allocation, excluding any supplemental awards and/or special project allocation may be used for the following. Any amount over and above will be allowed with the Chancellor's Office approval.

- (a) Purchase of new equipment
- (b) Equipment exchange and/or replacement
- (c) Rental and/or lease purchase agreement for equipment
- (d) Equipment maintenance
- (e) Instructional supplies
- (f) Media supplies
- (g) Office supplies
- (h) Other supplies
- (i) Textbooks
- (j) Other books
- (k) Rental and/or lease of space
- (l) Staff travel and/or conference expenses
- (m) Student travel and/or conference expenses
- (n) Contract services (consultants)
- (o) Cultural awareness and/or cultural enrichment activities
- (p) Recruitment mileage
- (q) Other items as submitted to and approved by the Chancellor's Office

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56291.1. Direct Aid to Students.

- (a) EOPS Grants to meet direct or supplemental educational costs up to \$850 annually.

(b) An EOPS eligible student may receive up to \$1,700 maximum annually from EOPS Funds. If a student receives an EOPS grant he/she may receive work study to meet supplemental educational costs up to the difference between the grant and \$1,700.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56291.2. Curriculum Development.

Funds may be provided to cover the cost of curriculum development as approved in the district's EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56292. Funding for EOPS Personnel.

Funds may be provided for EOPS Personnel as described in this section.

(a) Positions in all personnel categories which are described and approved in the EOPS plan may be funded with state EOPS monies in 1979-80, regardless of their sources of funding in 1978-79.

(b) New positions proposed for approval in 1979-80 EOPS plans may be funded to full salary with state EOPS monies if such positions are proposed for EOPS programs in colleges which are receiving state EOPS program funding for the first time in fiscal year 1979-80.

(c) All new positions in programs previously funded by state EOPS funds must be approved by the Chancellor, and may be funded with state EOPS monies up to 100% of the total salary.

(d) Positions described in subsection (c) shall be authorized only if it falls within one of the following personnel categories and shall be subject to the funding provisions specified therein.

(1) EOPS Director. For the purposes of the section, "director" means the person in the community college whose primary responsibility is to directly administer and oversee the daily operations of Extended Opportunity Programs and Services.

(2) EOPS Program Assistant. For the purposes of this section, "EOPS Program Assistant" means a position in a community college which:

(A) Is specifically described in the 1979-80 plan as essential to the attainment of the EOPS program objectives,

(B) Is within the EOPS program and authorized by the EOPS director, and

(C) Is approved by the Chancellor's Office in the annual budget approval process.

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(3) **Student Personnel Worker.** For the purpose of this section only, "Student Personnel Worker" means certificated EOPS student service personnel, certificated EOPS counselors, EOPS placement support staff, and EOPS counselors, EOPS student financial aid support staff, or classified personnel working in one of these capacities whose primary responsibilities are within the EOPS program as identified in the EOPS approved plan.

(4) **Clerical Staff.** Funds may be provided for the salary of clerical positions in the EOPS program.

(5) **Student Hourly Employees.** Funds may be provided in this category at the prevailing district rate. Federal minimum wage regulations must be applied in the employment of EOPS students with EOPS dollars.

(6) **Classified Hourly.** Funds may be provided in this category at the prevailing district rate.

(7) **Certificated Hourly.** Funds may be provided in this category at the prevailing district rate.

(e) Funds for new salary expenditures made possible by this provision should be derived, to the greatest extent possible, from decreased nonsalary expenditures in administration costs and support services. A college may not utilize direct aid funds for this purpose to an extent that would reduce direct aid monies below FY 1978-79 budget levels.

(f) No FY 1979-80 revised budgets based on the provision of this section shall be approved without certification that the EOPS director has been consulted in the revision.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56293. Board of Governors Reserve Fund.

The Board of Governors may authorize the Chancellor of the California Community Colleges to reserve from the state appropriation up to one-half of one percent annually for the purposes of funding EOPS student information system projects, publications and program development activities which the Board deem high priority.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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56235. Target or High Priority Area.

"Target or High Priority Area" means a depressed area with high total unemployment rates, high youth unemployment rates, and large numbers of minority youth in high school, college or in the community population served by the college.

NOTE: Authority cited: Sections 69648, 69632 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56236. "Dependent Student Eligibility".

To participate and receive financial assistance under EOPS, a dependent student shall meet all the following criteria:

(a) Must be eligible under all of the following Extended Opportunity Programs and Services guidelines.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at the institution.

(b) The family's (student's parents or legal guardians) previous year's gross income shall not exceed \$8,250 for a family of four with an additional \$900 for each additional dependent. A dependent student from a family of three would qualify if the family's previous year's gross income does not exceed \$7,350 and a family of two would qualify if the family's previous year's gross income does not exceed \$6,450. District student financial aid policies must be followed for income verification.

(c) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(d) Enroll as a full-time student at a community college as per Section 56224 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(e) Those students receiving financial assistance from EOPS must also submit an application for the Federal Basic Education Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS grant recipient is not receiving a BEOG, the community colleges must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's BEOG roster.

In instances where an applicant does not meet the criteria specified in this section, and/or the parents refuse to provide financial information, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69658 and 71080, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56237. Independent Student Definition.

(a) For purposes of determining whether or not a student is independent, an institution shall not consider the income of an applicant's parents in the determination of an applicant's financial need if the applicant meets all of the following requirements:

(1) Has not and will not be claimed as an exemption for state and federal income tax purposes by his or her parent in the calendar years aid is received and in any of the three calendar years prior to the award period for which aid is requested.

(2) Has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent in the calendar years in which aid is received and in any of the three calendar years before the award period for which aid is requested.

(3) Has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year aid is received and in any form of the three calendar years before the award period for which aid is requested.

(b) Notwithstanding subdivision (a) of this section, a postsecondary institution shall not consider the income of an EOPS applicant's parents in the determination of an applicant's financial need if the applicant meets one of the following requirements:

(1) Has been determined to be self-supporting prior to June 30, 1977, according to the procedures of the California postsecondary educational institution from which he or she is currently receiving need-based, state-funded financial aid.

(2) Has been a ward of the court, in which case appropriate court documents shall be submitted.

(3) Is an orphan and will not be claimed as an exemption for state and federal income tax purposes by anyone other than self or spouse for the calendar years aid is received.

(4) Has been a part of an extremely adverse home situation which is documented and supported by school or responsible community personnel such as a minister or social worker, which situation has led to estrangement from the family under circumstances where the student has not received a contribution in case or kind from his family for the preceding 12 months. Public postsecondary educational institutions and the Student Aid Commission shall develop a procedure to allow students to appeal decisions on whether the student has been part of an adverse home situation.

(5) Is 30 years of age or older, unless there is substantial evidence of parental support of such applicant.

NOTE: Authority cited: Sections 69648, 69658 and 71080, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Division 7, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).

56238. "Independent Student Eligibility".

To participate and receive financial assistance under EOPS, an independent student shall meet all of the following criteria:

(a) Must be eligible under all the following Extended Opportunity Programs and Services Guidelines. Income which is derived from Aid to Families with Dependent Children (A.F.D.C.) and/or Supplemental Security Income (S.S.I.) benefits is exempt from this provision.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS Grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at that institution.

(b) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(c) Enroll as a full-time student at a community college as per Section 56224 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(d) Those students receiving financial assistance from EOPS must also submit an application for the Federal Basic Educational Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS student is not receiving a BEOG, the community college must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's BEOG roster.

In instances where an applicant does not meet the criteria specified in this section, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56239. Priority in Serving Students.

An extended opportunity program or service shall benefit students in the following priority order:

(a) First time students with greatest need.

(b) Continuing students with greatest need.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56290. Capital Outlay Expenditures.

Capital outlay expenditures shall be recorded under the following required subordinate classes:

- (a) Buildings, leasing.
- (b) Equipment, rented.
- (c) Books.
- (d) Other Equipment, rental.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Award of Funds

56290. Expenses Not Funded.

Funds shall not be provided for the following expenses:

(a) Administrative salaries (assistant dean beginning salary level for the district and above). Personnel positions are exempt from this prohibition if:

(1) The position functions in the capacity of the EOPS Director having 100% of the position occupant's employed time and responsibility within the EOPS program, and

(2) The exemption is specifically certified by the Chancellor's Office.

(b) Administrative support costs.

(c) Costs of furniture.

(d) Indirect costs (e.g., heat, light, power, janitorial service).

(e) Costs of construction, remodeling, and renovation.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Division 7, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).

56291. Discretionary Funding.

Up to 10% (not to exceed \$25,000), of the campus allocation, excluding any supplemental awards and/or special project allocation may be used for the following. Any amount over and above will be allowed with the Chancellor's Office approval.

- (a) Purchase of new equipment
- (b) Equipment exchange and/or replacement
- (c) Rental and/or lease purchase agreement for equipment
- (d) Equipment maintenance
- (e) Instructional supplies
- (f) Media supplies
- (g) Office supplies
- (h) Other supplies
- (i) Textbooks
- (j) Other books
- (k) Rental and/or lease of space
- (l) Staff travel and/or conference expenses
- (m) Student travel and/or conference expenses
- (n) Contract services (consultants)
- (o) Cultural awareness and/or cultural enrichment activities
- (p) Recruitment mileage

(g) Other items as submitted to and approved by the Chancellor's Office

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56291.1. Direct Aid to Students.

(a) EOPS Grants to meet direct or supplemental educational costs up to \$850 annually.

(b) An EOPS eligible student may receive up to \$1,700 maximum annually from EOPS Funds. If a student receives an EOPS grant he/she may receive work study to meet supplemental educational costs up to the difference between the grant and \$1,700.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56291.2. Curriculum Development.

Funds may be provided to cover the cost of curriculum development as approved in the district's EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56292. Funding for EOPS Personnel.

Funds may be provided for EOPS Personnel as described in this section.

(a) Positions in all personnel categories which are described and approved in the EOPS plan may be funded with state EOPS monies in 1979-80, regardless of their sources of funding in 1978-79.

(b) New positions proposed for approval in 1979-80 EOPS plans may be funded to full salary with state EOPS monies if such positions are proposed for EOPS programs in colleges which are receiving state EOPS program funding for the first time in fiscal year 1979-80.

(c) All new positions in programs previously funded by state EOPS funds must be approved by the Chancellor, and may be funded with state EOPS monies up to 100% of the total salary.

(d) Positions described in subsection (c) shall be authorized only if it falls within one of the following personnel categories and shall be subject to the funding provisions specified therein.

(1) EOPS Director. For the purposes of the section, "director" means the person in the community college whose primary responsibility is to directly administer and oversee the daily operations of Extended Opportunity Programs and Services.

(2) EOPS Program Assistant. For the purposes of this section, "EOPS Program Assistant" means a position in a community college which:

(A) Is specifically described in the 1979-80 plan as essential to the attainment of the EOPS program objectives,

(B) Is within the EOPS program and authorized by the EOPS director, and

(C) Is approved by the Chancellor's Office in the annual budget approval process.

(3) Student Personnel Worker. For the purpose of this section only, "Student Personnel Worker" means certificated EOPS student service personnel, certificated EOPS counselors, EOPS placement support staff, and EOPS counselors, EOPS student financial aid support staff, or classified personnel working in one of these capacities whose primary responsibilities are within the EOPS program as identified in the EOPS approved plan.

(4) **Clerical Staff.** Funds may be provided for the salary of clerical positions in the EOPS program.

(5) **Student Hourly Employees.** Funds may be provided in this category at the prevailing district rate. Federal minimum wage regulations must be applied in the employment of EOPS students with EOPS dollars.

(6) **Classified Hourly.** Funds may be provided in this category at the prevailing district rate.

(7) **Certificated Hourly.** Funds may be provided in this category at the prevailing district rate.

(e) Funds for new salary expenditures made possible by subdivisions (a), (c) and (d) of this section should be derived to the greatest extent possible, from decreased nonsalary expenditures in administration costs and in support services costs. A college may not utilize direct aid funds for this purpose to an extent that would reduce direct aid monies expended in any current fiscal year below the direct aid expenditures in the immediate past fiscal year. The Chancellor may exempt a college from this direct aid restriction if one or more of the following conditions apply:

(1) The college EOPS allocation was reduced from the allocation level in the previous year, in which event the direct aid expenditure may be reduced in proportion to the reduction in the total allocations.

(2) The college EOPS program direct aid expenditure is distorted as a result of a summer augmentation which can be neither guaranteed in subsequent years nor ordinarily predicted as to amount when it is received, in which event the summer augmentation expended in direct aid need not be included in the calculation of the required direct aid expenditure.

(3) The college returns to the state treasury an amount equal to, or greater than, any difference between the amount that should have been expended in direct aid and the amount that actually was expended.

(f) No FY 1979-80 revised budgets based on the provision of this section shall be approved without certification that the EOPS director has been consulted in the revision.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Division 7, Education Code.

HISTORY:

1. Amendment of subsection (e) filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).

56293. Board of Governors Reserve Fund.

The Board of Governors may authorize the Chancellor of the California Community Colleges to reserve from the state appropriation up to one-half of one percent annually for the purposes of funding EOPS student information system projects, publications and program development activities which the Board deem high priority.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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§ 56276
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CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

Article 1. Scope and Effect

56200. Implementation.

NOTE: Authority cited for Chapter 2.5 (Sections 56200-56296, not consecutive): Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, Education Code.

HISTORY:

1. New Chapter 2.5 (Sections 56200-56296, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).
2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).
3. Repealer of Chapter 2.5 (Sections 56200-56296, not consecutive) and new Chapter 2.5 (Sections 56200-56293, not consecutive) filed 8-10-79; effective thirtieth day thereafter (Register 79, No. 32). For prior history, see Registers 77, No. 34, 77, No. 43, 78, No. 26 and 78, No. 39.
4. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56201. Plans.

Plans prepared for the approval of the Board of Governors with or without a request for funds shall be governed by all the provisions of this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56203. Participation.

Participation by a student in an extended opportunity program or service shall not preclude his/her participation in any other program which may be offered in the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56204. Effective Date.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

Article 2. Special Reports

56210. Annual Ethnic Survey.

An annual ethnic survey of the student population, instructional staff, administrative staff, supportive staff, and noncertificated staff shall be conducted by each college and submitted through the district to the Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56211. Evaluation.

Each college or district having an approved plan shall evaluate the same annually and report the results thereof to the Chancellor. The results shall be reported in the format mandated by the Chancellor for each year that the program is in operation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Definitions

56215. Effect of Article.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56216. Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56217. College.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56218. Curriculum Development.

"Curriculum Development" means the modification and/or the development of courses designed to increase the potential of students who have been handicapped by language, educational, financial or social disadvantages.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56219. Depressed Area.

"Depressed Area" means a geographic region identified by official census publication of the Department of Commerce, U.S. Department of Labor, Employment Development Department, Department of Interior or other government census agencies as being low income or depressed area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56220. District.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56221. Encumbrance.

"Encumbrance" means an accounting procedure consisting of a request made to extend the use of EOPS funds throughout the summer (July 1 to August 31). Such a request and commitment for expenditures must be made prior to the end of the fiscal year (June 30) and will not be valid without approval of the Chancellor's Office.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56222. Extended Opportunity Program and Service.

An "Extended Opportunity Program and Service" means a program or service undertaken by, or grants made by, a community college district or a college in the form and in accordance with the procedures prescribed by this chapter. Such a program or service shall be over, above, and in addition to, the regular educational programs of the college and has as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56223. EOPS Student.

An "EOPS Student" means a student whose eligibility to participate in programs and services offered under this chapter has been certified according to Section 56236, Section 56237 and Section 56238.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56224. Full-Time Student.

"Full-time Student", for the purpose of this article only, means a student who is enrolled in a minimum of 12 units in community college courses or a combination of no less than 9 units in community college courses plus sufficient additional hours in programs and/or services to total 14 directed student contact hours per week and who is making continuous progress toward a goal, degree, or certificate as determined by the governing board.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56225. Governing Board.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56226. Ethnic Minority Groups.

"Ethnic Minority Groups" means Afro-American (Negro or Black), Alaskan Native, American Indian, Asian (including South East Asian, Pacific Asian, Chinese, and Japanese), Filipinos, Hispanic (including Mexican-American, Chicanos, Latinos, Puerto Ricans, and other Spanish-surnamed individuals), and other non-Caucasian peoples.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56227. Multicultural Studies.

"Multicultural Studies" means separate organized courses of instruction which stress the cultural attributes and contributions of minority ethnic groups or that portion of other courses devoted to such material.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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CALIFORNIA COMMUNITY COLLEGES

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(Register 81, No. 2-1-77-81)

69828. Plan.

"Plan" means the proposed scheme of extended opportunity programs and services submitted for approval by the board pursuant to Subchapter 2 (commencing with Section 69840) of this chapter.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

69829. Program.

"Program" means a special pattern or method of instruction, approved by a local governing board and designed to facilitate the language, educational or social development of a student and increase his/her potential for success in the college.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

69830. Services.

"Services" means a program of assistance, including the making of grants, designed to aid students with socioeconomic handicaps to permit them to enroll and participate in the education activities of the college.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

69831. Special Projects.

"Special Projects" means those projects which (a) have the potential to benefit all colleges, (b) projects which the Board of Governors deem to have special merit.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

69832. Student Personnel Workers.

"Student Personnel Workers" for the purposes of this article only include but are not limited to certificated EOPS student service personnel, EOPS counselor, EOPS placement support staff, and student financial aid support staff, or classified personnel working in one of these capacities as identified in the approved EOPS plan. The professional responsibilities of such personnel must be within the EOPS program and must be authorized by the EOPS Director in the approved EOPS plan.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

69833. Student Contact Hour.

For the purpose of EOPS participants, directed student contact hours means the number of directed, documented hours per week spent in tutoring, counseling, instruction or similar activities as prescribed by the EOPS Director on the recommendation of a certificated counselor or instructor.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

69834. Supplemental Educational Costs.

For the purpose of this article only "Supplemental Educational Costs" means student educational costs for other than the following: living costs, student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

NOTE: Authority cited: Sections 69848, 69852 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69840) of Part 42, Education Code.

SUBCHAPTER 3. FINANCIAL AND BUDGET REQUIREMENTS**Article 1. General Provisions****56276. Scope.**

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56277. Necessity of Subchapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56278. Separate Accounts.

All funds designated for extended opportunity programs, grants, and services shall be placed in a separate account established for that purpose by each district.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56279. Accrual Basis.

District accounting shall be on an accrual basis. Expenditures shall be charged to the fiscal year in which the services are rendered or the goods received. Under the written authority of the Chancellor, expenditures for special summer work-study projects, special summer inservice training projects, or other special student services projects made for the purposes of the extended opportunity programs and services may be considered expended in the fiscal year for which the State's obligation to the district is created. In this case, the State's expenditure will be recorded for that year.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56280. Subsidiary Accounts.

The district shall maintain fiscal control for each approved project by setting up subsidiary accounts. Each approved project shall have its own appropriate income and expenditure accounts.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56281. Accounting Procedures.

The rules and regulations for district accounting applicable by virtue of Section 84030 of the Education Code shall apply to budgets and accounts prepared pursuant to this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 2. Budget Structure

56282. State Sources.

The funds granted under the provisions of Chapter 2, Article 8 (commencing with Section 69640) Part 42, Division 5, of the Education Code, shall be recorded as income from State sources. In this account shall be recorded that amount allowed for each approved project. At the close of the fiscal year and whenever a final fiscal report is made on any completed project during the fiscal year, this account shall be reduced by the amount received from the State for a project grant in excess of proper expenditures. The amount of the reduction shall be recorded as Account Payable, State.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56283. Other Sources.

The funds from Federal sources and grants and gifts shall be recorded separately according to the source.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56284. Expenditures.

Expenditures shall be recorded as direct and indirect expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56285. Direct Expenses.

Direct expenses shall be recorded under the following required subordinate classes for each approved project:

- (a) Certificated Salaries.
- (b) Classified Salaries.
- (c) Grant Payments.
- (d) Transportation.
- (e) Other Direct Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56286. Travel.

Travel with EOPS funds is limited to EOPS students and personnel, as described in Sections 56223, 56224 and 56292, and only for EOPS related activities.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56287. Indirect Expenses.

Indirect expenses shall be recorded under appropriate subordinate classes for each approved project.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56288. Purpose of Indirect Expense Account.

The account for indirect expenses is established in order that all elements of cost necessary for the programs, grants, and services may be recorded. These are the costs which are of such nature that they cannot be readily or accurately identified as specifically related service costs but which must be estimated or prorated in some reasonable manner for the purpose of entering the charge against a particular project.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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- § 56217
- § 56230
- § 56236
- § 56257
- § 56291
- § 56292

CHAPTER 25. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

SUBCHAPTER 1. GENERAL PROVISIONS

Article 1. Scope and Effect

56200. Implementation.

NOTE: Authority cited for Chapter 25 (Sections 56200-56298, not consecutive): Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, Education Code.

HISTORY:

1. New Chapter 25 (Sections 56200-56298, not consecutive) filed 10-6-76; designated effective 7-1-77 (Register 76, No. 41).
2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).
3. Repealer of Chapter 25 (Sections 56200-56298, not consecutive) and new Chapter 25 (Sections 56200-56298, not consecutive) filed 8-10-79; effective thirtieth day thereafter (Register 79, No. 38). For prior history, see Registers 77, No. 34, 77, No. 45, 78, No. 26 and 78, No. 32.
4. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56201. Plans.

Plans prepared for the approval of the Board of Governors with or without a request for funds shall be governed by all the provisions of this chapter.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56203. Participation.

Participation by a student in an extended opportunity program or service shall not preclude his/her participation in any other program which may be offered in the college.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56204. Effective Date.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

Article 2. Special Reports

56210. Annual Ethnic Survey.

An annual ethnic survey of the student population, instructional staff, administrative staff, supportive staff, and noncertificated staff shall be conducted by each college and submitted through the district to the Chancellor.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56211. Evaluation.

Each college or district having an approved plan shall evaluate the same annually and report the results thereof to the Chancellor. The results shall be reported in the format mandated by the Chancellor for each year that the program is in operation.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Definitions

56215. Effect of Article.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirteenth day thereafter (Register 81, No. 3).

56216. Chancellor.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirteenth day thereafter (Register 81, No. 3).

56217. Income Ceiling Adjustment.

The Chancellor shall review on an annual basis the impact of the inflation rate to determine if an increase to the income ceiling is warranted. The Chancellor shall determine the actual amount of increase in the income ceiling which shall not exceed the total California Consumer Price Index increase for the period of time used to determine the increase. No more than one adjustment in the income ceiling can be made for any two-year period preceding the last adjustment.

NOTE: Authority cited: Sections 69648, 69682, and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY:

1. New section filed 1-8-81; effective thirteenth day thereafter (Register 81, No. 19). For prior history, see Register 81, No. 3.

56218. Curriculum Development.

"Curriculum Development" means the modification and/or the development of courses designed to increase the potential of students who have been handicapped by language, educational, financial or social disadvantages.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56219. Depressed Area.

"Depressed Area" means a geographic region identified by official census publication of the Department of Commerce, U.S. Department of Labor, Employment Development Department, Department of Interior or other government census agencies as being low income or depressed area.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56220. District.

NOTE: Authority cited: Sections 69648, 69682 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirteenth day thereafter (Register 81, No. 3).

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§ 56226

(Register 81, No. 18-5-81)

(p. 668.7)

56221. Encumbrance.

"Encumbrance" means an accounting procedure consisting of a request made to extend the use of EOPS funds throughout the summer (July 1 to August 31). Such a request and commitment for expenditures must be made prior to the end of the fiscal year (June 30) and will not be valid without approval of the Chancellor's Office.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56222. Extended Opportunity Program and Service.

An "Extended Opportunity Program and Service" means a program or service undertaken by, or grants made by, a community college district or a college in the form and in accordance with the procedures prescribed by this chapter. Such a program or service shall be over, above, and in addition to, the regular educational programs of the college and has as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56223. EOPS Student.

An "EOPS Student" means a student whose eligibility to participate in programs and services offered under this chapter has been certified according to Section 56236, Section 56237 and Section 56238.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56224. Full-Time Student.

"Full-time Student", for the purpose of this article only, means a student who is enrolled in a minimum of 12 units in community college courses or a combination of no less than 9 units in community college courses plus sufficient additional hours in programs and/or services to total 14 directed student contact hours per week and who is making continuous progress toward a goal, degree, or certificate as determined by the governing board.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56225. Governing Board.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-18-81; effective thirtieth day thereafter (Register 81, No. 3).

56226. Ethnic Minority Groups.

"Ethnic Minority Groups" means Afro-American (Negro or Black), Alaskan Native, American Indian, Asian (including South East Asian, Pacific Asian, Chinese, and Japanese), Filipinos, Hispanic (including Mexican-American, Chicanos, Latinos, Puerto Ricans, and other Spanish-surnamed individuals), and other non-Caucasian peoples.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56227. Multicultural Studies.

"Multicultural Studies" means separate organized courses of instruction which stress the cultural attributes and contributions of minority ethnic groups or that portion of other courses devoted to such material.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56228. Plan.

"Plan" means the proposed scheme of extended opportunity programs and services submitted for approval by the board pursuant to Subchapter 2. (commencing with Section 56240) of this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56229. Program.

"Program" means a special pattern or method of instruction, approved by a local governing board and designed to facilitate the language, educational or social development of a student and increase his/her potential for success in the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56230. Services.

"Services" means a program of assistance, including but not limited to, management services, outreach services, instructional development services, counseling, intake, transition services, special activities, financial aid services, staff development and training services and direct aid services, designed to aid students with socioeconomic handicaps to permit them to enroll and participate in the education activities of the college. The Chancellor shall determine and define each component of each service described in this section.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69648, 69649, and 69650, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56231. Special Projects.

"Special Projects" means those projects which (a) have the potential to benefit all colleges, (b) projects which the Board of Governors deem to have special merit.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56232. Student Personnel Workers.

"Student Personnel Workers" for the purposes of this article only include but are not limited to certificated EOPS student service personnel, EOPS counselors, EOPS placement support staff, and student financial aid support staff, or classified personnel working in one of these capacities as identified in the approved EOPS plan. The professional responsibilities of such personnel must be within the EOPS program and must be authorized by the EOPS Director in the approved EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56233. Student Contact Hours.

For the purpose of EOPS participants, directed student contact hours means the number of directed, documented hours per week spent in tutoring, counseling, instruction or similar activities as prescribed by the EOPS Director on the recommendation of a certificated counselor or instructor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56234. Supplemental Educational Costs.

For the purpose of this article only "Supplemental Educational Costs" means student educational costs for other than the following: living costs, student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56235. Target or High Priority Area.

"Target or High Priority Area" means a depressed area with high total unemployment rates, high youth unemployment rates, and large numbers of minority youth in high school, college or in the community population served by the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56236. "Dependent Student Eligibility".

To participate and receive financial assistance under EOPS, a dependent student shall meet all the following criteria:

(a) Must be eligible under all of the following Extended Opportunity Programs and Services guidelines.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at the institution.

(b) The family's (student's parents or legal guardians) previous year's gross income shall not exceed \$9,999 for a family of four with an additional \$1,000 for each additional dependent. A dependent student from a family of three would qualify if the family's previous year's gross income does not exceed \$8,999, and a family of two would qualify if the family's previous year's gross income does not exceed \$7,999. District student financial aid policies must be followed for income verification. District student financial aid policies involving EOPS funds must also insure that students with the lowest incomes receive first consideration for EOPS grants and services.

(c) **Residence.** If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPFS eligibility purposes.

(d) **Enroll as a full-time student at a community college as per Section 88224 of this article.** EOPFS financial aid shall be withheld if the student drops below full-time status.

(e) **Those students receiving financial assistance from EOPFS must also submit an application for the Federal Basic Education Opportunity Grant Program and the college application for financial assistance.** In those cases where an EOPFS grant recipient is not receiving a BEOG, the community colleges must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's BEOG roster.

In instances where an applicant does not meet the criteria specified in this section, and/or the parents refuse to provide financial information, the student may not be considered for an EOPFS grant or work study award.

NOTE: Authority: ched. Sections 68249, 68252 and 71080, Education Code. References: Sections 68249, and 68248, Education Code.

HISTORY:

1. Amendment of subsection (b) filed 5-8-81; effective thirteenth day thereafter (Registar 81, No. 19).

8827. Independent Student Definition.

(a) For purposes of determining whether or not a student is independent, an institution shall not consider the income of an applicant's parents in the determination of an applicant's financial need if the applicant meets all of the following requirements:

(1) Has not and will not be claimed as an exemption for state and federal income tax purposes by his or her parent in the calendar years aid is received and in any of the three calendar years prior to the award period for which aid is requested.

(2) Has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent in the calendar years in which aid is received and in any of the three calendar years before the award period for which aid is requested.

(3) Has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year aid is received and in any form of the three calendar years before the award period for which aid is requested.

(b) **Notwithstanding subdivision (a) of this section, a postsecondary institution shall not consider the income of an EOPFS applicant's parents in the determination of an applicant's financial need if the applicant meets one of the following requirements:**

(1) Has been determined to be self-supporting prior to June 30, 1977, according to the procedures of the California postsecondary educational institution from which he or she is currently receiving need-based, state-funded financial aid.

(2) Has been a ward of the court, in which case appropriate court documents shall be submitted.

(3) Is an orphan and will not be claimed as an exemption for state and federal income tax purposes by anyone other than self or spouse for the calendar years aid is received.

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§ 56238

(Register 81, No. 12-6-81)

(p. 688.11)

(4) Has been a part of an extremely adverse home situation which is documented and supported by school or responsible community personnel such as a minister or social worker, which situation has led to estrangement from the family under circumstances where the student has not received a contribution in case or kind from his family for the preceding 12 months. Public postsecondary educational institutions and the Student Aid Commission shall develop a procedure to allow students to appeal decisions on whether the student has been part of an adverse home situation.

(5) Is 30 years of age or older, unless there is substantial evidence of parental support of such applicant.

NOTE: Authority cited: Sections 69648, 69652 and 71080, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Division 7, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).

56238. "Independent Student Eligibility".

To participate and receive financial assistance under EOPS, an independent student shall meet all of the following criteria:

(a) Must be eligible under all the following Extended Opportunity Programs and Services Guidelines. Income which is derived from Aid to Families with Dependent Children (A.F.D.C.) and/or Supplemental Security Income (S.S.I.) benefits is exempt from this provision.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS Grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at that institution.

(b) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(c) Enroll as a full-time student at a community college as per Section 56234 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

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(p. 668.12)

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(Regulation 51, No. 10-0001)

(d) Those students receiving financial assistance from EOPS must also submit an application for the Federal Basic Educational Opportunity Grant Program and the college application for financial assistance. In those cases where an EOPS student is not receiving a BEOG, the community college must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's BEOG roster.

In instances where an applicant does not meet the criteria specified in this section, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56239. Priority in Serving Students.

An extended opportunity program or service shall benefit students in the following priority order:

- (a) First time students with greatest need.
- (b) Continuing students with greatest need.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

(Register 81, No. 8-14-61)

§8923. Action by Board of Governor.

The Board of Governors shall consider all of the plans and requests for funding and the Chancellor's recommendations thereon and shall approve such plans and grant funds for such programs and services as it finds are in the best interest of the state, communities, and persons served.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

§8923. Approved Plan Required.

No extended opportunity program or service, or any portion thereof, shall be funded unless the plan of which it is a part has been approved by the Board of Governors.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

§8924. Matching Funds.

No funds shall be granted on the condition that the college commit an equal amount of college or district funds.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

§8925. Priority in Funding.

Programs and services will be funded in view of the following priority list:

- (a) Improvement or strengthening of programs or services.
- (b) Extension or expanding of programs or services.
- (c) Maintaining programs or services.
- (d) New programs or services.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

§8926. Adjustment After Funding.

After the Board of Governors has granted funds for a plan, the Chancellor may adjust the programs and services in the plan in view of the priorities established in Section 8925X, if adjustment is necessary to correct an error or if there had been insufficient information at the time the programs and services in the plan were originally ranked by priority.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

§8927. Funding.

Requests for funding shall be approved and funded in view of the following criteria:

- (a) Plans for districts of colleges in target areas as defined in Section 89235 of this chapter.
- (b) Plans for districts or colleges with highest percentage or number of students with gross family incomes of \$9,999 or less.

(c) Plans for districts or colleges with the highest percentage of ethnic minority population in the community the college serves, the highest percentage of ethnic minority Community College students, and the highest number of ethnic minority Community College students.

(d) Plans for districts or colleges that serve students from areas that have a high total unemployment rate or a high youth unemployment rate, or both.

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(p. 668.16)

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(Register 81, No. 19-3981)

(e) Plans for districts or colleges that have the highest level of involvement of the total college and groups in the community in extended opportunity programs and services.

(f) Plans for districts or colleges developing consortiums or cooperative ventures or projects which combine state and district funds with other sources of funds.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69648, and 69652, Education Code.

HISTORY:

1. Amendment of subsection (b) filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56258. Low Priority.

Plans and projects limited to research shall receive a low priority. Research projects will be considered as a priority if submitted for EOPS special project funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56259. Effective Program Experience.

Consideration for priority funding shall be given to plans from those districts or colleges which have demonstrated effective program experience.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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§ 56291

(Register 81, No. 19-5-81)

(p. 668.21)

56289. Capital Outlay Expenditures.

Capital outlay expenditures shall be recorded under the following required subordinate classes:

- (a) Buildings, leasing.
- (b) Equipment, rented.
- (c) Books.
- (d) Other Equipment, rental.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Award of Funds**56290. Expenses Not Funded.**

Funds shall not be provided for the following expenses:

(a) Administrative salaries (assistant dean beginning salary level for the district and above). Personnel positions are exempt from this prohibition if:

(1) The position functions in the capacity of the EOPS Director having 100% of the position occupant's employed time and responsibility within the EOPS program, and

(2) The exemption is specifically certified by the Chancellor's Office.

- (b) Administrative support costs.
- (c) Costs of furniture.
- (d) Indirect costs (e.g., heat, light, power, janitorial service).
- (e) Costs of construction, remodeling, and renovation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Division 7, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).

56291. Discretionary Funding.

Up to 10% (not to exceed \$25,000), of the campus allocation, excluding any supplemental awards and/or special project allocation may be used for the following. Any amount over and above will be allowed with the Chancellor's Office approval.

- (a) Purchase of new equipment
- (b) Equipment exchange and/or replacement
- (c) Rental and/or lease purchase agreement for equipment
- (d) Equipment maintenance
- (e) Instructional supplies
- (f) Media supplies
- (g) Office supplies
- (h) Textbooks
- (i) Other books
- (j) Rental and/or lease of space
- (k) Staff travel and/or conference expenses
- (l) Student travel and/or conference expenses
- (m) Contract services (consultants)
- (n) Cultural awareness and/or cultural enrichment activities
- (o) Recruitment mileage

(p) Other items as submitted to and approved by the Chancellor's Office

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69651, and 69652, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56291.1. Direct Aid to Students.

(a) EOPS Grants to meet direct or supplemental educational costs up to \$850 during any fiscal year, July 1 through June 30.

(b) An EOPS eligible student may receive up to \$1,700 maximum during any fiscal year from EOPS Funds. If a student receives an EOPS grant he/she may receive work study to meet supplemental educational costs up to the difference between the grant and \$1,700.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69650 and 69652, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56291.2. Curriculum Development.

Funds may be provided to cover the cost of curriculum development as approved in the district's EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56292. Funding for EOPS Personnel.

Funds may be provided for EOPS Personnel as described in this section.

(a) Positions in all personnel categories which are described and approved in the EOPS plan may be funded with state EOPS monies in any new fiscal year, regardless of their sources of funding in the prior fiscal year.

(b) New positions proposed for approval in any one fiscal year may be funded to full salary with state EOPS monies if such positions are proposed for EOPS programs in colleges which are receiving state EOPS program funding for the first time in that fiscal year.

(c) All new positions in programs previously funded by state EOPS funds must be approved by the Chancellor, and may be funded with state EOPS monies up to 100% of the total salary.

(d) Positions described in subsection (c) shall be authorized only if it falls within one of the following personnel categories and shall be subject to the funding provisions specified therein.

(1) **EOPS Director.** For the purposes of the section, "director" means the person in the community college whose primary responsibility is to directly administer and oversee the daily operations of Extended Opportunity Programs and Services.

(2) **EOPS Program Assistant.** For the purposes of this section, "EOPS Program Assistant" means a position in a community college which:

(A) Is specifically described in the plan as essential to the attainment of the EOPS program objectives.

(B) Is within the EOPS program and authorized by the EOPS director, and

(C) Is approved by the Chancellor's Office in the annual budget approval process.

(3) **Student Personnel Worker.** For the purpose of this section only, "Student Personnel Worker" means certificated EOPS student service personnel, certificated EOPS counselors, EOPS placement support staff, and EOPS counselors, EOPS student financial aid support staff, or classified personnel working in one of these capacities whose primary responsibilities are within the EOPS program as identified in the EOPS approved plan.

- (4) Clerical Staff. Funds may be provided for the salary of clerical positions in the EOFS program.
- (5) Student Hourly Employee. Funds may be provided in this category at the prevailing district rate. Federal minimum wage regulations must be applied in the employment of EOFS students with EOFS dollars.
- (6) Classified Hourly. Funds may be provided in this category at the prevailing district rate.
- (7) Certificated Hourly. Funds may be provided in this category at the prevailing district rate.
- (e) Funds for new salary expenditures made possible by subdivisions (a), (c) and (d) of this section should be derived to the greatest extent possible, from decreased nonsalary expenditures in administration costs and in support services costs. A college may not utilize direct aid funds for this purpose to an extent that would reduce direct aid monies expended in any current fiscal year below the direct aid expenditures in the immediate past fiscal year. The Chancellor may exempt a college from this direct aid restriction if one or more of the following conditions apply:
 - (1) The college EOFS allocation was reduced from the allocation level in the previous year, in which event the direct aid expenditure may be reduced in proportion to the reduction in the total allocation.
 - (2) The college EOFS program direct aid expenditure is distorted as a result of an augmentation which can be neither guaranteed in subsequent years nor ordinarily predicted as to amount when it is received, in which event the augmentation expended in direct aid need not be included in the calculation of the required direct aid expenditure.
 - (3) The college returns to the state an amount equal to, or greater than, any difference between the amount that should have been expended in direct aid and the amount that actually was expended.
 - (4) The college EOFS program can demonstrate the existence of other hardships created by this regulation where none of the above exemptions offer an adequate remedy.
 - (5) No revised budgets based on the provision of this section shall be approved without certification that the EOFS director has been consulted in the revision.

NOTE: Authority cited: Sections 6064, 6068 and 71050, Education Code. Reference: Sections 6064, 6061, and 6069, Education Code.

HISTORY:

1. Amendment of subsection (e) filed 2-7-80, effective thirteenth day thereafter (Registar 80, No. 5).
2. Amendment filed 5-8-81; effective thirteenth day thereafter (Registar 81, No. 19).

80920. Board of Governors Reserve Fund.

The Board of Governors may authorize the Chancellor of the California Community Colleges to reserve from the state appropriation up to one-half of one percent annually for the purposes of funding EOFS students' information system projects, publications and program development activities which the Board deems high priority.

NOTE: Authority cited: Sections 6064, 6068 and 71050, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 6060) of Part 4, Education Code.

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CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

Article 1. General Provisions and Definitions

56200. Implementation.

This chapter implements, and should be read in conjunction with, Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69643, 69644, 69646, 69648, 69649 and 69650, Education Code.

HISTORY:

1. New Chapter 2.5 (Sections 56200-56296, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).

2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).

3. Repealer of Chapter 2.5 (Sections 56200-56296, not consecutive) and new Chapter 2.5 (Sections 56200-56293, not consecutive) filed 8-10-79; effective thirtieth day thereafter (Register 79, No. 32). For prior history, see Registers 77, No. 34, 77, No. 45, 78, No. 26 and 78, No. 39.

4. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

5. Repealer of Subchapter 1 heading, amendment of Article 1 heading, and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56201. Plans.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56203. Participation.

Participation by a student in an extended opportunity program or service shall not preclude his/her participation in any other program which may be offered in the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56204. Effective Date.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56210. Annual Ethnic Survey.

An annual ethnic survey of the student population, instructional staff, administrative staff, supportive staff, and noncertificated staff shall be conducted by each college and submitted through the district to the Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56211. Evaluation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56215. Effect of Article.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56216. Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56217. Income Ceiling Adjustment.

NOTE: Authority cited: Sections 69648, 69652, and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY:

1. New section filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19). For prior history, see Register 81, No. 3.
2. Repealer of Article 3 heading and Section 56217 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56218. Curriculum Development.

"Curriculum Development" means the modification and/or the development of courses designed to increase the potential of students who have been handicapped by language, educational, financial or social disadvantages.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56219. Depressed Area.

"Depressed Area" means a geographic region identified by official census publication of the Department of Commerce, U.S. Department of Labor, Employment Development Department, Department of Interior or other government census agencies as being low income or depressed area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56220. District.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56221. Encumbrance.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56222. Extended Opportunity Program and Service.

An "Extended Opportunity Program and Service" means a program or service undertaken by, or grants made by, a community college district or a college in the form and in accordance with the procedures prescribed by this chapter. Such a program or service shall be over, above, and in addition to, the regular educational programs of the college and has as its purpose the provision of positive encouragement directed to the enrollment of students handicapped by language, social, and economic disadvantages, and to the facilitation of their successful participation in the educational pursuits of the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56223. EOPS Student.

An "EOPS Student" means a student whose eligibility to participate in programs and services offered under this chapter has been certified according to Section 56236, Section 56237 and Section 56238.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56224. Full-Time Student.

"Full-time Student", for the purpose of this article only, means a student who is enrolled in a minimum of 12 units in community college courses or a combination of no less than 9 units in community college courses plus sufficient additional hours in programs and/or services to total 14 directed student contact hours per week and who is making continuous progress toward a goal, degree, or certificate as determined by the governing board.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56225. Governing Board.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56226. Ethnic Minority Groups.

"Ethnic Minority Groups" means Afro-American (Negro or Black), Alaskan Native, American Indian, Asian (including South East Asian, Pacific Asian, Chinese, and Japanese), Filipinos, Hispanic (including Mexican-American, Chicanos, Latinos, Puerto Ricans, and other Spanish-surnamed individuals), and other non-Caucasian peoples.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56227. Multicultural Studies.

"Multicultural Studies" means separate organized courses of instruction which stress the cultural attributes and contributions of minority ethnic groups or that portion of other courses devoted to such material.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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CALIFORNIA COMMUNITY COLLEGES

TITLE 5

(Register 83, No. 18—4-30-83)

56228. Plan.

"Plan" means the proposed scheme of extended opportunity programs and services submitted by a college or district for approval by the board pursuant to Article 3 (commencing with Section 56240) of this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56229. Program.

"Program" means a special pattern or method of instruction, approved by a local governing board and designed to facilitate the language, educational or social development of a student and increase his/her potential for success in the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56230. Services.

"Services" means a program of assistance, including but not limited to, management services, outreach services, instructional development services, counseling, intake, transition services, special activities, financial aid services, staff development and training services and direct aid services, designed to aid students with socioeconomic handicaps to permit them to enroll and participate in the education activities of the college. The Chancellor shall determine and define each component of each service described in this section.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69648, 69649, and 69650, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56231. Special Projects.

"Special Projects" means those projects which (a) have the potential to benefit all colleges, (b) projects which the Board of Governors deem to have special merit.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56232. Student Personnel Workers.

"Student Personnel Workers" for the purposes of this article only include but are not limited to certificated EOPS student service personnel, EOPS counselors, EOPS placement support staff, and student financial aid support staff, or classified personnel working in one of these capacities as identified in the approved EOPS plan. The professional responsibilities of such personnel must be within the EOPS program and must be authorized by the EOPS Director in the approved EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56233. Student Contact Hours.

For the purpose of EOPS participants, directed student contact hours means the number of directed, documented hours per week spent in tutoring, counseling, instruction or similar activities as prescribed by the EOPS Director on the recommendation of a certificated counselor or instructor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56234. Supplemental Educational Costs.

For the purpose of this article only "Supplemental Educational Costs" means student educational costs for other than the following: living costs, student fees, books, supplies, tools, equipment, instruments, uniforms, and transportation between home and college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56235. Target or High Priority Area.

"Target or High Priority Area" means a depressed area with high total unemployment rates, high youth unemployment rates, and large numbers of minority youth in high school, college or in the community population served by the college.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 2. Eligibility

56236. "Dependent Student Eligibility".

To participate and receive financial assistance under EOPS, a dependent student shall meet all the following criteria:

(a) Must be eligible under all of the following Extended Opportunity Programs and Services guidelines.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at the institution.

(b) The family's (student's parents or legal guardians) previous year's gross income shall not exceed \$9,999 for a family of four with an additional \$1,000 for each additional dependent. A dependent student from a family of three would qualify if the family's previous year's gross income does not exceed \$8,999, and a family of two would qualify if the family's previous year's gross income does not exceed \$7,999. District student financial aid policies must be followed for income verification. District student financial aid policies involving EOPS funds must also insure that students with the lowest incomes receive first consideration for EOPS grants and services.

(c) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(d) Enroll as a full-time student at a community college as per Section 56224 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(e) Those students receiving financial assistance from EOPS must also submit an application for the Pell Grant Program and the college application for financial assistance. In those cases where an EOPS grant recipient is not receiving a Pell Grant, the community colleges must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's Pell Grant roster.

In instances where an applicant does not meet the criteria specified in this section, and/or the parents refuse to provide financial information, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640 and 96648, Education Code.

HISTORY:

1. Amendment of subsection (b) filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

2. New Article 2 heading and amendment of subsection (e) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56237. Independent Student Criteria.

(a) For purposes of determining whether or not a student is independent, an institution shall not consider the income of an applicant's parents in the determination of an applicant's financial need if the applicant meets all of the following requirements:

(1) Has not and will not be claimed as an exemption for state and federal income tax purposes by his or her parent in the calendar years aid is received and in any of the three calendar years prior to the award period for which aid is requested.

(2) Has not and will not receive more than one thousand dollars (\$1,000) per year in financial assistance from his or her parent in the calendar years in which aid is received and in any of the three calendar years before the award period for which aid is requested.

(3) Has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year aid is received and in any form of the three calendar years before the award period for which aid is requested.

(b) Notwithstanding subdivision (a) of this section, a postsecondary institution shall not consider the income of an EOPS applicant's parents in the determination of an applicant's financial need if the applicant meets one of the following requirements:

(1) Has been determined to be self-supporting prior to June 30, 1977, according to the procedures of the California postsecondary educational institution from which he or she is currently receiving need-based, state-funded financial aid.

(2) Has been a ward of the court, in which case appropriate court documents shall be submitted.

(3) Is an orphan and will not be claimed as an exemption for state and federal income tax purposes by anyone other than self or spouse for the calendar years aid is received.

(4) Has been a part of an extremely adverse home situation which is documented and supported by school or responsible community personnel such as a minister or social worker, which situation has led to estrangement from the family under circumstances where the student has not received a contribution in case or kind from his family for the preceding 12 months. Public postsecondary educational institutions and the Student Aid Commission shall develop a procedure to allow students to appeal decisions on whether the student has been part of an adverse home situation.

(5) Is 30 years of age or older, unless there is substantial evidence of parental support of such applicant.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69506, 69640, 69641, 69642 and 69650, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Amendment of section heading and subsection (a) (2) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56238. "Independent Student Eligibility".

To participate and receive financial assistance under EOPS, an independent student shall meet all of the following criteria:

(a) Must be eligible under all the following Extended Opportunity Programs and Services Guidelines. Income which is derived from Aid to Families with Dependent Children (A.F.D.C.) and/or Supplemental Security Income (S.S.I.) benefits is exempt from this provision.

(1) Is a national of the United States, in the United States for other than a temporary purpose and intends to become a permanent resident thereof, or is a permanent resident of the Trust Territories of the Pacific Islands;

(2) Is of exceptional need.

(A) A student has exceptional financial need if his or her expected family contribution does not exceed 50 percent of his or her cost of education.

(B) Notwithstanding subparagraph (A) of this paragraph, an institution may determine that a student has exceptional financial need if the student financial aid officer and the EOPS Director believe it is impracticable for the student with financial need to meet that need from loans, employment, or grants other than an EOPS Grant.

(C) If an institution determines that a student has exceptional financial need under subparagraph (B), it must include the rationale for that decision as part of its records.

(3) Would not, but for an EOPS grant, be financially able to pursue a course of study at that institution.

(b) Residence. If the portion of the expected family contribution which is derived from residence equity is the sole reason for a student not meeting "exceptional financial need," then that student may be considered to have exceptional financial need for EOPS eligibility purposes.

(c) Enroll as a full-time student at a community college as per Section 56224 of this article. EOPS financial aid shall be withheld if the student drops below full-time status.

(d) Those students receiving financial assistance from EOPS must also submit an application for the Pell Grant Program and the college application for financial assistance. In those cases where an EOPS student is not receiving a Pell Grant, the community college must certify that the student is ineligible, with a copy of the rejected Student Eligibility Report (SER) or from information on the institution's Pell Grant roster.

In instances where an applicant does not meet the criteria specified in this section, the student may not be considered for an EOPS grant or work study award.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642 and 69650, Education Code.

HISTORY:

1. Amendment of subsection (d) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56239. Priority in Serving Students.

An extended opportunity program or service shall benefit students in the following priority order:

- (a) First time students with greatest need.
- (b) Continuing students with greatest need.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 3. Plans

56240. Submitted by District.

An application for approval of extended opportunity programs and services, for funding, or for both, shall be submitted by each district for individual colleges within the district. Each college will be considered as an independent entity. Districts with multiple campuses may submit a district-wide application. Consortiums, exchanges, or cooperative inter-district endeavors are permitted.

In the case of a district-wide application, the district will be considered the entity submitting the application.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Subchapter 2 heading, and renumbering and amendment of former Article 1 heading to Article 3 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56241. Outline.

Each application shall conform to the following outline:

- (a) Purpose.
 - (1) Goals. These are the long-term purposes of the EOPS program.
 - (2) Objectives. These are the short-term measurable goals of the EOPS program.
- (b) Activities to be undertaken to accomplish the objectives.
- (c) Description of methods of evaluation.
- (d) Budget.
- (e) Number of students projected to be served.
- (f) Number of unduplicated students projected to be served.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56243. Deadlines.

The Chancellor's Office may not establish a deadline for the submission of EOPS plans which occurs sooner than 90 days from the date on which the manual of instructions and the appropriate application forms are mailed. All applications for approval of plans and requests for funds for plans for a given fiscal year shall be received at the Office of the Chancellor not later than the deadline date established by the Board of Governors for each fiscal year. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

The provisions of the prior paragraph do not apply to the approval or funding of special projects. Requests for approval of special projects, funding of special projects, or both, shall be submitted at a time designated by the Chancellor's Office.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56244. Applications.

Each application shall contain a one year plan. It shall reflect a commitment to the Statement of Policy, Goals, and Guidelines of Board of Governors, California Community Colleges for extended opportunity programs and services. The plan shall be revised and brought up-to-date in each year in which approval or funding of the plan is requested.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56245. Scope and Appropriateness.

Consideration shall be given to the scope and appropriateness of the activities planned. These activities may include, but not be limited to, tutorial services, multicultural studies, recruitment services, counseling, admission services, in-service training programs, programs which encourage active EOPS student participation, grants to meet direct and supplemental educational costs, and grants to meet the costs of a student for student fees, supplies, tools, equipment, instruments, uniforms, and transportation between home and college, and other activities to meet special needs.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56246. Maintenance of Effort.

If the plan contains a request for funds, it shall give assurance that funds granted pursuant to this chapter shall supplement and, to the extent practicable, increase the amount of district funds used by the college for extended opportunity programs and services. Exceptions to this section may be given in those unusual circumstances which could not be anticipated by the district. Such exceptions require approval by the Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56247. Advisory Committee.

Each EOPS Program shall include an Advisory Committee, members of which shall serve without compensation, with the permissible exception of reimbursement for necessary expenses incurred in performing their duties and responsibilities. The advisory committee shall include representation from the college personnel, EOPS students, community and business sector.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56248. Evaluation.

Each college or district having an approved plan shall evaluate the same annually and report the results thereof to the Chancellor. The results shall be reported in the format mandated by the Chancellor for each year that the program is in operation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649 and 69650, Education Code.

HISTORY:

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56250. Effect.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Article 2 heading and Section 56250 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56251. Evaluation by Chancellor.

All plans and requests for funding submitted on or before the deadline shall be reviewed and evaluated by the Chancellor and his staff. They shall recommend plans, programs and services or portions thereof for Board of Governors approval and funding. The recommendation for funding shall include a specific amount.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56252. Action by Board of Governors.

The Board of Governors shall consider all of the plans and requests for funding and the Chancellor's recommendations thereon and shall approve such plans and grant funds for such programs and services as it finds are in the best interest of the state, communities, and persons served.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56253. Approved Plan Required.

No extended opportunity program or service, or any portion thereof, shall be funded unless the plan of which it is a part has been approved by the Board of Governors.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56254. Matching Funds.

No funds shall be granted on the condition that the college commit an equal amount of college or district funds.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56255. Priority in Funding.

Programs and services will be funded in view of the following priority list:

- (a) Improvement or strengthening of programs or services.
- (b) Extension or expanding of programs or services.

- (c) Maintaining programs or services.
- (d) New programs or services.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56256. Adjustment After Funding.

After the Board of Governors has granted funds for a plan, the Chancellor may adjust the programs and services in the plan in view of the priorities established in Section 56255, if adjustment is necessary to correct an error or if there had been insufficient information at the time the programs and services in the plan were originally ranked by priority.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56257. Funding.

Requests for funding shall be approved and funded in view of the following criteria:

- (a) Plans for districts of colleges in target areas as defined in Section 56235 of this chapter.
- (b) Plans for districts or colleges with highest percentage or number of students with gross family incomes of \$9,999 or less.
- (c) Plans for districts or colleges with the highest percentage of ethnic minority population in the community the college serves, the highest percentage of ethnic minority community college students, and the highest number of ethnic minority community college students.
- (d) Plans for districts or colleges that serve students from areas that have a high total unemployment rate or a high youth unemployment rate, or both.
- (e) Plans for districts or colleges that have the highest level of involvement of the total college and groups in the community in extended opportunity programs and services.
- (f) Plans for districts or colleges developing consortiums or cooperative ventures or projects which combine state and district funds with other sources of funds.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69649 and 69652, Education Code.

HISTORY:

1. Amendment of subsection (b) filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Amendment of subsection (c) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56258. Low Priority.

Plans and projects limited to research shall receive a low priority. Research projects will be considered as a priority if submitted for EOPS special project funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56259. Effective Program Experience.

Consideration for priority funding shall be given to plans from those districts or colleges which have demonstrated effective program experience.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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CALIFORNIA COMMUNITY COLLEGES

TITLE 5

(Register 83, No. 16—430-83)

56270. Effect.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Article 3 heading and Section 56270 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56271. Approved Programs and Services.

Programs and services offered under EOPS must comply with the approved plan for that year as well as with State statutes.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56272. Quantitative Data.

The following records must be kept up-to-date by colleges offering programs and services under EOPS:

(a) Enrolled EOPS students for the current year under the following headings:

- (1) EOPS support services only.
 - (2) EOPS direct aid only.
 - (3) EOPS support services and direct aid.
 - (4) EOPS services received by students authorized under Section 56240.
- (b) All EOPS-eligible applicants.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 4. Financial and Budget Requirements

56276. Scope.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56277. Necessity of Subchapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56278. Separate Accounts.

All funds designated for extended opportunity programs, grants, and services shall be placed in a separate account established for that purpose by each district.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Subchapter 3 heading, and renumbering and amendment of former Article 1 heading to Article 4 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56279. Accrual Basis.

District accounting shall be on an accrual basis. Expenditures shall be charged to the fiscal year in which the services are rendered or the goods received. Under the written authority of the Chancellor, expenditures for special summer work-study projects, special summer inservice training projects, or other special student services projects made for the purposes of the extended opportunity programs and services may be considered expended in the fiscal year for which the State's obligation to the district is created. In this case, the State's expenditure will be recorded for that year.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56280. Subsidiary Accounts.

The district shall maintain fiscal control for each approved project by setting up subsidiary accounts. Each approved project shall have its own appropriate income and expenditure accounts.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56281. Accounting Procedures.

The rules and regulations for district accounting applicable by virtue of Section 84030 of the Education Code shall apply to budgets and accounts prepared pursuant to this chapter.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56282. State Sources.

The funds granted under the provisions of Chapter 2, Article 8 (commencing with Section 69640) Part 42, Division 5, of the Education Code, shall be recorded as income from State sources. In this account shall be recorded that amount allowed for each approved project. At the close of the fiscal year and whenever a final fiscal report is made on any completed project during the fiscal year, this account shall be reduced by the amount received from the State for a project grant in excess of proper expenditures. The amount of the reduction shall be recorded as Account Payable, State.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Article 2 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56283. Other Sources.

The funds from Federal sources and grants and gifts shall be recorded separately according to the source.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56284. Expenditures.

- (a) Expenditures shall be recorded as direct and indirect expenses.
(b) Direct expenses shall be recorded under the following required subordinate classes for each approved project:
- (1) Certificated Salaries.
 - (2) Classified Salaries.

(3) Grant Payments.

(4) Transportation.

(5) Other Direct Expenses.

(c) Indirect expenses shall be recorded under appropriate subordinate classes for each approved project.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56285. Direct Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56286. Income Ceiling Adjustment.

The Chancellor shall review on an annual basis the impact of the inflation rate to determine if an increase to the income ceiling is warranted. The Chancellor shall determine the actual amount of increase in the income ceiling which shall not exceed the total California Consumer Price Index increase for the period of time used to determine the increase. No more than one adjustment in the income ceiling can be made for any two-year period after the last adjustment.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY:

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56287. Indirect Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56288. Purpose of Indirect Expense Account.

The account for indirect expenses is established in order that all elements of cost necessary for the programs, grants, and services may be recorded. These are the costs which are of such nature that they cannot be readily or accurately identified as specifically related service costs but which must be estimated or prorated in some reasonable manner for the purpose of entering the charge against a particular project.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56289. Capital Outlay Expenditures.

Capital outlay expenditures shall be recorded under the following required subordinate classes:

- (a) Buildings, leasing.
- (b) Equipment, rented.
- (c) Books.
- (d) Other Equipment, rental.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

Article 5. Award of Funds**56290. Expenses Not Funded.**

Funds shall not be provided for the following expenses:

- (a) Administrative salaries (assistant dean beginning salary level for the district and above). Personnel positions are exempt from this prohibition if:
- (1) The position functions in the capacity of the EOPS Director having 100% of the position occupant's employed time and responsibility within the EOPS program, and
 - (2) The exemption is specifically certified by the Chancellor's Office.
- (b) Administrative support costs.
(c) Costs of furniture.
(d) Indirect costs (e.g., heat, light, power, janitorial service).
(e) Costs of construction, remodeling, and renovation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Division 7, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Renumbering of former Article 3 to Article 5 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56291. Discretionary Funding.

Up to 10% (not to exceed \$25,000), of the campus allocation, excluding any supplemental awards and/or special project allocation may be used for the following. Any amount over and above will be allowed with the Chancellor's Office approval.

- (a) Purchase of new equipment
- (b) Equipment exchange and/or replacement
- (c) Rental and/or lease purchase agreement for equipment
- (d) Equipment maintenance
- (e) Instructional supplies
- (f) Media supplies
- (g) Office supplies
- (h) Textbooks
- (i) Other books
- (j) Rental and/or lease of space
- (k) Staff travel and/or conference expenses
- (l) Student travel and/or conference expenses
- (m) Contract services (consultants)
- (n) Cultural awareness and/or cultural enrichment activities
- (o) Recruitment mileage
- (p) Other items as submitted to and approved by the Chancellor's Office

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69651, and 69652, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56291.1. Direct Aid to Students.

(a) EOPS Grants to meet direct or supplemental educational costs up to \$850 during any fiscal year, July 1 through June 30.

(b) An EOPS eligible student may receive up to \$1,700 maximum during any fiscal year from EOPS Funds. If a student receives an EOPS grant he/she may receive work study to meet supplemental educational costs up to the difference between the grant and \$1,700.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69650 and 69652, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56291.2. Curriculum Development.

Funds may be provided to cover the cost of curriculum development as approved in the district's EOPS plan.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

56292. Funding for EOPS Personnel.

Funds may be provided for EOPS Personnel as described in this section.

(a) Positions in all personnel categories which are described and approved in the EOPS plan may be funded with state EOPS monies in any new fiscal year, regardless of their sources of funding in the prior fiscal year.

(b) New positions proposed for approval in any one fiscal year may be funded to full salary with state EOPS monies if such positions are proposed for EOPS programs in colleges which are receiving state EOPS program funding for the first time in that fiscal year.

(c) All new positions in programs previously funded by state EOPS funds must be approved by the Chancellor, and may be funded with state EOPS monies up to 100% of the total salary.

(d) Positions described in subsection (c) shall be authorized only if it falls within one of the following personnel categories and shall be subject to the funding provisions specified therein.

(1) EOPS Director. For the purposes of the section, "director" means the person in the community college whose primary responsibility is to directly administer and oversee the daily operations of Extended Opportunity Programs and Services.

(2) EOPS Program Assistant. For the purposes of this section, "EOPS Program Assistant" means a position in a community college which:

(A) Is specifically described in the plan as essential to the attainment of the EOPS program objectives,

(B) Is within the EOPS program and authorized by the EOPS director, and

(C) Is approved by the Chancellor's Office in the annual budget approval process.

(3) Student Personnel Worker. For the purpose of this section only, "Student Personnel Worker" means certificated EOPS student service personnel, certificated EOPS counselors, EOPS placement support staff, and EOPS counselors, EOPS student financial aid support staff, or classified personnel working in one of these capacities whose primary responsibilities are within the EOPS program as identified in the EOPS approved plan.

(4) Clerical Staff. Funds may be provided for the salary of clerical positions in the EOPS program.

(5) **Student Hourly Employees.** Funds may be provided in this category at the prevailing district rate. Federal minimum wage regulations must be applied in the employment of EOPS students with EOPS dollars.

(6) **Classified Hourly.** Funds may be provided in this category at the prevailing district rate.

(7) **Certificated Hourly.** Funds may be provided in this category at the prevailing district rate.

(e) Funds for new salary expenditures made possible by subdivisions (a), (c) and (d) of this section should be derived to the greatest extent possible, from decreased nonsalary expenditures in administration costs and in support services costs. A college may not utilize direct aid funds for this purpose to an extent that would reduce direct aid monies expended in any current fiscal year below the direct aid expenditures in the immediate past fiscal year. The Chancellor may exempt a college from this direct aid restriction if one or more of the following conditions apply:

(1) The college EOPS allocation was reduced from the allocation level in the previous year, in which event the direct aid expenditure may be reduced in proportion to the reduction in the total allocations.

(2) The college EOPS program direct aid expenditure is distorted as a result of an augmentation which can be neither guaranteed in subsequent years nor ordinarily predicted as to amount when it is received, in which event the augmentation expended in direct aid need not be included in the calculation of the required direct aid expenditure.

(3) The college returns to the state an amount equal to, or greater than, any difference between the amount that should have been expended in direct aid and the amount that actually was expended.

(4) The college EOPS program can demonstrate the existence of other hardships created by this regulation where none of the above exemptions offer an adequate remedy.

(f) No revised budgets based on the provision of this section shall be approved without certification that the EOPS director has been consulted in the revision.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69649, 69651, and 69652, Education Code.

HISTORY:

1. Amendment of subsection (e) filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).

2. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).

56293. Board of Governors Reserve Fund.

The Board of Governors may authorize the Chancellor of the California Community Colleges to reserve from the state appropriation up to one-half of one percent annually for the purposes of funding EOPS student information system projects, publications and program development activities which the Board deem high priority.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

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56294. Travel.

Travel with EOPS funds is limited to EOPS students and personnel, as described in Sections 56223, 56224, 56231, 56292 and 56293 and only for EOPS related activities.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

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| | | |
|---------|---------|---------|
| § 56200 | § 56232 | § 56270 |
| § 56201 | § 56234 | § 56272 |
| § 56202 | § 56236 | § 56274 |
| § 56204 | § 56238 | § 56276 |
| § 56206 | § 56240 | § 56278 |
| § 56208 | § 56252 | § 56280 |
| § 56210 | § 56254 | § 56290 |
| § 56220 | § 56256 | § 56292 |
| § 56222 | § 56258 | § 56293 |
| § 56224 | § 56260 | § 56295 |
| § 56226 | § 56262 | § 56296 |
| § 56230 | § 56264 | § 56298 |

CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

Article 1. General Provisions and Definitions

56000. Implementation.

This chapter implements, and should be read in conjunction with, Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code. The definitions in this article apply to the requirements of this chapter.

NOTE: Authority cited: Sections 69648, 69653 and 71030, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New Chapter 2.5 (Sections 56000-56006, not consecutive) filed 10-8-76; designated effective 7-1-77 (Register 76, No. 41).
2. Amendment filed 8-16-77; effective thirtieth day thereafter (Register 77, No. 34).
3. Repealer of Chapter 2.5 (Sections 56000-56006, not consecutive) and new Chapter 2.5 (Sections 56000-56003, not consecutive) filed 8-10-79; effective thirtieth day thereafter (Register 79, No. 32). For prior history, see Registers 77, No. 34, 77, No. 45, 78, No. 26 and 78, No. 39.
4. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
5. Repealer of Subchapter 1 heading, amendment of Article 1 heading, and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
6. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56001. Waiver.

The Chancellor is authorized to waive any part or all of Articles 3 and 5. Waiver requests must be submitted to the Chancellor in writing by the district superintendent/chancellor setting forth in detail the reasons for the request and the resulting problems caused if the request were denied.

NOTE: Authority cited: Sections 69648, 69648.7 and 71030, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56002. Full-Time Student.

"Full-Time Student" means a student, who during a regular semester or quarter, is enrolled in a minimum of 12 credit units or the equivalent in community college courses. Full-time student for a summer or inter session shall be defined by the college district.

NOTE: Authority cited: Sections 69648, 69648.7 and 71030, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56003. Participation.

NOTE: Authority cited: Sections 69648, 69653 and 71030, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56204. Student Served.

For purposes of allocating EOPS funds, conducting audits and evaluations, an EOPS student served is a person for whom, at minimum, the EOPS program has documentation in the student's file of an EOPS application, Educational Plan, and Mutual Responsibility Contract developed pursuant to Section 56202(c).

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Registers 83, No. 18 and 81, No. 3.

56206. EOPS Information.

The Chancellor shall require districts receiving EOPS funds to identify students served and the level and type of programs and services each student received.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56208. Advisory Committee.

Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The purpose of the advisory committee is to assist the college in developing and maintaining effective extended opportunity programs and services. The term of each committee member shall be for two years, July 1 of the year of appointment to June 30 of the second succeeding year. Members may serve more than one term. The committee shall consist of no fewer members than the members of the local Board of Trustees. Members shall serve without compensation. Members may be reimbursed for necessary expenses incurred in performing their duties. The advisory committee should include representation from college personnel, EOPS students, local or feeder high schools, community and business sectors, and four-year colleges where possible. The Advisory Committee shall meet at least once during each academic year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56210. Comparable Level of Services.

Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three-year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

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56211. Evaluation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56215. Effect of Article.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56216. Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).

56217. Income Ceiling Adjustment.

NOTE: Authority cited: Sections 69648, 69652, and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY:

1. New section filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19). For prior history, see Register 81, No. 3.
2. Repealer of Article 3 heading and Section 56217 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56218. Curriculum Development.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56219. Depressed Area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 2. Student Eligibility and Responsibility

56220. Eligibility for Programs and Services.

To receive programs and services authorized by this chapter, a student must:

- (a) be a resident of California pursuant to the provisions of Part 41 commencing with Section 69000 of the Education Code.
- (b) be enrolled full-time when accepted into the EOPS program. The EOPS director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units.
- (c) not have completed more than 70 units of degree applicable credit coursework in any combination of post-secondary higher education institutions.

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(d) qualify to receive a Board of Governors Grant pursuant to Section 56220(1) or (2).

(e) be educationally disadvantaged as determined by the EOPS director or designee. In making that determination the EOPS director shall consider one or more of the following factors:

(1) not qualified at the college of attendance for enrollment into the minimum level English or mathematics course that is applicable to the associate degree.

(2) not have graduated from high school or obtained the General Education Diploma (G.E.D.).

(3) graduated from high school with a grade point average below 2.50 on a 4.00 scale.

(4) been previously enrolled in remedial education.

(5) other factors set forth in the District's plan submitted to the Chancellor pursuant to Section 56270 of this part.

NOTE: Authority cited: Sections 56243, 69643.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

56221. Encumbrance.

NOTE: Authority cited: Sections 69643, 69653 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 43, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 53, No. 18).

56222. Student Responsibility.

To remain eligible to receive programs and services, students shall:

(a) apply for state and/or federal financial aid pursuant to the applicable rules and procedures of the college of attendance.

(b) maintain academic progress towards a certificate, associate degree, or transfer goal pursuant to the academic standards established by the college of attendance applicable to all credit enrolled students.

(c) file an initial EOPS application and complete and adhere to a student educational plan and an EOPS mutual responsibility contract for programs and services.

(d) within two months of acceptance into the EOPS program, provide income documentation from state or federal income tax forms, or public assistance documentation pursuant to Section 56220 (2) of this part, or other documentation as required for financial aid by the college of attendance.

NOTE: Authority cited: Sections 56243, 69643.7 and 71020, Education Code. Reference: Section 69640-69653, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

56223. EOPS Student.

NOTE: Authority cited: Sections 56243, 69653 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 43, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

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(Register 57, No. 2-22-57)

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59254. Eligibility for EOP's Financial Aid.
To receive EOP's financial aid a student shall:

- (a) be eligible for and receive programs and services pursuant to Sections 59250 and 59252 above.
- (b) demonstrate financial need according to the rules and procedures established for financial aid at the college of attendance.
- (c) have need for EOP's financial aid in accordance with Sections 69220 and 69254 of this Chapter.

NOTE: Authority cited: Sections 69242, 69247 and 71020, Education Code. Reference: Sections 69240-69250, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 57, No. 18.

59255. Governing Board.

NOTE: Authority cited: Sections 69242, 69247 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69240) of Part 24, Education Code.

HISTORY:

1. Repealer filed 1-16-61; effective thirtieth day thereafter (Register 61, No. 3).

59256. Limitations on Eligibility.

A student who has met the eligibility requirements of Sections 59250 and 59252, and who participates without term-to-term interruption, shall continue to be eligible until the student:

- (a) has completed 70 degree applicable credit units of instruction, or has completed consecutively six semester terms or nine quarter terms of enrollment. Time spent by the student enrolled in remedial courses, including remedial level English as a Second Language course, shall not be included when computing the requirements of this sub-section. The EOP's Director may waive this limitation only in cases where students are enrolled in programs which require more than 70 units, or which require prerequisites that would exceed the limitations.
- (b) has failed to meet the terms, conditions, and follow-up provisions of the student education plan and/or the EOP's mutual responsibility contract.

NOTE: Authority cited: Sections 69242, 69247 and 71020, Education Code. Reference: Sections 69240-69250, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 57, No. 18.

59257. Multicultural Studies.

NOTE: Authority cited: Sections 69242, 69248 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69240) of Part 24, Education Code.

HISTORY:

1. Repealer filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 57, No. 18.

59258. Grandfather Provision.

Eligible students who were served by EOP's prior to the effective date of this Article and who would otherwise become ineligible, shall continue to be eligible for one academic year after the effective date of this Article.

NOTE: Authority cited: Sections 69242, 69243, 7 and 71020, Education Code. Reference: Sections 69240-69250, Education Code.

HISTORY:

1. Amendment filed 4-57-63; effective thirtieth day thereafter (Register 63, No. 15).
2. Repealer and new section filed 9-24-57; operative 10-24-57 (Register 57, No. 40).

58229. Program.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

Article 2. Program Standards.

58230. Full-Time EOPS Director.

Each college receiving EOPS funds shall employ a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities. Colleges having less than full-time EOPS director positions may continue such positions upon approval of the Chancellor. The Chancellor shall consider the number of students served, the size of the EOPS staff and budget, and the scope and level of services offered when approving requests for less than full-time EOPS director positions.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69650, Education Code.

HISTORY:

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 51, No. 19).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 57, No. 40).

58231. Special Projects.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 57, No. 40).

58232. Outreach, Orientation, and Registration Services.

Each college receiving EOPS funds shall provide access services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:

- (a) outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college;
- (b) orientation to familiarize EOPS eligible students with: the location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology (e.g., grade points, units), course add and drop procedures and related rules, financial aid application procedures, and transfer procedures to four-year institutions;
- (c) registration assistance for priority enrollment pursuant to Section 58108 of this Part.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69650, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

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(Register 87, No. 40-10-87)

(56233

(p. 005)

56233. Student Contact Hours.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 48, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56234. Assessments.

Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the college president certifies are reliable, valid, and appropriate for students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum, include:

(a) course and placement tests in reading, comprehension, vocabulary, writing, and computations.

(b) diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.

(c) study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.

(d) support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extra-curricular pursuits).

(e) assessment instruments that are not culturally or linguistically biased.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56235. Target or High Priority Area.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 48, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56236. Counseling and Advisement.

Each college receiving EOPS funds shall provide counseling and advisement to EOPS-eligible students of at least three contact sessions per term for each student as follows:

(a) a contact session which combines interview interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.

(b) an in-term contact session to ensure the student is succeeding adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success.

(c) a term-end or program exit contact session to assess the success of students in meeting the objectives of that term, the success of the program, and services provided in meeting student needs, and to assist students in preparing for the next term of classes, or to make future plans if students are leaving the EOPS program or the college.

NOTE: Authority cited: Sections 69648, 69648.7 and 71090, Education Code. Reference: Sections 69649-69653, Education Code.

HISTORY:

1. Amendment of subsection (b), filed 5-8-81; effective thirtieth day thereafter (Register 82, No. 19).
2. New Article 2 heading and amendment of subsection (a) filed 3-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56237. Independent Student Criteria

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Sections 69649, 69649, 69641, 69642 and 69650, Education Code.

HISTORY:

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Amendment of section heading and subsection (a) (2) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56238. Basic Skills Instruction and Tutoring Services

Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessment and counseling, need such services to succeed in reaching their educational goals.

NOTE: Authority cited: Sections 69648, 69648.7 and 71090, Education Code. Reference: Sections 69649-69653, Education Code.

HISTORY:

1. Amendment of subsection (d) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56239. Priority in Serving Students

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 69649) of Part 42, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56240. Transfer and Career Employment Services

Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate college and EOPS staff shall attempt to articulate coursework and support services needed by EOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to EOPS.

NOTE: Authority cited: Sections 69648, 69648.7 and 71090, Education Code. Reference: Sections 69649-69653, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

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(Register 87, No. 40—10-24-87)

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50241. Outline.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50243. Deadlines.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50244. Applications.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50245. Scope and Appropriateness.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50246. Maintenance of Effort.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50247. Advisory Committee.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50248. Evaluation.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649 and 69650, Education Code.

HISTORY:

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

50250. Effect.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Article 2 heading and Section 50250 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

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(Register 57, No. 42-12247)

56251. Evaluation by Chancellor.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Sections 69640, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter: (Register 53, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87: (Register 57, No. 40).

Article 4. EOPS Financial Aid Standards

56252. Purpose.

Financial assistance in the form of EOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to EOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after Pell grants and other state, federal or institutional financial aid has been awarded to the student.

NOTE: Authority cited: Sections 69643, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

56253. Approved Plan Required.

NOTE: Authority cited: Sections 69643, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

56254. EOPS Grants and Workstudy Awards.

(a) Grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.

(b) Workstudy awards shall not exceed \$1,500 per academic year, or the amount of a student's unmet need, whichever is less. Contracts with private industry may be utilized to place EOPS workstudy students.

(c) No combination of EOPS grant and workstudy awards may exceed \$1,500 or exceed the amount of a student's unmet need, whichever is less in an academic year.

(d) EOPS grants shall be disbursed to each student equally among terms in the college academic year.

NOTE: Authority cited: Sections 69643, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

56255. Priority in Funding.

NOTE: Authority cited: Sections 69643, 69653 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 18.

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(Register 52, No. 40—10-24-57)

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5050. Award Procedures.

(a) Financial aid offices shall award and disburse EOPS grant and workstudy funds according to college procedures upon the authorization of the EOPS office.

(b) EOPS offices shall authorize EOPS grant and workstudy awards such that:

(1) Awards are distributed as evenly as possible between dependent and independent students.

(2) Priority in awards is given to dependent or independent students having the lowest family or personal incomes, respectively.

(c) EOPS offices may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 53, No. 18.

5057. Funding.

NOTE: Authority cited: Sections 69643, 69643 and 71020, Education Code. Reference: Sections 69640, 69643 and 69655, Education Code.

HISTORY:

1. Amendment of subsection (b) filed 5-9-51; effective thirtieth day thereafter (Register 51, No. 19).

2. Amendment of subsection (c) filed 4-27-53; effective thirtieth day thereafter (Register 53, No. 18).

3. Repealer filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 53, No. 18.

5058. Emergency Loans.

EOPS programs may establish an emergency loan program for EOPS students to meet unexpected or untimely costs for books, college supplies, transportation and housing, subject to the following provisions:

(a) loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.

(b) loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.

(c) the total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 53, No. 18.

5059. Effective Program Experience.

NOTE: Authority cited: Sections 69643, 69653 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69940) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 53, No. 18.

Article 5. Staffing Standards

59290. Staff.

EOPS shall be provided by certificated director, instructors and counselors and other support staff employed by the governing board of the community college district. All staff funded by EOPS who are not supervised by the EOPS Director shall be accountable to the EOPS Director for the services rendered to EOPS students pursuant to the approved EOPS program plan.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

59292. Director Qualifications.

(a) The EOPS Director must possess a Community College Supervisor Credential.

(b) An EOPS Director hired after the effective date of this Article must have, within the last four years, two years of full-time experience or the equivalent:

(1) in the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or

(2) as a community college EOPS counselor or EOPS instructor, or have comparable experience in working with disadvantaged clientele.

(c) Shall have completed a minimum of six units of college-level course work predominantly relating to ethnic minorities or persons handicapped by educational, language, or social disadvantages.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

59294. Counselor Qualifications.

(a) EOPS "Counselors" are those persons designated by the community college to serve as certificated counselors in the EOPS program and must possess the Community College Counselor Credential required by Education Code Section 57374 and

(b) EOPS counselors hired after the effective date of this Article shall:

(1) have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social or economic disadvantages or six semester units or equivalent of a college-level counseling practicum or counseling field work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages and,

(2) have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social or economic disadvantages.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

Article 6. Plans and Priorities

50270. Contract Plan.

(a) Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of this Chapter for each college within the district which intends to operate an EOPS program. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor. Changes to the program plan may be made only with the prior written approval of the Chancellor.

(b) The Chancellor will notify in writing those districts which submit plans on or before the deadline set pursuant to Section 50274 of this part within ninety (90) days of that deadline whether the district's plan is complete and whether the plan is approved or disapproved. If the plan is disapproved, the Chancellor will notify the district how the plan is deficient. If a district plan is disapproved, the district may resubmit the plan and the Chancellor will approve or disapprove the resubmitted plan within ninety (90) days of its receipt.

(c) The Chancellor's median, minimum and maximum times for approving district plans for EOPS, from the receipt of the initial plan to final approval of the plan, for fiscal years 1984-85 and 1985-86 are 28 days, 43 days and 610 days respectively. These times may include repeated resubmissions of plans by some community college districts. The estimated time lapse from initial receipt to the first action of approval or disapproval is estimated to be 57 days.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50271. Approved Programs and Services.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640), of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

50272. Outline.

Each plan shall address the following:

(a) the long-term goals of the EOPS program in supporting the goals of the college and the goals adopted for EOPS by the Board of Governors.

(b) the objectives of the EOPS program to be attained in the fiscal year for which EOPS funds are allocated.

(c) the activities to be undertaken to achieve the objectives, including how the college plans to meet the standards set forth in Articles 3, 4, and 5 of this Chapter.

(d) an operating budget which indicates the planned expenditures of EOPS funds, and of other district funds to be used to finance EOPS activities.

(e) the number of students to be served.

(f) an evaluation of the results achieved in the prior year of funding.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 9274. Deadlines.

The Chancellor's Office shall annually establish a final date for the submission of BOPS plans and shall notify districts of this date and designate the time for the submission of the plans. Plans must be submitted 60 days prior to this date. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

NOTE: Authority cited: Sections 9243, 9243.7 and 71020, Education Code. Reference: Sections 9240-9242, Education Code.

HISTORY:

1. New section filed 9-24-57; operative 10-24-57 (Register 57, No. 40).

§ 9275. Review and Approval of District Plans.

All plans and requests for funding submitted on or before the deadline shall be reviewed and evaluated by the Chancellor. The Chancellor shall approve plans for funding in whole or in part.

NOTE: Authority cited: Sections 9243, 9243.7 and 71020, Education Code. Reference: Sections 9240-9242, Education Code.

HISTORY:

1. New section filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Registers 53, No. 18 and 51, No. 3.

§ 9277. Necessity of Subchapter.

NOTE: Authority cited: Sections 9243, 9253 and 71020, Education Code. Reference: Chapter 2, Article 9 (commencing with Section 9240) of Part 42, Education Code.

HISTORY:

1. Repealer filed 1-16-81; effective thirtieth day thereafter (Register 51, No. 3).

§ 9278. Program Evaluation by the Chancellor.

Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives.

NOTE: Authority cited: Sections 9243, 9243.7 and 71020, Education Code. Reference: Sections 9240-9242, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 53, No. 18.

§ 9279. Accrual Basis.

NOTE: Authority cited: Sections 9243, 9253 and 71020, Education Code. Reference: Chapter 2, Article 9 (commencing with Section 9240) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-57; operative 10-24-57 (Register 57, No. 40). For prior history, see Register 53, No. 18.

§ 9280. Priorities in Serving Students.

Each plan shall incorporate the priorities of this Section in the order presented when serving students from among those who are eligible pursuant to Section 9280. The purpose of these priorities is to ensure that colleges strive to achieve and maintain a racial, ethnic, and gender composition among income eligible students served which matches the racial, ethnic, and gender composition by income group of eighteen years and above who reside in the college service area.

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(a) priority in outreach and recruitment services shall be directed towards correcting the greatest underrepresentation among students served. Additional priority among underrepresented students shall be given to serving individuals who are the first in their family to attend college.

(b) priority in serving students enrolled at the college shall be:

- (1) serving continuing EOPS students with the lowest income.
- (2) serving continuing EOPS students with the lowest income who are transferring from another EOPS program conducted by a community college.
- (3) serving first-time EOPS students with the lowest income.

NOTE: Authority cited: Sections 69648, 69649.7 and 71090, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56281. Accounting Procedures.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56282. State Sources.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer of Article 8 heading filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56283. Other Sources.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56284. Expenditures.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Sections 69640, 69641, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY:

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56285. Direct Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

56286. Income Ceiling Adjustment.

NOTE: Authority cited: Sections 69648, 69652 and 71090, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY:

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

55057. Indirect Expenses.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 6900) of Part 42, Education Code.

HISTORY:

1. Repealer filed 4-27-83, effective thirtieth day thereafter (Register 53, No. 15).

55058. Purpose of Indirect Expense Account.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 6900) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87, operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 15.

55059. Capital Outlay Expenditures.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 6900) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87, operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 15.

Article 7. Funding and Expenditures

55060. Income and Expenditure Accountability.

Districts shall maintain separate accounts for monies provided for, and expended in, support of CDEA activities by specific line item.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Sections 6900-6905, Education Code.

HISTORY:

1. Amendment filed 2-7-80, effective thirtieth day thereafter (Register 50, No. 5).
2. Renumbering of former Article 3 to Article 5 filed 4-27-83, effective thirtieth day thereafter (Register 53, No. 15).
3. Repealer and new section filed 9-24-87, operative 10-24-87 (Register 57, No. 40).

55061. Discretionary Funding.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Sections 6904, 6905, and 6906, Education Code.

HISTORY:

1. Amendment filed 5-8-81, effective thirtieth day thereafter (Register 51, No. 16).
2. Repealer filed 9-24-87, operative 10-24-87 (Register 57, No. 40).

55061.1. Direct Aid to Students.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Sections 6900 and 6901, Education Code.

HISTORY:

1. Amendment filed 5-8-81, effective thirtieth day thereafter (Register 51, No. 16).
2. Repealer filed 9-24-87, operative 10-24-87 (Register 57, No. 40).

55061.2. Curriculum Development.

NOTE: Authority cited: Sections 6904, 6905 and 71001, Education Code. Reference: Chapter 2, Article 5 (commencing with Section 6900) of Part 42, Education Code.

HISTORY:

1. Repealer filed 9-24-87, operative 10-24-87 (Register 57, No. 40). For prior history, see Register 53, No. 15.

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(Register 87, No. 40-10-87)

456285
(p. 6889)**56292. Adjustment to Allocations.**

The Chancellor may adjust the allocation to any college during a fiscal year for one or more of the following reasons:

- (a) to correct over or under allocated amounts in any of the three prior fiscal years.
- (b) to correct for over or under utilization of allocated amounts in the current fiscal year.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Amendment of subsection (e) filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56293. District Fiscal Responsibility and Contribution.

Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide to EOPS students who need them the same programs and services the college offers to all of its credit enrolled students. The district shall fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. Districts accepting EOPS funds will be required to pay the salary of the EOPS director at the rate of at least 70% of salary and benefits for 1987-88 and 100% of salary and benefits for 1988-89 and every year thereafter.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

56294. EOPS Supplemental Costs.

Colleges shall expend EOPS funds only for programs and services which are over, above, and in addition to the costs which are the district's responsibility as defined in Section 56293.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56295. Expenditures Allowed.

(a) Colleges may expend EOPS funds to meet the EOPS supplemental costs as defined in Section 56294 for personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-6000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less.

(b) Requests to purchase computer hardware and/or software shall be approved by the district superintendent/president prior to transmittal for approval by the Chancellor.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56298
(p. 562.10)

CALIFORNIA COMMUNITY COLLEGES

TITLE 5

(Register 22, No. 40 - 10-24-87)

56298. Expenditures Not Allowed.

EOPS funds shall not be expended for the following:

- (a) college administrative support costs (e.g., staff of the business office, business registration, staff at the dean's office, food and storage);
- (b) building costs (e.g., heat, light, power, janitorial services);
- (c) political or professional association dues and/or contributions;
- (d) costs of furniture (chairs, desks, coat hangers, etc.);
- (e) costs of construction, remodeling, renovation, or vehicles;
- (f) travel costs other than travel costs of EOPS staff and students for EOPS activities or functions.

Except for items (a) through (c) above, waivers may be approved by the Chancellor on a case-by-case basis.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56297. Special Projects and Incentives.

(a) The Chancellor may allocate funds for recommended special projects which seek to benefit the statewide, regional or local conduct of EOPS programs, provided that no special project duplicates college or EOPS activities.

(b) Special projects shall be recommended by the advisory committee established pursuant to Section 69643 of the Education Code.

(c) Funding for special projects shall consist of amounts set aside for this purpose in the Governor's Budget. The Chancellor may redirect funds released pursuant to Section 69643 to fund additional special projects.

(d) Colleges which demonstrate outstanding effectiveness based upon evaluations conducted pursuant to Section 56278 of this Chapter shall receive priority consideration for use of special project funds or other funds which may be released pursuant to Section 69643.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

56296. EOPS Financial Aid Restriction.

In each fiscal year the colleges shall expend for EOPS grants and workstudy an amount equal to that expended in the prior fiscal year, unless waived by the Chancellor, for the following reasons:

- (a) to establish a book service program;
- (b) the college allocation was corrected pursuant to Section 56292;
- (c) to meet the requirements of Article 3.

NOTE: Authority cited: Sections 69643, 69643.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

HISTORY:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

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3. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56238. Basic Skills Instruction and Tutoring Services.

Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment of subsection (d) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56239. Priority in Serving Students.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56240. Transfer and Career Employment Services.

Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate college and EOPS staff shall attempt to articulate coursework and support services needed by EOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to EOPS.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56241. Outline.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56243. Deadlines.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56244. Applications.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56245. Scope and Appropriateness.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56246. Maintenance of Effort.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56247. Advisory Committee.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56248. Evaluation.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649 and 69650, Education Code.

HISTORY

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56250. Effect.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer of Article 2 heading and Section 56250 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56251. Evaluation by Chancellor.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

Article 4. EOPS Financial Aid Standards

§ 56252. Purpose.

Financial assistance in the form of EOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to EOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after Pell grants and other state, federal or institutional financial aid has been awarded to the student.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56253. Approved Plan Required.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56254. EOPS Grants and Workstudy Awards.

(a) Grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.

(b) Workstudy awards shall not exceed \$1,800 per academic year, or the amount of a student's unmet need, whichever is less. Contracts with private industry may be utilized to place EOPS workstudy students.

(c) No combination of EOPS grant and workstudy awards may exceed \$1,800 or exceed the amount of a student's unmet need, whichever is less in an academic year.

(d) EOPS grants shall be disbursed to each student equally among terms in the college academic year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 5025B. Priority in Funding.

Notes: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

1. Registrar filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

History**§ 5025B. Award Procedures.**

(a) Financial aid offices shall award and disburse EOPFS grant and workstudy funds according to college procedures upon the authorization of the EOPFS office.

(b) EOPFS offices shall authorize EOPFS grant and workstudy awards such that:

(1) Awards are distributed as evenly as possible between dependent and independent students.

(2) Priority in awards is given to dependent or independent students having the lowest family or personal income, respectively.

(c) EOPFS offices may authorize an EOPFS grant to reduce packaged student employment awards on a case by case basis.

Notes: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. Registrar and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 50257. Funding.

Notes: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69648 and 69652, Education Code.

History

1. Amendment of subsection (b) filed 5-9-81; effective thirtieth day thereafter (Register 81, No. 19).

2. Amendment of subsection (c) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 15).

3. Registrar filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

5026. Emergency Loans.

EOPFS programs may establish an emergency loan program for EOPFS students to meet unexpected or unanticipated costs for books, college supplies, transportation and housing, subject to the following provisions:

(a) Loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.

(b) Loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.

(c) The total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor.

Notes: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. Registrar and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 5026B. Effective Program Experience.

Notes: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Registrar filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 5. Staffing Standards**§ 50260. Staff.**

EOPFS shall be provided by certificated director, instructors and counsellors and other support staff employed by the governing board of the community college district. All staff funded by EOPFS who are not sup-

vised by the EOPFS Director shall be accountable to the EOPFS Director for the services rendered to EOPFS students pursuant to the approved EOPFS program plan.

Notes: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 50262. Director Qualifications.

(a) The EOPFS Director must meet the minimum qualifications for a student-services administrator as specified in section 53420 of this part. He must possess a Community College Supervisor Credential.

(b) In addition, an EOPFS Director hired after October 24, 1987, must have, within the last four years, two years of experience or the equivalent:

(1) In the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or.

(2) As a community college EOPFS counsellor or EOPFS instructor, or have comparable experience in working with disadvantaged clientele.

(c) In addition, an EOPFS director hired after October 24, 1987, shall have completed a minimum of six units of college-level course work predominantly relating to ethnic minorities or persons handicapped by educational, language, or social disadvantages.

Notes: Authority cited: Sections 69648, 70901(b)(1)(B) and 87356 Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

History

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

2. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges, operative 11-30-90 (Register 90, No. 49), submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 50264. Counselor Qualifications.

(a) EOPFS "Counselors" are those persons designated by the community college to serve as certified counselors in the EOPFS program and must possess the Community College Counselor Credential or possess a master's degree in counseling, rehabilitation counseling, clinical psychology, counseling psychology, guidance counselling, educational counselling, social work or career development, or the equivalent, and

(b) In addition, EOPFS counselors hired after October 24, 1987, shall:

(1) Have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages or,

(2) Have completed six semester units or the equivalent of a college-level counselling practicum or counselling field-work courses in a community college EOPFS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social, or economic disadvantages and.

(c) In addition, an EOPFS counselor hired after October 24, 1987, shall have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages.

Notes: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

2. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges, operative 11-30-90 (Register 90, No. 49), submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Article 6. Plans and Priorities

(a) Districts wishing to participate in EOPFS shall submit for approval by the Chancellor a plan which conforms to the provisions of this Chapter for each college within the district which intends to conduct an EOPFS program. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor.

Changes to the program plan may be made only with the prior written approval of the Chancellor.

(b) The Chancellor will notify in writing those districts which submit plans on or before the deadline set pursuant to Section 56274 of this part within ninety (90) days of that deadline whether the district's plan is complete and whether the plan is approved or disapproved. If the plan is disap-

proved, the Chancellor will notify the district how the plan is deficient. If a district plan is disapproved, the district may resubmit the plan and the Chancellor will approve or disapprove the resubmitted plan within ninety (90) days of its receipt.

(c) The Chancellor's median, minimum and maximum times for approving district plans for EOPS, from the receipt of the initial plan to final

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§ 56262

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5. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56238. Basic Skills Instruction and Tutoring Services.

Colleges receiving BOPS funds shall provide basic skills instruction and tutoring services to BOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. Amendment of subsection (d) filed 4-27-83; effective thirteenth day thereafter (Register 83, No. 18).

2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56239. Priority in Serving Students.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56240. Transfer and Career Employment Services.

Colleges receiving BOPS funds shall provide assistance to BOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate colleges and BOPS staff shall attempt to establish coursework and support services needed by BOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to BOPS.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56241. Outline.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56243. Deadlines.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56244. Applications.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56245. Scope and Appropriateness.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56246. Maintenance of Effort.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56247. Advisory Committee.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56248. Evaluation.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649 and 69650, Education Code.

History

1. New section filed 4-27-83; effective thirteenth day thereafter (Register 83, No. 18).

2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56250. Effect.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer of Article 2 heading and Section 56250 filed 4-27-83; effective thirteenth day thereafter (Register 83, No. 18).

§ 56251. Evaluation by Chancellor.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

History

1. Amendment filed 4-27-83; effective thirteenth day thereafter (Register 83, No. 18).

2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

Article 4. EOPS Financial Aid Standards

§ 56252. Purpose.

Financial assistance in the form of BOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to BOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after Pell grants and other state, federal or institutional financial aid has been awarded to the student.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56253. Approved Plan Required.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56254. EOP's Grants and Workstudy Awards.

(a) Grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.

(b) Workstudy awards shall not exceed \$1,800 per academic year, or the amount of a student's unmet need, whichever is less. Contracts with private industry may be utilized to place EOP's workstudy students.

(c) No combination of BOPS grant and workstudy awards may exceed \$1,800 or exceed the amount of a student's unmet need, whichever is less in an academic year.

(d) BOPS grants shall be distributed to each student equally among terms in the college academic year.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

History

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56255. Priority in Funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56256. Award Procedures.

(a) Financial aid offices shall award and disburse EOPS grant and workstudy funds according to college procedures upon the authorization of the EOPS office.

(b) EOPS offices shall authorize EOPS grant and workstudy awards such that:

(1) Awards are distributed as evenly as possible between dependent and independent students.

(2) Priority in awards is given to dependent or independent students having the lowest family or personal incomes, respectively.

(c) EOPS offices may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56257. Funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69648 and 69652, Education Code.

HISTORY

1. Amendment of subsection (b) filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Amendment of subsection (c) filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56258. Emergency Loans.

EOPS programs may establish an emergency loan program for EOPS students to meet unexpected or untimely costs for books, college supplies, transportation and housing, subject to the following provisions:

(a) loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.

(b) loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.

(c) the total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56259. Effective Program Experience.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 5. Staffing Standards**§ 56260. Staff.**

EOPS shall be provided by certificated director, instructors and counselors and other support staff employed by the governing board of the community college district. All staff funded by EOPS who are not super-

vised by the EOPS Director shall be accountable to the EOPS Director for the services rendered to EOPS students pursuant to the approved EOPS program plan.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56262. Director Qualifications.

(a) The EOPS Director must meet the minimum qualifications for a student services administrator as specified in section 53420 of this part, or must possess a Community College Supervisor Credential.

(b) In addition, an EOPS Director hired after October 24, 1987, must have, within the last four years, two years of experience or the equivalent:

(1) In the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or,

(2) As a community college EOPS counselor or EOPS instructor, or have comparable experience in working with disadvantaged clientele.

(c) In addition, an EOPS director hired after October 24, 1987, shall have completed a minimum of six units of college-level course work predominantly relating to ethnic minorities or persons handicapped by educational, language, or social disadvantages.

NOTE: Authority cited: Sections 69648, 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
2. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code, section 70901.5(b).
3. Editorial correction of printing error in subsection (a) (Register 91, No. 29).

§ 56264. Counselor Qualifications.

(a) EOPS "Counselors" are those persons designated by the community college to serve as certificated counselors in the EOPS program and must possess the Community College Counselor Credential or possess a master's degree in counseling, rehabilitation counseling, clinical psychology, counseling psychology, guidance counseling, educational counseling, social work, or career development, or the equivalent, and

(b) In addition, EOPS counselors hired after October 24, 1987, shall:

(1) Have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages or,

(2) Have completed six semester units or the equivalent of a college-level counseling practicum or counseling field-work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social, or economic disadvantages and,

(c) In addition, an EOPS counselor hired after October 24, 1987, shall have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social, or economic disadvantages.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
2. Amendment filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

Article 6. Plans and Priorities**§ 56270. Contract Plan.**

(a) Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of this chapter for each college within the district which intends to conduct an EOPS pro-

gram. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor. Changes to the program plan may be made only with the prior written approval of the Chancellor.

(b) The Chancellor will notify in writing those districts which submit plans on or before the deadline set pursuant to section 56274 of this part within ninety (90) days of that deadline whether the district's plan is complete and whether the plan is approved or disapproved. If the plan is disapproved, the Chancellor will notify the district how the plan is deficient. If a district plan is disapproved, the district may resubmit the plan and the Chancellor will approve or disapprove the resubmitted plan within ninety (90) days of its receipt.

(c) The Chancellor's median, minimum and maximum times for approving district plans for EOPFS, from the receipt of the initial plan to final approval of the plan, for fiscal years 1984-85 and 1985-86 are 245 days, 43 days and 610 days respectively. These times may include repeated resubmissions of plans by some community college districts. The earliest time lapse from initial receipt to the first action of approval or disapproval is estimated to be 87 days.

Norm Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

History:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

2. Editorial correction of printing error retaining section heading (Register 91, No. 29).

§ 56271. Approved Programs and Services.

Norm Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History:

1. Register filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56272. Outline.

Each plan shall address the following:

(a) the long-term goals of the EOPFS program in supporting the goals of the college and the goals adopted for EOPFS by the Board of Governors.

(b) the objectives of the EOPFS program to be attained in the fiscal year for which EOPFS funds are allocated.

(c) the activities to be undertaken to achieve the objectives, including how the college plans to meet the standards set forth in Articles 3, 4, and 5 of this Chapter.

(d) an operating budget which indicates the planned expenditures of EOPFS funds, and of other district funds to be used to finance EOPFS activities.

(e) the number of students to be served.

(f) an evaluation of the results achieved in the prior year of funding. Norm Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

History:

1. Register and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56274. Deadlines.

The Chancellor's Office shall annually establish a final date for the submission of EOPFS plans and shall notify districts of this date and distribute the forms for the submission of the plan not less than 90 days prior to that date. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

Norm Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

History:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56278. Review and Approval of District Plans.

All plans and requests for funding authorized on or before the deadline shall be reviewed and evaluated by the Chancellor. The Chancellor shall approve plans for funding in whole or in part.

Norm Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

History:

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18 and 81, No. 3.

§ 56277. Necessity of Subchapter.

Norm Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History:

1. Register filed 1-16-81; effective thirteenth day thereafter (Register 81, No. 3).

§ 56278. Program Evaluation by the Chancellor.

Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives.

Norm Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

History:

1. Register and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56279. Accrual Bank.

Norm Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History:

1. Register filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56280. Priorities in Serving Students.

Each plan shall incorporate the priorities of this Section in the order presented when serving students from among those who are eligible pursuant to Section 56220. The purpose of these priorities is to ensure that colleges strive to achieve and maintain a racial, ethnic, and gender composition among income eligible students served which matches the racial, ethnic, and gender composition by income group of eighteen years and above who reside in the college service area.

(a) priority in outreach and recruitment services shall be directed towards contacting the greatest underrepresentation among students served. Additional priority among underrepresented students shall be given to serving individuals who are the first in their family to attend college.

(b) priority in servc of students enrolled at the college shall be:

(1) serving continuing, EOPFS students with the lowest income.

(2) serving continuing EOPFS students with the lowest income who are transferring from another EOPFS program conducted by a community college.

(3) serving first-time EOPFS students with the lowest income.

Norm Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69653, Education Code.

History:

1. Register and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56281. Accounting Procedures.

Norm Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History:

1. Register filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56282. State Sources.

Norm Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

History:

1. Register of Article 2 heading filed 4-27-83; effective thirteenth day thereafter (Register 83, No. 18).

2. Register filed 9-24-87; operative 11-24-87 (Register 87, No. 40).

§ 56283. Other Sources.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56284. Expenditures.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69641, 69642, 69649, 69650, 69651, 69652 and 69653, Education Code.

HISTORY

1. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56285. Direct Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56286. Income Ceiling Adjustment.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

HISTORY

1. Repealer and new section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56287. Indirect Expenses.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

§ 56288. Purpose of Indirect Expense Account.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56289. Capital Outlay Expenditures.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

Article 7. Funding and Expenditures**§ 56290. Income and Expenditure Accountability.**

Districts shall maintain separate accounts for monies provided for, and expended in, support of EOPS activities by specific line item.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Renumbering of former Article 3 to Article 5 filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56291. Discretionary Funding.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69640, 69651, and 69652, Education Code.

HISTORY

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56291.1. Direct Aid to Students.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Sections 69650 and 69652, Education Code.

HISTORY

1. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
2. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56291.2. Curriculum Development.

NOTE: Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

HISTORY

1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56292. Adjustment to Allocations.

The Chancellor may adjust the allocation to any college during a fiscal year for one or more of the following reasons:

- (a) to correct over or under allocated amounts in any of the three prior fiscal years.
- (b) to correct for over or under utilization of allocated amounts in the current fiscal year.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Amendment of subsection (e) filed 2-7-80; effective thirtieth day thereafter (Register 80, No. 6).
2. Amendment filed 5-8-81; effective thirtieth day thereafter (Register 81, No. 19).
3. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56293. District Fiscal Responsibility and Contribution.

Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide to EOPS students who need them the same programs and services the college offers to all of its credit enrolled students. The district shall fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. Districts accepting EOPS funds will be required to pay the salary of the EOPS director at the rate of at least 50% of salary and benefits for 1987-88 and 100% of salary and benefits for 1988-89 and every year thereafter.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56294. EOPS Supplemental Costs.

Colleges shall expend EOPS funds only for programs and services which are over, above, and in addition to the costs which are the district's responsibility as defined in Section 56293.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
2. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56295. Expenditures Allowed.

(a) Colleges may expend EOPS funds to meet the EOPS supplemental costs as defined in Section 56294 for personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-6000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less.

(b) Requests to purchase computer hardware and/or software shall be approved by the district superintendent/president prior to transmittal for approval by the Chancellor.

NOTE: Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Preference: Sections 69640-69655, Education Code.

HISTORY

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).

§ 56296. Expenditures Not Allowed.

EOPS funds shall not be expended for the following:

- (a) college administrative support costs (e.g., staff of the business office, bookstore, reproduction, staff at the dean salary level and above).
- (b) indirect costs (e.g., heat, lights, power, janitorial service).
- (c) political or professional association dues and/or contributions.
- (d) costs of furniture (chairs, desks, coat hangers, etc.)

[The next page is 367.]

Register 97-46

§ 56210

§ 56203. Participation.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

- History**
1. Repealer filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.

§ 56204. Student Service.

For purposes of allocating BOPS funds, conducting audits and evaluations, an BOPS student served is a person for whom, at minimum, the BOPS program has documentation in the student's file of an BOPS application, Educational Plan, and Mutual Responsibility Contract developed pursuant to Section 56222(c).
Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

- History**
1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Registers 83, No. 18 and 81, No. 3.

§ 56206. BOPS Information.

The Chancellor shall require districts receiving BOPS funds to identify students served and the level and type of programs and services each student received.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
History

§ 56208. Advisory Committee.

Each BOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the BOPS Director. The purpose of the advisory committee is to assist the college in developing and maintaining effective extended opportunity programs and services. The term of each committee member shall be for two years, July 1 of the year of appointment to June 30 of the second succeeding year. Members may serve more than one term. The committee shall consist of no fewer members than the members of the local Board of Trustees. Members shall serve without compensation. Members may be reappointed for necessary expenses incurred in performing their duties. The advisory committee should include representation from college personnel, BOPS students, local or feeder high schools, community and business sectors, and four-year colleges where possible. The Advisory Committee shall meet at least once during each academic year.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

1. New section filed 9-24-87; operative 10-24-87 (Register 87, No. 40).
History

§ 56210. Comparable Level of Services.

Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-BOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three-year average or 15% of the average BOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollment in the BOPS program declines.

Norms Authority cited: Sections 69648, 69648.7 and 71020, Education Code. Reference: Sections 69640-69655, Education Code.

- History**
1. Repealer and new section filed 9-24-87; operative 10-24-87 (Register 87, No. 40). For prior history, see Register 83, No. 18.
2. Editorial correction of NOTE (Register 97, No. 49).

§ 56211. Evaluation.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

1. Repealer filed 4-27-83; effective third day thereafter (Register 83, No. 18).
History

§ 56218. Effect of Article.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

1. Repealer filed 1-16-81; effective third day thereafter (Register 81, No. 3).
History

§ 56216. Chancellor.

Norms Authority cited: Sections 69648, 69652 and 71020, Education Code. Reference: Chapter 2, Article 8 (commencing with Section 69640) of Part 42, Education Code.

1. Repealer filed 1-16-81; effective third day thereafter (Register 81, No. 3).
History

§ 56217. Income Ceiling Adjustment.

Norms Authority cited: Sections 69648, 69652, and 71020, Education Code. Reference: Sections 69640 and 69648, Education Code.

- History**
1. New section filed 5-8-81; effective third day thereafter (Register 81, No. 19). For prior history, see Register 81, No. 3.
2. Repealer of Article 3 heading and Section 56217 filed 4-27-83; effective third day thereafter (Register 83, No. 18).

[The next page is 361.]

SixTen and Associates Mandate Reimbursement Services

EXHIBIT I

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8805
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Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

May 15, 2008

RECEIVED

MAY 16 2008

**COMMISSION ON
STATE MANDATES**

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM 02-TC-29
Extended Opportunity Programs & Services

Dear Ms. Higashi:

On January 8, 2007, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the history of the Title 5, CCR, sections included in the test claim, at the request of the Commission staff.

This letter transmits, on behalf of the test claimants, the list of registers and relevant section numbers, in the form of an amended attachment page to the CSM 2 form.

Sincerely,



Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor
Finance and Administration
State Center Community College District
1525 East Weldon
Fresno, CA 93704-6398

1 **DECLARATION OF SERVICE**

2
3 Re: Test Claim 02-TC-29
4 West Kern Community College District
5 Extended Opportunity Programs & Services
6

7 I declare:

8
9 I am employed in the office of SixTen and Associates, which is the
10 appointed representative of the above named claimants. I am 18 years of
11 age or older and not a party to the entitled matter. My business address is
12 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.
13

14 On the date indicated below, I served the attached letter dated May 15,
15 2008, to Paula Higashi, Executive Director, Commission on State Mandates
16 to:
17

18 Paula Higashi, Executive Director
19 Commission on State Mandates
20 980 Ninth Street, Suite 300
21 Sacramento, CA 95814
22

23 **U.S. MAIL:** I am familiar with the
24 business practice at SixTen and
25 Associates for the collection and
26 processing of correspondence for mailing
27 with the United States Postal Service. In
28 accordance with that practice,
29 correspondence placed in the internal
30 mail collection system at SixTen and
31 Associates is deposited with the United
32 States Postal Service that same day in
33 the ordinary course of business.
34

35 **OTHER SERVICE:** I caused such
36 envelope(s) to be delivered to the office
37 of the addressee(s) listed above by:
38


39 _____
40 (Describe)
41

FACSIMILE TRANSMISSION: On the
date below from facsimile machine
number (858) 514-8645, I personally
transmitted to the above-named
person(s) to the facsimile number(s)
shown above, pursuant to California
Rules of Court 2003-2008. A true copy of
the above-described document(s)
was(were) transmitted by facsimile
transmission and the transmission was
reported as complete and without error.

A copy of the transmission report issued
by the transmitting machine is attached to
this proof of service.

PERSONAL SERVICE: By causing a true
copy of the above-described document(s)
to be hand delivered to the office(s) of the
addressee(s).

42 I declare under penalty of perjury under the laws of the State of California that the
43 foregoing is true and correct and that this declaration was executed on May 15, 2008, at
44 Sacramento, California.
45

46 
47 Barbara A. Rinkle

Amended Attachment to CSM 2 (1/91)
 Test Claim of West Kern Community College District
 Extended Opportunity Programs and Services

Statutes:

Chapter 1455, Statutes of 1990
 Chapter 1372, Statutes of 1990
 Chapter 1586, Statutes of 1985
 Chapter 1178, Statutes of 1984

Code Sections:

Education Code Section 69640
 Education Code Section 69641
 Education Code Section 69641.5
 Education Code Section 69643
 Education Code Section 69648
 Education Code Section 69649
 Education Code Section 69652
 Education Code Section 69655
 Education Code Section 69656

Title 5, California Code of Regulations Registers

Register 76-41

| | | | | | | | |
|--------------------|-------|-------|-------|-------|-------|-------|-------|
| Title 5, Sections: | 56200 | 56201 | 56202 | 56204 | 56208 | 56210 | 56220 |
| | 56224 | 56228 | 56230 | 56232 | 56234 | 56238 | 56240 |
| | 56252 | 56254 | 56256 | 56258 | 56270 | 56272 | 56274 |
| | 56276 | 56278 | 56280 | 56290 | 56292 | 56293 | 56295 |
| | 56298 | | | | | | |

Register 77-34

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|--------------------|-------|-------|-------|-------|---------|-------|-------|
| Title 5, Sections: | 56200 | 56223 | 56234 | 56235 | 56235.1 | 56281 | 56282 |
| | 56291 | 56292 | | | | | |

Register 79-32

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|--------------------|-------|-------|-------|-------|---------|---------|-------|
| Title 5, Sections: | 56200 | 56201 | 56203 | 56204 | 56210 | 56211 | 56215 |
| | 56216 | 56217 | 56218 | 56219 | 56220 | 56221 | 56222 |
| | 56223 | 56224 | 56225 | 56226 | 56227 | 56228 | 56229 |
| | 56230 | 56231 | 56232 | 56233 | 56234 | 56235 | 56236 |
| | 56237 | 56238 | 56239 | 56240 | 56241 | 56243 | 56244 |
| | 56245 | 56246 | 56247 | 56250 | 56251 | 56252 | 56253 |
| | 56254 | 56255 | 56256 | 56257 | 56258 | 56259 | 56270 |
| | 56271 | 56272 | 56276 | 56277 | 56278 | 56279 | 56280 |
| | 56281 | 56282 | 56283 | 56284 | 56285 | 56286 | 56287 |
| | 56288 | 56289 | 56290 | 56291 | 56291.1 | 56291.2 | 56292 |
| | 56293 | | | | | | |

Register 80-06

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| Title 5, Sections: | 56237 | 56290 | 56292 |
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Register 81-03

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| Title 5, Sections: | 56200 | 56204 | 56215 | 56216 | 56217 | 56220 | 56225 |
| | 56276 | 56277 | | | | | |

Register 81-19

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| Title 5, Sections: | 56217 | 56230 | 56236 | 56257 | 56291 | 56291.1 | 56292 |
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Register 83-18

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|--------------------|-------|-------|-------|-------|-------|-------|-------|
| Title 5, Sections: | 56200 | 56201 | 56210 | 56211 | 56217 | 56221 | 56228 |
| | 56236 | 56237 | 56238 | 56240 | 56248 | 56250 | 56251 |
| | 56257 | 56270 | 56278 | 56282 | 56284 | 56285 | 56286 |
| | 56287 | 56290 | 56294 | | | | |

Register 87-40

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|--------------------|-------|-------|-------|-------|-------|---------|---------|
| Title 5, Sections: | 56200 | 56201 | 56202 | 56203 | 56204 | 56206 | 56208 |
| | 56210 | 56218 | 56219 | 56220 | 56221 | 56222 | 56223 |
| | 56224 | 56226 | 56228 | 56229 | 56230 | 56231 | 56232 |
| | 56233 | 56234 | 56235 | 56236 | 56237 | 56238 | 56239 |
| | 56240 | 56241 | 56243 | 56244 | 56245 | 56246 | 56247 |
| | 56248 | 56250 | 56251 | 56252 | 56253 | 56254 | 56255 |
| | 56256 | 56257 | 56258 | 56259 | 56260 | 56262 | 56264 |
| | 56270 | 56271 | 56272 | 56274 | 56276 | 56278 | 56279 |
| | 56280 | 56281 | 56282 | 56283 | 56284 | 56285 | 56286 |
| | 56287 | 56288 | 56289 | 56290 | 56291 | 56291.1 | 56291.2 |
| | 56292 | 56293 | 56294 | 56295 | 56296 | 56297 | 56298 |

Register 90-49

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| Title 5, Sections: | 56262 | 56264 |
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Register 91-29

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| Title 5, Sections: | 56262 | 56270 |
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Register 97-46

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| Title 5, Sections: | 56210 |
|--------------------|-------|

Title 5, Code of Regulations Originally Cited

| | | | | |
|---------------|---------------|---------------|---------------|---------------|
| Section 56200 | Section 56201 | Section 56202 | Section 56204 | Section 56206 |
| Section 56208 | Section 56210 | Section 56220 | Section 56222 | Section 56224 |
| Section 56226 | Section 56230 | Section 56232 | Section 56234 | Section 56236 |
| Section 56238 | Section 56240 | Section 56252 | Section 56254 | Section 56256 |
| Section 56258 | Section 56260 | Section 56262 | Section 56264 | Section 56270 |
| Section 56272 | Section 56274 | Section 56276 | Section 56278 | Section 56280 |
| Section 56290 | Section 56292 | Section 56293 | Section 56295 | Section 56296 |
| Section 56298 | | | | |

Other:

EQPS Implementing Guidelines
Chancellor of the California Community
Colleges (January 2002)

Hearing Date: July 31, 2009
 J:\MANDATES\2002\TC\02-tc-29\TC

ITEM _____

**TEST CLAIM
 DRAFT STAFF ANALYSIS**

Education Code Sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656
 as amended by Statutes 1984, Chapter 1178; Statutes 1985, Chapter 1586;
 Statutes 1990, Chapter 1352; Statutes 1990, Chapter 1455

California Code of Regulations, Title 5, Sections
 56200, 56201, 56202, 56204, 56206, 56208, 56210, 56220, 56222, 56224, 56226, 56230, 56232,
 56234, 56236, 56238, 56240, 56252, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272,
 56274, 56276, 56278, 56280, 56290, 56292, 56293, 56295, 56296, and 56298

(As added or amended by Register 76, No. 41, Register 77, No. 34, Register 79, No. 32,
 Register 80, No. 06, Register 81, Nos. 03 & 19, Register 83, No. 18, Register 87, No. 40,
 Register 90, No. 49, Register 91, No. 29, and Register 97, No 46

EOPS Implementing Guidelines,
 Chancellor of the California Community Colleges (January 2002)

Extended Opportunities Programs and Services

02-TC-29

West Kern Community College District, Claimant

EXECUTIVE SUMMARY

This test claim addresses the Community College Extended Opportunity Programs and Services program (EOPS). In 1969, Senate Bill No. (SB) 164 added Article 8 to the Education Code establishing EOPS to "encourage local community colleges to establish and implement programs to identify those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions." (Section 69640.¹)

The community college districts (districts) are encouraged to participate in EOPS by both legislative intent language and state (and potentially federal) funding that is provided specifically for EOPS. In exchange for state funding, the district generally must meet minimum standards that are specified in the test claim statutes and executive orders.²

¹ All statutory references are to the California Education Code, unless otherwise specified.

² The regulations pled are collectively referred to as the test claim executive orders throughout this analysis. Note that, as discussed in the analysis below, staff finds that the EOPS Guidelines are not executive orders.

EOPS provides academic and financial support to community college students whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending college. Services are specifically designed for at-risk students and their special needs. Counseling contacts are required and a Student Educational Plan is developed for each student to assist the student in achieving their individual goals. Today, approximately 107,000 community college students are served by EOPS annually. The appropriation in the 2007-2008 state budget for EOPS was \$106.78 million (Prop 98 state funds - local assistance) while the districts contributed \$22.7 million to the program.

At the outset, staff finds that the EOPS Guidelines are not executive orders. An executive order is "any order, plan, requirement, rule or regulation" issued by the Governor or any official serving at the pleasure of the Governor.³ Although the EOPS Guidelines are issued by the Chancellor's Office and the Chancellor serves at the pleasure of the Governor, the EOPS Guidelines do not contain "requirements, rules or regulations."

With regard to Section 69656, and Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56252 and 56292, staff finds that these sections do not require districts to perform any activities because:

- Section 69656 states the intent of the Legislature for the California State University (CSU) and the University of California (UC) to provide fee waivers for admissions applications for EOPS transfer students who provide waiver forms signed by a community college EOPS director and, by its plain language, requires no specific action on the part of districts or community college.
- 56220-56226 relate to student eligibility and responsibility and do not require districts to perform any activities.
- 56252 is a statement of purpose for EOPS financial aid and does not require districts to perform any activities.
- 56292 states that the Chancellor may adjust allocations to correct for an over or under allocation or utilization of EOPS funds, but does not require any district to perform any activities.

Finally, the requirements of the remaining test claim statutes and executive orders are triggered by the district's decision to establish an EOPS program and to request and accept state funding for that program and therefore, are not state-mandated activities. Pursuant to Sections 69649 and 69650, the decisions to establish Extended Opportunities Programs or Extended Opportunities Services are discretionary decisions of the district which must be approved by the Board of Governors. Similarly, if the districts decide to establish an EOPS program, they also make a discretionary decision regarding whether to apply to the BOG for a state grant to fund all or a portion of the costs of establishing and operating an EOPS program. (Section 69652.)

³ Government Code Section 17516.

CONCLUSION

Staff concludes that the test claim should be denied because the test claim statutes and executive orders do not require the community colleges to perform any state-mandated activities and thus do not impose a state-mandated program on community college districts because:

1. The EOPS Guidelines are not executive orders.
2. Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252 and 56292 do not require districts to perform any activities.
3. The activities required by Sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656, as added or amended by the test claim statutes, and California Code of Regulations, Title 5 sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, or, 56298 are the requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

STAFF ANALYSIS

Claimant

West Kern Community College District

Chronology

- 06/13/03 West Kern Community College District filed test claim with the Commission on State Mandates ("Commission")⁴
- 06/27/03 Commission staff issued completeness review letter and requested comments from state agencies
- 07/25/03 Department of Finance (DOF) requested a 45-day extension for filing comments
- 07/29/03 The Commission granted DOF's request for an extension to September 8, 2003 to file comments on test claim
- 08/21/03 California Community Colleges (CCC) requested an extension to October 11, 2003 to file comments
- 08/28/03 The Commission granted CCC's request for an extension to October 11, 2003 to file comments on test claim
- 09/11/03 DOF requested an extension for an additional 30-day to file comments
- 09/17/03 The Commission granted DOF an extension to October 13, 2003 to file comments on test claim
- 11/07/03 The Commission extended the due date for state agencies to file comments on test claim to February 7, 2004
- 02/09/04 DOF submitted comments on the test claim
- 03/04/04 Claimant submitted a response to DOF's comments on the test claim
- 03/11/04 CCC submitted comments on the test claim
- 04/23/04 Claimant submitted a response to CCC's comments on the test claim
- 06/09/04 DOF submitted comments on the claimant's response
- 07/06/04 Claimant submitted a response to DOF's June 9, 2003 comments on claimant's response
- 01/08/07 Claimant submitted a supplement to the test claim filing (i.e. the history of Title 5, CCR sections at issue in the test claim)
- 05/15/08 Claimant submitted a supplement to the test claim filing (i.e. the list of registers and relevant section numbers)
- 05/12/09 Commission issued draft staff analysis

⁴ Based on the filing date of June 13, 2003, the potential period of reimbursement for this test claim begins on July 1, 2001.

Background

This test claim addresses the Community College Extended Opportunity Programs and Services program (EOPS).

In 1969, SB 164 added Article 8 to the Education Code establishing EOPS.⁵ Article 8 contains all of the code sections pled in this test claim. The intent of the Legislature in establishing EOPS was to "encourage local community colleges to establish and implement programs to identify those students affected by language, social, and economic handicaps, to increase the number of eligible EOPS students served, and to assist those students to achieve their educational objectives and goals, including, but not limited, to, obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions." (Section 69640.)

The community college districts (districts) are encouraged to participate in EOPS by both legislative intent language and state (and potentially federal) funding that is provided specifically for EOPS. In exchange for state funding, the district generally must meet minimum standards that are specified in the test claim statutes and executive orders.⁶

EOPS provides academic and financial support to community college students whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending college. Services are specifically designed for at-risk students and their special needs. Counseling contacts are required and a Student Educational Plan is developed for each student to assist the student in achieving their individual goals. Today, approximately 107,000 community college students are served by EOPS annually. The appropriation in the 2007-2008 state budget for EOPS was \$106.78 million (Prop 98 state funds - local assistance) while the districts contributed \$22.7 million to the program.

Importantly, as is reflected throughout the statutory and regulatory framework, the Legislature stated its intent that EOPS not be viewed as the only means of providing services to nontraditional and disadvantaged students or of meeting student and employee affirmative action objectives. (See section 69640.) Rather, EOPS is intended as a supplement to the other programs and services available to community college students.

To be eligible for EOPS a student must:

- (1) Be a resident of California
- (2) Be enrolled full-time when accepted into the EOPS program (the EOPS director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units).
- (3) Not have completed more than 70 units of degree applicable credit coursework in any combination of post-secondary higher education institutions.
- (4) Qualify to receive a Board of Governors (BOG) Grant.⁷

⁵ Statutes 1969, Chapter 1579.

⁶ The regulations pled are collectively referred to as the test claim executive orders throughout this analysis. Note that, as discussed in the analysis below, staff finds that the EOPS Guidelines are not executive orders.

⁷ A BOG Grant is a community college fee waiver provided to California residents who either:

The Role of the Board of Governors of the California Community Colleges

The BOG is required to consider adopting regulations which include all of the following objectives:

- (a) That the EOPS provided by a community college shall include, but not be limited to, staff qualified to counsel all EOPS students regarding their individual educational objectives and the specific academic or vocational training program necessary to achieve those objectives, and that each EOPS student receives that counseling upon his or her initial enrollment in the community college, and at least every six months thereafter.
- (b) That in assisting all EOPS students to identify their educational objectives, the EOPS provided by a community college identifies those students who want to transfer to a four-year institution, and those who have the potential to transfer successfully, and that the EOPS director at each community college disseminates the names and addresses of these potential transfer students to admissions staff at public universities throughout the state at least once a year.
- (c) That the EOPS director at each community college shall work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful study at a university, including, but not limited to, time management, research and study skills, classroom note-taking skills, and writing skills, and that these classes be developed if they are not already established. (Section 69641.5.)

The BOG is required to adopt rules and regulations necessary to implement Education Code Chapter 2, Article 8, including rules and regulations which do all of the following:

- (a) Prescribe the procedure by which a district shall identify a student eligible for EOPS on the basis of the student's language, social, or economic disadvantages.
- (b) Establish minimum standards for the establishment and conduct of EOPS. The standards may include, but shall not be limited to, guidelines for all of the following:
 - (1) The provision of staffing and program management.
 - (2) The establishment of a documentation and data collection system.
 - (3) The establishment of an EOPS advisory committee.

-
- A. Are recipients or dependants of recipients of: TANF/CalWORKs; SSI/SSP (Supplemental Security Income/State Supplemental Program); General Assistance, the Congressional Medal of Honor or who have certification from the California Department of Veterans Affairs or are a dependant of a victim of the September 11, 2001 terrorist attack; or,
 - B. Have an income (or are a dependant of someone with an income) at or below 150% of the federal poverty guidelines, (\$15,600 for a family of one for 2009/2010).

- (4) The provision of recruitment and outreach services.
 - (5) The provision of cognitive and noncognitive assessment, advising, and orientation services.
 - (6) The provision of college registration.
 - (7) The provision of basic skills instruction, seminars, and tutorial assistance.
 - (8) The provision of counseling and retention services.
 - (9) The provision of transfer services.
 - (10) The provision of direct aid.
 - (11) The establishment of objectives to achieve the goals specified in Section 69640, and objectives to be applied in implementing EOPS.
- (c) Subject to approval of the Chancellor, establish procedures for the review and evaluation of the districts' EOPS.
 - (d) Require the submission of the reports by districts that will permit the evaluation of the program and services offered. (Section 69648.)

The BOG is also required to determine the elements of a statewide database for EOPS, pursuant to Section 69648, which shall be used for periodic evaluation of the programs and services. The data base shall include all information necessary to demonstrate the statewide progress towards achieving the program goals identified in Section 69640, and program objectives adopted pursuant to Section 69648 including, but not limited to, all of the following:

- (1) The annual number of EOPS students and non-EOPS students who complete degree or certificate programs, transfer programs, or other programs, as determined by state and local matriculation policies.
- (2) The annual number of EOPS and non-EOPS students who transfer to institutions which award the baccalaureate degree. In implementing this paragraph, the BOG shall work in cooperation with the California Postsecondary Education Commission, the President of the University of California, the Chancellor of the California State University, and the Association of Independent Colleges and Universities to establish methods for obtaining the necessary data.
- (3) The annual number of EOPS and non-EOPS students completing occupational programs who find career employment. In implementing this paragraph, the board of governors shall integrate the data collection with existing data collection requirements pertaining to vocational education.

Since January 1987, the BOG has been required to annually report to the Legislature regarding the number of students served by community college EOPS and the number of EOPS students who achieve their educational objectives. [Section 69655 (b).]

State Funding of EOPS

The BOG is required to review the need for state funds for state financial aid programs, including EOPS, and to include an estimate of such need in its budget for each year. (Section

69654.) The BOG may use up to one percent of the funds appropriated for the EOPS program by the annual Budget Act to monitor program activities and to conduct the evaluation of EOPS offered by districts. (69648.5.) As mentioned above, for budget year 2007-2008, the state provided \$106.78 million to community college EOPS programs while the districts contributed a combined \$22.7 million to their own EOPS programs.

Claimant's Position

Claimant alleges reimbursable state-mandated costs for districts to "provide certified directors, instructors and counselors; to provide counselors for students; to comply with new minimum standards; petition for waivers of minimum standards and staffing requirements; to enter into Student Educational Plans and mutual responsibility contracts; verify student eligibility and compliance; and utilize specific accounting standards and procedures in order to implement the EOPS program."⁸

Claimant maintains that even if the EOPS was originally an optional program, beginning with the 1987-1988 academic year Title 5 California Code of Regulations, section 56210 required each college to maintain EOPS programs at a minimum level.⁹ Claimant states that therefore, the provisions of Government Code section 17565 apply in this case. Government Code section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the district for those costs incurred after the operative date of the mandate. In further clarification of this issue, claimant states that this is more than maintenance of effort and that colleges may not discontinue the program.¹⁰ Claimant focuses on the "shall maintain" language of Title 5 California Code of Regulations, section 56210 in finding a mandate.

Claimant also argues that districts are practically compelled to provide EOPS because "in order to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648."¹¹ Claimant cites to the *Sacramento II* and *Kern* cases to support its practical compulsion arguments.¹²

Department of Finance's Position

DOF believes that a district's participation in EOPS is the result of a discretionary action taken by the governing board of the district and that therefore the state laws and regulations at issue in this test claim do not impose state-mandated reimbursable activities.¹³ Moreover, DOF asserts, "the choice of a district to participate in this discretionary program remains discretionary as the program's internal requirements change, because the authority to establish a program in statute

⁸ Test Claim, p. 2.

⁹ Claimant's March 4, 2004 response to DOF's comments on the test claim, p. 2.

¹⁰ Claimant's July 6, 2004 response to DOF's response dated June 9, 2004, pp. 2-3.

¹¹ Claimant's March 4, 2004 response to DOF's comments on the test claim, supra, pp. 2-3.

¹² Id., p. 3-6, citing *City of Sacramento v. State of California* (1990) 50 Cal. 3rd 51 (*Sacramento II*) and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern*).

¹³ DOF, comments on test claim dated February 9, 2004, p. 1.

has remained unchanged over time. The claimant therefore could withdraw from the program and not be subject to any altered requirements. . . .”¹⁴ DOF also emphasizes that “funding is specifically provided in the annual budget for districts who apply for funding, which then triggers the requirements of the program” and that “activities related to the requirements of the voluntary program have a specific fund source dedicated to offset district costs.”¹⁵ DOF cites to the plain language of sections 69640, 69649 which use the terms “encourage” and “may” regarding a district’s establishment of an EOPS program. DOF also cites to sections 69652 and 69653 which DOF says “establish mechanisms that authorize district to apply to the [BOG] for funding, rather than requiring them to do so. . . .” DOF also notes that if the BOG denied a district’s request to establish an EOPS program, a district would have no legal obligation to operate a program.¹⁶

In support of its argument that the test claim statutes and executive orders do not impose a reimbursable mandate, DOF cites to *Kern* in which DOF says “the court found that if a school district elects to participate in any underlying voluntary education-related funded program, the obligation to comply with the requirements related to that program does not constitute a reimbursable state mandate.”¹⁷ With regard to Title 5 California Code of Regulations, section 56210, DOF argues that it “applies only to those colleges choosing to operate a program” and “nothing prevents a district from discontinuing its program and its associated maintenance of effort requirement.”¹⁸

California Community Colleges Position

CCC states that there are no state-mandated costs because EOPS is voluntary and not compulsory.¹⁹ Specifically, CCC points out that section 69640 states legislative intent “to encourage local community college districts to establish and implement programs. . . .” Additionally, CCC cites to sections 69649 and 64650 regarding the establishment of Extended Opportunities Programs (EOP) and Extended Opportunities Services (EOS) which both state, in pertinent part that “[t]he governing board of a community college district *may*, with approval of the [BOG] establish. . . .” Finally, CCC quotes section 69652 and 69653 regarding state funding for EOPS which state that a district “. . . *may apply to the [BOG] for an allowance to meet all or a portion of the cost* of establishing and operating [EOPS] authorized by the article” and that “applications shall be subject to approval of the board.”

According to CCC’s analysis, “nothing in the law requires districts to have EOPS; indeed approval of the [BOG] is necessary to establish such a program.”²⁰ Additionally, CCC adds, “nor does the law provide that the entire cost of establishing and operating EOPS will be

¹⁴ Ibid.

¹⁵ DOF, comments on test claim, supra, page 1.

¹⁶ DOF, comments on test claim, supra, page 2.

¹⁷ DOF, comments on test claim, supra, page 3, citing to *Kern*, supra, 30 Cal.4th 727.

¹⁸ DOF’s June 9, 2004 comments on claimant’s response dated April 23, 2004, page 1.

¹⁹ CCC, Chancellor’s Office, comments on test claim, supra, page 2.

²⁰ CCC, Chancellor’s Office, comments on test claim, supra, page 2.

covered, if the district has secured the required approval.” CCC also argues that the districts are not legally or practically compelled to establish and operate EOPS program and cites to the *Kern* case to support this argument.²¹ Specifically, CCC states:

[t]here are no fines or penalties or other forms of compulsion if a district does not chose to voluntarily establish EOPS and receive state funding for the programs and services. If a District chooses to receive EOPS funding, compliance with the EOPS statutes and regulations merely amounts to “the cost of compliance with conditions of participation in these funded programs”.²²

CCC argues that even where districts had EOPS programs in place prior to various changes in statute, there are no state-mandated costs.²³ In support of this argument CCC cites a portion of the *Kern* decision which says in pertinent part: “. . . [t]he circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity’s decision whether to continue its participation any less voluntary.”²⁴

Discussion

The courts have found that article XIII B, section 6, of the California Constitution recognizes the state constitutional restrictions on the powers of local government to tax and spend. “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.”²⁵ 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.²⁶ 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.²⁷

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.²⁸ To determine if the

²¹ Ibid, citing to *Department of Finance v. Commission on State Mandates [Kern High School District, et. Al., Real Parties in Interest]* (*Kern*) (2003) 30 Cal.4th 727, 730.

²² Ibid.

²³ CCC, Chancellor’s Office, comments on test claim dated March 11, 2004, page 3.

²⁴ Id, page 4, citing to *Kern*, supra, 30 Cal.4th 727, 753-754.

²⁵ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁷ *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.3rd 830, 835 (*Lucia Mar*).

²⁸ *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,

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.²⁹ A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."³⁰ Finally, the newly required activity or increased level of service must impose costs mandated by the state.³¹

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 6.³² 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."³³

The analysis addresses the following issue: do the test claim statutes and executive orders require community colleges to perform state-mandated activities?

Issue: Do Education Code Sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656, as added or amended by the test claim statutes, California Code of Regulations, Title 5 sections 56200, 56201, 56202, 56204, 56206, 56208, 56210, 56220, 56222, 56224, 56226, 56230, 56232, 56234, 56236, 56238, 56240, 56252, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56292, 56293, 56295, 56296, or, 56298, or the EOPS Implementing Guidelines published by the Chancellor of the California Community Colleges in January 2002 require community colleges to perform state-mandated activities?

Claimant alleges reimbursable state-mandated costs for districts to "provide certified directors, instructors and counselors; to provide counselors for students; to comply with new minimum standards; petition for waivers of minimum standards and staffing requirements; to enter into Student Educational Plans and mutual responsibility contracts; verify student eligibility and compliance; and utilize specific accounting standards and procedures in order to implement the EOPS program."³⁴

Claimant also argues that districts are practically compelled to provide EOPS because "in order to receive state funding, the program shall meet the minimum standards established pursuant to

²⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

³¹ *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 (*County of Sonoma*); Government Code sections 17514 and 17556.

³² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³³ *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.

³⁴ Test Claim, p. 2.

subdivision (b) of section 69648.³⁵ Claimant cites to the *Sacramento II* and *Kern* cases to support its practical compulsion arguments.³⁶

Staff finds that the test claim statutes and executive orders do not require the community colleges to perform any state-mandated activities because:

1. The EOPS Guidelines are not executive orders.
2. Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252 and 56292 do not require districts to perform any activities.
3. The activities required by Sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656, as added or amended by the test claim statutes, and California Code of Regulations, Title 5 sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, or, 56298 are the requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.

A. The EOPS Guidelines are Not Executive Orders

At the outset, staff finds that the EOPS Guidelines are not executive orders. An executive order is "any order, plan, requirement, rule or regulation" issued by the Governor or any official serving at the pleasure of the Governor.³⁷ Although the EOPS Guidelines are issued by the Chancellor's Office and the Chancellor serves at the pleasure of the Governor, they do not contain "requirements, rules or regulations." Because the EOPS Guidelines do not *require* community colleges to do anything, they are not executive orders. The EOPS Guidelines are merely the Chancellor's Offices' interpretation of the regulations that are the subject of this test claim. The EOPS Guidelines specifically state that they "are not regulations" and that "college staff are *encouraged* to utilize the guidelines in the administration of EOPS program activities."³⁸ Moreover, the Guidelines do not add additional requirements above what is already required by the statutes and regulations pled in this test claim. The California Supreme Court has acknowledged that although the interpretation of regulations is a question of law, it "will give great weight to an administrative agency's interpretation of its own regulations and the statutes

³⁵ Claimant's March 4, 2004 response to DOF's comments on the test claim, *supra*, pp. 2-3.

³⁶ *Id.*, p. 3-6, citing *City of Sacramento v. State of California* (1990) 50 Cal. 3rd 51 (*Sacramento II*) and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern*).

³⁷ Government Code Section 17516.

³⁸ EOPS Implementing Guidelines for Title 5 Regulations, p. ii. Note that staff acknowledges that the EOPS Guidelines also say ". . . it is the responsibility of individual colleges to establish local programs, policies and procedures in accordance with the *requirements of these policies* and other relevant statutes and state regulations." (Emphasis added.) This language is confusing since it appears in a technical assistance/guidance document and all other language in the document is permissive.

under which it operates."³⁹ Therefore, although this document is not an executive order, it is still valuable as an interpretation of the regulations issued by the Chancellor's Office.

B. Section 69656 and Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252 and 56292 Do Not Require Districts to Perform Any Activities

Section 69656 states the intent of the Legislature for the California State University (CSU) and the University of California (UC) to provide fee waivers for admissions applications for EOPS transfer students who provide waiver forms signed by a community college EOPS director. Section 69656, by its plain language, requires no specific action on the part of districts or community college.

With regard to Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56252 and 56292, staff finds that these sections do not require districts to perform any activities because:

- 56200-56204 are general provisions and definitions not requiring districts to perform any activities.
- 56220-56226 relate to student eligibility and responsibility and do not require districts to perform any activities.
- 56252 is a statement of purpose for EOPS financial aid and does not require districts to perform any activities.
- 56292 states that the Chancellor may adjust allocations to correct for an over or under allocation or utilization of EOPS funds, but does not require any district to perform any activities.

C. The Activities Required By the Test Claim Statutes and Remaining Test Claim Regulations are Requirements of an Ongoing Elective Program Which the Districts Participate in on a Voluntary Basis and are Not State-Mandated Activities

The decision to establish EOP or EOS is a discretionary decision of the district which must be approved by the BOG. There is no requirement in law for establishment of EOPS programs. Section 69649 states:

(a) [t]he governing board of a community college district *may*, with the approval of the board, establish an EOP. Except as provided in subdivision (b), in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of Section 69648.

(b) The board of governors may waive any or all of the minimum standards established pursuant to subdivision (b) of Section 69648 if the board of governors determines that unusual circumstances which merit a waiver exist. (Emphasis added.)

Likewise section 69650 provides:

³⁹ *Robinson v. Fair Employment & Housing Com.* (1992) 2 Cal.4th 226, 235.

The governing board of a community college district *may*, with the approval of the board, establish EOS. Such services *may* include, but need not be limited to:

- (a) Loans or grants to meet living costs or a portion thereof.
- (b) Loans or grants to meet the cost of student fees.
- (c) Loans or grants to meet cost of transportation between home and college.
- (d) The provision of scholarships.
- (e) Work-experience programs.
- (f) Job placement programs. (Emphasis added.)

Similarly, if the districts decide to establish an EOPS program, they may also apply to the BOG for a state grant to fund all or a portion of the costs of establishing and operating an EOPS program. (Section 69652.) Section 69652 provides:

The governing board of a community college district may apply to the board for an allowance to meet all or a portion of the cost of establishing and operating EOPS. The application must contain a detailed plan for use of the allowance and be submitted in accordance with rules and regulations adopted by the BOG.

The use of funds provided by the state for EOPS is restricted as follows:

The governing board of a community college district shall not use any funds received from the state for the operation and administration of [EOPS] to supplant district resources, programs, or services authorized by Section 69649 and 69650. The governing board may use those funds to meet the matching requirements to receive federal funds, or funds granted by nonprofit foundations, designated for the same purposes, for EOPS, as defined by Section 69641. (Section 69651.)

(1) Activities Required of Districts as a Condition of State Funding

If a district exercises its discretion to establish EOP and/or EOS and applies for state funding for its EOPS program, those decisions trigger a number of administrative, educational, counseling, accounting and reporting activities. These activities are listed below:

- **Supplement to regular educational programs:** A district must supplement the regular educational programs of the district to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives. (Section 69641.)
- **Certified directors and instructors and board approval of counselors and support staff:** EOPS shall be provided by certificated directors and instructors, as well as by counselors and other support staff approved by the governing board of the community college district. (Section 69641.)
- **EOPS information:** The Chancellor shall require districts receiving EOPS funds to identify students served and the level and type of programs and services each student received. (Tit. 5 CCR § 56206.)
- **Advisory committee:** Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The

committee shall consist of no fewer members than the local Board of Trustees. Members serve without compensation but may be reimbursed for necessary expenses incurred in performing their duties. (Tit. 5 CCR § 56208.)

- **Same dollar level of services:** The college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline. (Tit. 5 CCR § 56210.)
- **Full-time EOPS director:** Each college receiving EOPS funds shall employ a full-time EOPS director. Colleges having less than full-time EOPS director positions may continue such position upon approval by the Chancellor who shall consider the number of students served, size of the EOPS staff and budget and the scope and level of services offered when approving requests for less than full-time EOPS director positions. (Tit. 5 CCR § 56230.)
- **Outreach, orientation, and registration services:** Each college receiving EOPS funds shall provide access to services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:
 - (a) Outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college.
 - (b) Orientation to familiarize EOPS eligible students with: the location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology, (e.g., grade points, units) course add and drop procedures; and transfer procedures to four-year institutions.
 - (c) Registration assistance for priority enrollment pursuant to Title 5 California Code of Regulations section 58108. (Tit. 5 CCR § 56232.)
- **Assessments:** Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the college president certifies are reliable, valid, and appropriate for the students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum include:
 - (a) Course and placement tests in reading, comprehension, vocabulary, writing, and computations.
 - (b) Diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.
 - (c) Study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.

- (d) Support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extra-curricular pursuits).
 - (e) Assessment instruments that are not culturally or linguistically biased. (Tit. 5 CCR 56234.)
- **Counseling and Advisement:** Each college receiving EOPS funds shall provide counseling and advisement to EOPS-eligible students of at least three contact sessions per term for each student as follows:
 - (a) A contact session which combines interview and interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.
 - (b) An in-term contact session to ensure the student is succeeding adequately, that the programs and services are being provided effectively, and to plan changes as soon as may be needed to enhance student success.
 - (c) A term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS program or the college. (Tit. 5 CCR § 56236.)
- **Basic skills instruction and tutoring services:** Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals. (Tit. 5 CCR § 56238.)
- **Transfer and career employment services:** Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate colleges and EOPS staff shall attempt to articulate coursework and support services needed by EOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to EOPS. (Tit. 5 CCR § 56240.)
- **EOPS grants and workstudy awards:** EOPS grants are required to be distributed to each student equally among terms in the college academic year. The provision of grants and workstudy awards is at the discretion of the colleges so long as workstudy awards do not exceed \$1,800 per academic year and EOPS grants do not exceed \$900 per academic year. However, the amount of the combined EOPS grant and workstudy award is limited to a maximum of \$1,800 or the student's unmet need, whichever is less. (Tit. 5 CCR § 56254.)
- **Award procedures:**
 - (a) Financial aid offices shall award and disburse EOPS grant and workstudy funds according to college procedures upon the authorization of the EOPS office.

- (b) EOPS office shall authorize EOPS grant and workstudy awards such that:
 - (1) Awards are distributed as evenly as possible between dependant and independent students.
 - (2) Priority in awards is given to dependant or independent students having the lowest family or personal incomes, respectively.
 - (c) EOPS may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis. (Tit. 5 CCR § 56256.)
- **Emergency loans:** EOPS programs may establish an emergency loan program for EOPS students to meet the unexpected or untimely costs for books, college supplies, transportation and housing, subject to the following requirements:
 - (a) Loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.
 - (b) Loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.
 - (c) The total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor. (Tit. 5 CCR § 56258.)
- **Staff:** EOPS shall be provided by a certificated director, instructors and counselors and other support staff employed by the governing board of the district. (Tit. 5 CCR § 56260.)
- **Director Qualifications:** The EOPS director must meet the minimum qualifications for a student services administrator as specified in Title 5 California Code of Regulations, section 53420 or possess a Community College Supervisor Credential. In addition, an EOPS director must have:
 - (a) Within the last four years, two years experience or the equivalent:
 - (1) In the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or,
 - (2) As a community college EOPS counselor or EOPS instructor, or have a comparable experience working with disadvantaged clientele.
 - (b) Two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social or economic disadvantages. (Tit. 5 CCR § 56262.)
- **Counselor Qualifications:** EOPS counselors are those persons designated by the community college to serve as certificated counselors in the EOPS program and must

possess the Community College Counselor Credential or a master's degree in counseling, rehabilitation counseling, clinical psychology, counseling psychology, guidance counseling, educational counseling, social work, or career development, or the equivalent, and:

- (1) Have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social or economic disadvantages, or
- (2) Have completed six semester units or the equivalent of a college-level counseling practicum or counseling field-work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages, and,
- (3) Have two years of occupational experience in work relating to predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages.
(Tit. 5 CCR § 56264.)

- **EOPS Plan:** Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of Title 5 California Code of Regulations, Chapter 7 for each college within the district which intends to conduct an EOPS program. A college plan approved by the Chancellor shall constitute a contract between the district which operates the college and the Chancellor. Changes to the program may be made only with the prior written approval of the Chancellor. (Tit. 5 CCR § 56270.) Each plan shall contain the following:

- (a) The long-term goals of the EOPS program in supporting the goals of the college and the goals adopted for EOPS by the BOG.
- (b) The objectives of the EOPS program to be attained in the fiscal year for which EOPS funds are allocated.
- (c) The activities to be undertaken to achieve the objectives, including how the college plans to meet the program standards, EOPS financial aid standards and the staffing standards imposed by Title 5 California Code of Regulations, Chapter 7.
- (d) An operating budget which indicates the planned expenditures of EOPS funds, and other district funds to be used to finance EOPS activities.
- (e) The number of students to be served.
- (f) An evaluation of the results achieved in the prior year of funding.
(Tit. 5 CCR § 56272.)

- **EOPS Plan Deadlines and Procedures:**

- (a) The Chancellor's Office shall annually set a final date for submission of EOPS plans and provide at least 90-days notice of that date. Applications and plans received after that date shall be returned to the district without evaluation or consideration. (Tit. 5 CCR § 56274.) Plans and requests for funding that are

submitted on time shall be reviewed, evaluated. Requests for funding shall be approved in whole or in part. (Tit. 5 CCR § 56276.)

- (b) Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives. (Tit. 5 CCR § 56278.)
- (c) Each plan shall incorporate the priorities in Title 5 California Code of Regulations, section 56280 in the order presented when serving eligible EOPS students:
 - (1) Priority in outreach and recruitment services shall be directed towards correcting the greatest underrepresentation among students served. Additional priority among underrepresented students shall be given to serving individuals who are the first in their family to attend college.
 - (2) Priority in serving students enrolled at the college shall be:
 - a. Serving continuing EOPS students with the lowest income.
 - b. Serving continuing EOPS students with the lowest income who have transferred from another community college EOPS program.
 - c. Serving first-time EOPS students with the lowest income. (Tit. 5 CCR § 56280.)

Funding and Expenditures:

- (a) Districts shall maintain separate accounts for monies provided for, and expended in, support of EOPS activities by specific line item. (Tit. 5 CCR § 56290.)
- (b) Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide the same programs and services it offers to all of its credit enrolled students to EOPS students. The district shall fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. (Tit. 5 CCR § 56293.)
- (c) Districts accepting EOPS funds will be required to pay the 100% of the salary of the EOPS director. (Tit. 5 CCR § 56293.)
- (d) Colleges shall expend EOPS funds only for programs and services that are over, above, and in addition to the costs which are the district's responsibility as defined in Title 5 California Code of Regulations, section 56293 (i.e. supplemental costs). (Tit. 5 CCR § 56294.)
- (e) Colleges may expend EOPS funds to meet the supplemental costs as defined in section 56294 for personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-6000 (except for

EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less. (Tit. 5 CCR § 56295.)

- (f) Requests to purchase computer hardware and/or software shall be approved by the district superintendent/president prior to transmittal for approval by the Chancellor. (Tit. 5 CCR § 56295.)
- (g) EOPS funds shall not be expended for the following:
 - 1. College administrative support costs (e.g. staff of business office, bookstore, reproduction, staff at the dean salary level and above).
 - 2. Indirect costs (e.g. heat, lights, power, janitorial service).
 - 3. Costs of furniture (chairs, desks coat hangers, etc.). (Tit. 5 CCR § 56296.)
- (h) In each fiscal year the colleges shall expend for EOPS grants and work-study, an amount equal to that expended in the prior fiscal year, unless waived by the chancellor for the following reasons:
 - 1. To establish a book service program.
 - 2. The college allocation was corrected pursuant to section 56292.
 - 3. To meet the requirements of Article 3 (i.e. Program Standards). (Tit. 5 CCR § 56298.)

(2) Community College Districts are Not Legally Compelled to Establish and Maintain an EOPS Program

Staff finds that the requirement to perform the above outlined activities is triggered by the claimant's voluntary participation in the underlying EOPS program and acceptance of state funding for that program and that therefore, none of the required activities are state-mandated.

Claimant maintains that even if the EOPS was originally an optional program, beginning with the 1987-1988 academic year Title 5 California Code of Regulations, section 56210 required each college to maintain EOPS programs at a minimum level.⁴⁰ Claimant states that therefore, the provisions of Government Code section 17565 apply in this case. Government Code section 17565 provides that if a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the district for those costs incurred after the operative date of the mandate. In further clarification of this issue, claimant states that this is more than a maintenance of effort and that colleges may not discontinue the program.⁴¹ Title 5 California Code of Regulations section 56210 provides:

Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever

⁴⁰ Claimant's March 4, 2004 response to DOF's comments on the test claim, p. 2.

⁴¹ Claimant's July 6, 2004 response to DOF's response dated June 9, 2004, pp. 2-3.

is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline.

Claimant focuses on the "shall maintain" language of Title 5 California Code of Regulations, section 56210 in finding a state mandate prohibiting the discontinuance the EOPS program.

When determining what a statute requires the Commission must look at the whole act.⁴² Its words must be construed in context,⁴³ so as to make sense of the entire statutory scheme.⁴⁴ Here, though it is true that section 56210 says "the college shall maintain," this language must be read within the context of the whole statutory and regulatory scheme. As discussed above, the decision to establish an EOPS program and request funding for that program is a discretionary decision of the district which must be approved that the BOG.⁴⁵ The statutory scheme makes clear that compliance the requirements of the test claim statutes and regulations is a condition for receiving funding for the EOPS program. There is no penalty for refusal to comply with the statutory and regulatory provisions other than a loss of EOPS funding from the state.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings.⁴⁶

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."⁴⁷ The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."⁴⁸ The court also reviewed and affirmed the holding of *City of Merced*⁴⁹, determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.⁵⁰ The court stated the following:

⁴² *People v. Hammer* (2003) 30 Cal. 4th 756; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Ca. 4th 1106; *Teresa J. v. Superior Court* (3d Dist. 2002) 102 Cal. App. 4th 366.

⁴³ *People v. Thomas* (1992) 4 Cal. 4th 59; *Seidler v. Municipal Court* (2d Dist. 1993) 12 Cal. App. 4th 1229.

⁴⁴ *Flannery v. Prentice* (2001) 26 Cal. 4th 572; *Carrisales v. Department of Corrections* (1999) 21 Cal. 4th 1132.

⁴⁵ See sections 69649, 69650, 69652 and 69553.

⁴⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

⁴⁷ *Id.* at p. 737.

⁴⁸ *Ibid.*

⁴⁹ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

⁵⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.⁵¹ (Emphasis in original.)

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]⁵²

Based on the plain language of the statutes creating the underlying education programs in *Kern*, the court determined that school districts were not legally compelled by the state to establish school site councils and advisory bodies, or to participate in eight of the nine underlying state and federal programs and, hence, not legally compelled to incur the notice and agenda costs required under the open meeting laws. Rather, the districts elected to participate in the school site council programs to receive funding associated with the programs.⁵³

Similarly here, districts are not legally compelled to establish an EOPS program or to request and accept state EOPS funds for that program. The plain language of Education Code sections 69649, subdivision (a) and 69650, state that compliance with the EOPS rules and regulations is a condition of receiving state EOPS funding. Education Code section 69649, subdivision (a) states: "The governing board of a community college district *may*, with the approval of the [BOG], establish an extended opportunity program. Except as provided in subdivision (b), *in order to be eligible to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648.*" (Emphasis added.) Likewise, section 69650, subdivision (a) provides: "[t]he governing board of a community college district *may*, with the approval of the [BOG], establish extended opportunity services. . . ." Moreover, the requirements imposed by title 5, sections 56232, 56234, 56236, 56238 are only imposed on those districts electing to establish an EOPS program and receiving state funding as is evidenced by the fact that each of those sections begins with the phrase: "[e]ach college receiving EOPS funds shall"

(3) Claimant Has Not Demonstrated by Evidence in the Record That it is Practically Compelled to Establish and Maintain an EOPS Program

⁵¹ Ibid.

⁵² Id. at p. 731.

⁵³ Id. at pp. 744-745.

Claimant also argues that districts are practically compelled to provide EOPS because “in order to receive state funding, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648.”⁵⁴ Specifically, Claimant states, that:

[t]he Legislature has challenged California community colleges to recognize the need and accept the responsibility for extending opportunities to all who may profit therefrom regardless of economic, social, and educational status. To ignore available funding to help recognize these needs and to ignore their responsibility is so far beyond the realm of practical reality, that it leaves community college districts without any rational discretion.

Claimant cites to the *Sacramento II* and *Kern* cases to support its practical compulsion arguments.⁵⁵

In *Kern*, the school districts made similar arguments and urged the court to define “state mandate” broadly to include situations where participation in the program is practically compelled; where the absence of a reasonable alternative to participation creates a “de facto” mandate.⁵⁶ The court previously applied such a construction to the definition of a federal mandate in the case of *Sacramento II*, where the court considered whether state statutes enacted as a result of various federal “incentives” for states to extend unemployment insurance coverage to public employees constituted a reimbursable state-mandated program under article XIII B, section 6.⁵⁷ The court in *Sacramento II*, concluded that the costs resulted from a federal mandate because the financial consequences to the state and its residents of failing to participate in the federal plan (full, double unemployment taxation by both state and federal governments) were so onerous and punitive; amounting to “certain and severe federal penalties” including “double taxation” and “other “draconian” measures.”⁵⁸

The court in *Kern* stated that although it analyzed the legal compulsion issue, it found it “unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.”⁵⁹ The court did provide language addressing what might constitute practical compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

Finally, we reject claimants’ alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice-

⁵⁴ Claimant’s March 4, 2004 response to DOF’s comments on the test claim, *supra*, pp. 2-3.

⁵⁵ *Id.*, p. 3-6, citing *City of Sacramento v. State of California* (1990) 50 Cal. 3rd 51 (*Sacramento II*) and *Department of Finance v. Commission on State Mandates* (2003) 30 Cal. 4th 727 (*Kern*).

⁵⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 748.

⁵⁷ *City of Sacramento*, *supra*, 50 Cal.3d 51, 74

⁵⁸ *City of Sacramento*, *supra*, 50 Cal.3d 51, 74; *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 750.

⁵⁹ *Id.* at p. 736.

and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had “no true option or choice” other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs “too good to refuse” — even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)⁶⁰

Although the court in *Kern* declined to apply the reasoning in *City of Sacramento II* that a state mandate may be found in the absence of strict legal compulsion, after reflecting on the purpose of article XIII B, section 6 — to preclude the state from shifting financial responsibilities onto local agencies — the court stated: “In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.”⁶¹

However, the court in *Kern* found that the facts before it failed to amount to such a “de facto” mandate since a school district that elects to discontinue participation in one of the educational programs at issue did not face “certain and severe” penalties (independent of the program funds at issue)⁶² such as “double ... taxation” or other “draconian” consequences. The court concluded that:

[T]he circumstances presented in the case before us do not constitute the type of nonlegal compulsion that reasonably could constitute, in claimants’ phrasing, a “de facto” reimbursable state mandate. Contrary to the situation that we described in *City of Sacramento* ... a claimant that elects to discontinue participation in one of the programs here at issue does not face “certain and severe ... penalties” such as “double ... taxation” or other “draconian” consequences ... but simply must adjust to the withdrawal of grant money along with the lifting of program obligations. Such circumstances do not constitute a reimbursable state mandate for purposes of article XIII B, section 6.⁶³

The court acknowledged that a participant in a funded program may be disappointed when additional requirements are imposed as a condition of continued participation in the program.

⁶⁰ *Id.* at 731.

⁶¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 752.

⁶² *Id.* at page 731.

⁶³ *Id.* at page 754.

Such conditions, however, do not make the program mandatory or reimbursable under article XIII B, section 6:

Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstances that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary.⁶⁴

The result of the cases discussed above is that, if a local government participates "voluntarily," i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement. Though *Kern* suggests "involuntarily" can extend beyond "legal compulsion" to "compelled as a practical matter to participate." the latter phrase means facing " 'certain and severe ... penalties' such as 'double ... taxation' or other 'draconian' consequences" and not merely having to "adjust to the withdrawal of grant money along with the lifting of program obligations."⁶⁵

In this case, pursuant to the analysis put forward in the *Kern* case, during the course of the reimbursement period, claimant has not been practically compelled to perform the activities required by the test claim statutes and regulations, since the test claim statutes authorized but did not require establishment of an EOPS program, and no "substantial penalties" would be imposed for the district's failure to establish or decision to dismantle an EOPS program. Moreover, claimant has put no evidence into the record to show that the districts are practically compelled to establish and maintain EOPS programs.

The state has imposed some regulatory requirements upon districts receiving EOPS funds. The incentive, or "carrot," for community colleges to comply with the regulatory requirements of the EOPS program is the availability of funding to cover the costs of providing educational services to EOPS eligible students; the only consequence is the removal of the funds. There are no other "certain and severe" penalties imposed by law, or evidenced in the record, such as double taxation, or the removal of other, unrelated funding sources, if a district declines to participate in the EOPS program. Like the Court in *Kern*, a "district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits."⁶⁶ Under *Kern*, when additional requirements are imposed as a condition of participating in a funded program, those conditions do not make the program mandatory or reimbursable under article XIII B, section 6.

Additionally, in the *DOF v. Commission* case, the court expanded on the issue of what is

⁶⁴ *Id.* at pages 753-754.

⁶⁵ *Id.*

⁶⁶ *Kern High School Dist., supra*, 30 Cal.4th 727, 753.

required to support a finding of practical compulsion.⁶⁷ That case had to do (in part) with whether school districts were practically compelled to hire public safety officers, thus making compliance with the provisions of the Public Safety Officers Procedural Bill of Rights a reimbursable state-mandated program or higher level of service.

Like the record in this test claim, in *DOF v. Commission* there was no evidence in the record of practical compulsion - that school districts or special districts were not able to rely on the general law enforcement resources of cities and counties or that exercising their statutory authority to hire peace officers was the only reasonable alternative to carrying out their core functions. There, the trial court held the school districts and special districts employ peace officers in order to perform their basic and essential function to provide a service to the public. The Court of Appeal reversed and held that in cases of practical compulsion, there must be a "concrete" showing in the record that a local entity is facing certain and severe penalties, such as double taxation or other draconian consequences, if it fails to exercise the discretionary authority and comply with the downstream requirements imposed by a test claim statute.⁶⁸

These cases support the conclusion that evidence in the record is required to show practical compulsion. Absent such a showing by the claimant, staff does not find substantial evidence to support as finding of practical compulsion.

CONCLUSION

Staff concludes that the test claim should be denied because the test claim statutes and executive orders do not require the community colleges to perform any state-mandated activities and thus do not impose a state-mandated program on community college districts because:

1. The EOPS Guidelines are not executive orders.
2. Title 5 California Code of Regulations, sections 56200, 56201, 56202, 56204, 56220, 56222, 56224, 56226, 56540, 56252 and 56292 do not require districts to perform any activities.
3. The activities required by Sections 69640, 69641, 69641.5, 69643, 69648, 69649, 69652, 69655 and 69656, as added or amended by the test claim statutes, and California Code of Regulations, Title 5 sections 56206, 56208, 56210, 56230, 56232, 56234, 56236, 56238, 56254, 56256, 56258, 56260, 56262, 56264, 56270, 56272, 56274, 56276, 56278, 56280, 56290, 56293, 56295, 56296, or, 56298 are the requirements of an ongoing elective program which the districts participate in on a voluntary basis and thus are not state-mandated activities.

Recommendation

Staff recommends that the Commission adopt this staff analysis to deny the test claim.

⁶⁷ *Department of Finance v. Commission on State Mandates (DOF v. Commission)* (2009) 170 Cal.App.4th 1355.

⁶⁸ *Ibid.*

SixTen and Associates Mandate Reimbursement Services

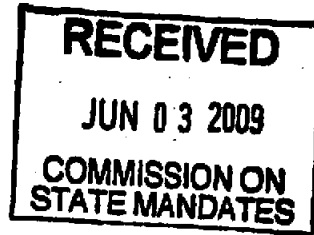
EXHIBIT K

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June 2, 2009



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

RE: 02-TC-29
West Kern Community College District
Extended Opportunity Programs and Services

Dear Ms. Higashi:

I have received the Commission Draft Staff Analysis (DSA) dated May 12, 2009, to which I respond on behalf of the test claimant.

The Extended Opportunity Programs and Services (EOPS) Guidelines are Executive Orders

Government Code Section 17516, as added by Statutes of 1984, Chapter 1459, states:

"Executive order" means any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.
- (c) Any agency, department, board, or commission of state government.

The DSA (12) concludes that the EOPS Guidelines are not executive orders because "they do not contain 'requirements, rules or regulations.'" However, Section 17516 also provides that an executive order may be an order or a plan. The EOPS Guidelines provide a plan for implementation and administration of the program, and are issued by the California Community College Chancellor's Office (CCCCO), which serves at the

pleasure of the Governor. Thus, the EOPS Guidelines meet the definition of an executive order as laid out in Section 17516.

The DSA (12) also concludes that, "[b]ecause the EOPS Guidelines do not *require* community colleges to do anything, they are not executive orders." This conclusion is completely unsupported by Section 17516. Nowhere in that section is the definition of an executive order conditioned on the requirement that it impose some sort of affirmative action on a party. Orders, plans, rules, and regulations can provide statements of intent, goals, and prohibitions on action as commonly as they require specific acts to be undertaken.

Similarly unsupported is the statement that "the Guidelines do not add additional requirements above what is already required by the statutes and regulations pled in this test claim." Whether the EOPS Guidelines impose additional duties on the community colleges has no bearing on whether they are or are not executive orders. The statement is also peremptory, since it does not result from a comparison of the provisions of the EOPS Guidelines to the test claim statutes and regulations.

While not determinative of the EOPS Guidelines' status as executive orders, the citation to *Robinson v. Fair Employment & Housing Com.* is misleading. The DSA (12,13) cites *Robinson* in support of the proposition that "although the interpretation of regulations is a question of law, [the court] 'will give great weight to an administrative agency's interpretation of its own regulations and the statutes under which it operates.'" The footnote that this quote is taken from actually states "Even though the court will give great weight to an administrative agency's interpretation of its own regulations and the statutes under which it operates, these are questions of law which the court must ultimately resolve." Although the quote provided in the DSA is accurate, the emphasis varies from that in the original.

Furthermore, the court in *Robinson* noted that the phrase in question in that case cannot be interpreted solely by administrative construction because the phrase was previously used in the same context in a previous statute long before the administrative agency's interpretation. So, while the court finds the administrative construction to be "helpful," it does not find it to be conclusive. (*Robinson* at 236). The citation to *Robinson* should be removed because it is misleading and unnecessary, as it has no bearing on the determination of whether the EOPS Guidelines are executive orders.

In conclusion, the EOPS Guidelines should be analyzed in the DSA as executive orders, because they meet the definition of an executive order provided by Government Code Section 17516, since they constitute a plan for implementation and administration of the EOPS program, and are issued by the State Community College Chancellor, who serves at the pleasure of the Governor.

Community Colleges are Legally Required to Participate in EOPS

Community Colleges are required to participate in EOPS by mandatory provisions in the test claim statutes and regulations. Thus, the activities mandated by the test claim statutes, regulations, and executive orders are not discretionary and constitute reimbursable state mandates.

Title 5, California Code of Regulations (CCR) Section 56210

Section 56210, as adopted by Register 87, No. 40 states:

"Beginning with the 1987-88 academic year and every year thereafter, the college shall maintain the same dollar level of services supported with non-EOPS funds as the average reported in its final budget report in the previous three academic years. At a minimum, this amount shall equal the three year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the amount if enrollment in the EOPS program decline."

The court cases cited in the DSA are not factually similar or legally determinative. The school districts in *Kern* could have discontinued the variously funded program advisory committees to avoid the mandated agenda requirements. In *City of Merced*, the court concluded that underlying the choice of eminent domain was not a mandated action to obtain property for city use. Here the test is not that districts are compelled to begin an EOPS program as the underlying choice, but that they cannot discontinue the program.

There is no exception to this provision to allow community colleges to discontinue their EOPS programs, regardless of the alleged initial choice to participate. The only time that a community college is permitted to provide a lower level of service would be when EOPS enrollment declines and the Chancellor grants an exception.

This Section would be violated if those community college districts that provided EOPS services in any of the three academic years preceding the 1987-88 fiscal year terminated those services because the program expenditure would drop to \$0, which would be less than the three-year average. Thus, a community college district that provided an EOPS program in any of the three academic years preceding the 1987-88 fiscal year is legally compelled to continue that program at the minimum funding level, as required by the plain language of Title 5, CCR Section 56210.

The DSA (21) mistakenly focuses on the original enactment of the EOPS program when evaluating the context of Section 56210. The EOPS program was initially enacted as a voluntary program by Statutes of 1975, Chapter 1270, and therefore the provisions enacted at that time reflected its voluntary nature. The adoption of Section 56210 removed the voluntary aspect of the program for those community colleges that had

provided an EOPS program in any of the three years preceding the 1987-88 fiscal year, while leaving the program voluntary for those community college districts that had not provided a program during that period of time. This maintenance of effort is similar to that seen in the Health Fee Elimination mandate, which was approved by the Commission on November 20, 1986.

Those community colleges that are required to provide an EOPS program by Section 56210 are thus required to comply with all of the test claim statutes, regulations, and executive orders that become mandatory when an EOPS program is in force. Compliance with these requirements is also a condition of receiving state aid, but there is no provision that allows a community college to violate Section 56210 in exchange for giving up its related state aid. Contrary to the conclusions of the DSA (21), there is no requirement that there be a penalty for noncompliance when there is legal compulsion. Penalties for noncompliance only become relevant when analyzing practical compulsion.

Therefore, the plain language of Section 56210 legally compels a community college district that provided an EOPS program in any of the three academic years preceding the 1987-88 fiscal year to maintain that level of service unless the Chancellor grants a reduction due to declining EOPS enrollment. For those community college districts that meet this requirement, the activities mandated by the test claim statutes, regulations, and executive orders are no longer voluntary, and thus, impose reimbursable mandated costs.

Technical Corrections

While the following technical corrections do not affect the outcome of the test claim decision, there were errors in some of the quotations that should be corrected in the Final Staff Analysis.

-Page 8, first paragraph under "Claimant's Position"; "Student Educational Plans" should be replaced by "education plans" to accurately reflect the quoted material. This misquote is repeated on page 11 in the last full paragraph.

-Page 8, third paragraph under "Claimant's Position"; the clause "in order" should not be part of the quotation as it is used.

-Page 9, second paragraph under "California Community Colleges Position"; the clause "for a district" should be inserted after the word "necessary." Additionally, while the footnote for this quotation references a full citation supra, there is no such citation in an earlier footnote.

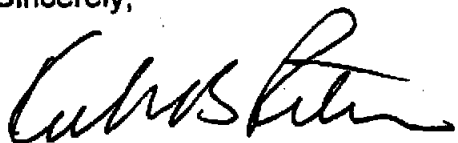
-Page 10; first full paragraph; the clause "in the modified program" should be inserted after the word "participation."

-Page 21, last paragraph; the narrative mistakenly attributes the statement that "a state mandate comprises something that a local government entity is required or forced to do" to the ballot materials for the proposition that enacted Article XIII B, Section 6, as referenced in *Kern*. In fact, the quoted language refers to the position of the Department of Finance in that case, and does not come from the ballot materials or the findings of the court.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

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DECLARATION OF SERVICE

Re: Test Claim 02-TC-29
West Kern Community College District
Extended Opportunity Programs and Services

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated June 2, 2009, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list dated 05/12/2009 for this test claim, and to:

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

U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

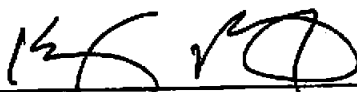
(Describe)

FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 2, 2009, at Sacramento, California.



Kyle M. Peters

Commission on State Mandates

Original List Date: 6/26/2003

Mailing Information: Draft Staff Analysis

Last Updated: 5/4/2009

List Print Date: 05/12/2009

Mailing List

Claim Number: 02-TC-29

Issue: Extended Opportunity Programs and Services

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit 2, § 1181.2.)

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153 Cal.App.4th 1579

153 Cal.App.4th 1579, 64 Cal.Rptr.3d 302, 07 Cal. Daily Op. Serv. 9533, 2007 Daily Journal D.A.R. 12,207

(Cite as: 153 Cal.App.4th 1579, 64 Cal.Rptr.3d 302)

C

Court of Appeal, Third District, California.
 COUNTY OF SACRAMENTO, Plaintiff and Appellant,
 v.
 STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents.
 No. C052237.

Aug. 9, 2007.

Background: County petitioned for writ of mandate, challenging orders of the State Water Resources Control Board and the Regional Water Quality Control Board which established limitations for coliform effluent from youth correctional facility. The Superior Court, Sacramento County, No. 03CS01521, Lloyd Connelly, J., denied the petition, and county appealed.

Holdings: The Court of Appeal, Morrison, J., held that:

- (1) basin plan's water quality objective for ground waters "used for" domestic or municipal supply included probable future use;
- (2) court would decline to take judicial notice of ground water quality objectives for bacteria in two other basin plans; and
- (3) court would decline to take judicial notice of proposed basin plan amendment.

Affirmed.

Raye, J., dissented with opinion.

West Headnotes

11 Waters and Water Courses 405 ↪ 196405 Waters and Water Courses405IX Public Water Supply405IX(A) Domestic and Municipal Purposes405k196 k. Purity of Water and ProtectionThereof from Pollution or Diversion. Most Cited Cases

Basin plan's coliform water quality objective for ground waters "used for" domestic or municipal sup-

ply referred to ground waters designated for use as domestic and municipal use and included probable future use such that objective applied to youth correctional facility's wastewater treatment facility, even though water was not currently used for municipal supply. West's Ann. Cal. Water Code § 13050.

See 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 893; Cal. Jur. 3d, Pollution and Conservation Laws, § 118 et seq.

12 Administrative Law and Procedure 15A ↪ 412.1

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations15Ak412 Construction15Ak412.1 k. In General. Most CitedCases

The interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute.

13 Constitutional Law 92 ↪ 234092 Constitutional Law92XX Separation of Powers92XX(B) Legislative Powers and Functions92XX(B)1 In General92k2340 k. Nature and Scope in General. Most Cited Cases

The Legislature has no authority to interpret a statute.

14 Administrative Law and Procedure 15A ↪ 41315A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(C) Rules and Regulations15Ak412 Construction

15Ak413 k. Administrative Construction. Most Cited Cases

Where the language of a regulation is ambiguous, it is appropriate to consider the agency's interpretation.

15 Administrative Law and Procedure 15A

413

15A Administrative Law and Procedure15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents15AIV(C) Rules and Regulations15Ak412 Construction15Ak413 k. Administrative Construction. Most Cited Cases

The court defers to an agency's interpretation of a regulation involving its area of expertise unless the interpretation flies in the face of the clear language and purpose of the provision.

16 Evidence 157 48157 Evidence157I Judicial Notice157k48 k. Official Proceedings and Acts.Most Cited Cases

Court considering county's appeal from orders of the State Water Resources Control Board and the Regional Water Quality Control Board which established limitations for coliform effluent from youth correctional facility would decline to take judicial notice of ground water quality objectives for bacteria in two other basin plans, despite county's contention that those basin plans showed how terms "used for" and "designated" were used in water quality objectives, as consideration of other basin plans was irrelevant to the issue before the court as to whether ground waters subject to coliform limit were "used for" domestic or municipal supply; at most, the two basin plans showed that different terms were used, but not their effect, and county did not offer evidence of the waste discharge requirements issued under those basin plans to show how the differing terms were interpreted.

17 Statutes 361 183361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k180 Intention of Legislature361k183 k. Spirit or Letter of Law.Most Cited Cases

Statutes 361 184

361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k180 Intention of Legislature361k184 k. Policy and Purpose of Act.Most Cited Cases

Statutes 361 208

361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k204 Statute as a Whole, and Intrinsic

Aids to Construction

361k208 k. Context and RelatedClauses. Most Cited Cases

The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute, and where possible the language should be read so as to conform to the spirit of the enactment.

18 Statutes 361 184361 Statutes361VI Construction and Operation361VI(A) General Rules of Construction361k180 Intention of Legislature361k184 k. Policy and Purpose of Act.Most Cited Cases

Where statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation.

19 Evidence 157 48157 Evidence157I Judicial Notice157k48 k. Official Proceedings and Acts.Most Cited Cases

Court considering county's appeal from orders of the State Water Resources Control Board and the Regional Water Quality Control Board which established limitations for coliform effluent from youth correctional facility would decline to take judicial notice of a transcript of an agenda item and minutes of a State Board meeting at which the State Board declined to adopt proposed basin plan amendment to change the water quality objective bacteria in ground

waters, but tabled the matter; State Board's actions occurred after the revised waste discharge requirements at issue were adopted, and State Board's failure to adopt the amendment had little evidentiary value on the question of the proper interpretation of the basin plan.

[10] Administrative Law and Procedure 15A
676

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(A) In General

15Ak676 k. Record. Most Cited Cases

It is not proper to take judicial notice of evidence that was not before the agency at the time it made its decision.

****304 Robert A. Ryan, Jr.**, County Counsel, John H. Dodds, Deputy County Counsel; Somach, Simmons & Dunn, **Paul S. Simmons**, Kristen T. Castanos and **Andrew M. Hitchings** for Plaintiff and Appellant.

Bill Lockyer, Attorney General, **Mary E. Hackenbracht**, Chief Assistant Attorney General, Bruce Reeves, Deputy Attorney General, for Defendants and Respondents.

MORRISON, J.

***1582** The County of Sacramento appeals from denial of its petition for a writ of mandate directing the State Water Resources Control Board and the Regional Water Quality Control Board for the Central Valley Region (collectively the Boards) to rescind and vacate their water quality orders that apply to the Boys Ranch wastewater treatment plant insofar as the orders establish limitations for coliform effluent. The County contends the water quality orders are inconsistent with the Basin Plan for the Central Valley Region and the Boards failed to comply with the requirements of the Water Code in adopting a new interpretation. We find the water quality orders are consistent with the applicable basin plan and affirm.

BACKGROUND

Porter-Cologne Water Quality Control Act

"It is hereby declared that because of the conditions

prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare." (Cal. Const., art. X, § 2.)

California's policy on water quality is set forth in the Porter-Cologne Water Quality Control Act (Water Code, § 13000 et seq.; all further undesignated section references are to the Water Code). "[A]ctivities and factors which may affect the quality of the waters of the state shall be regulated to attain the *1583 highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (§ 13000.) This act is administered by the state water resources control Board (the State Board) and nine regional boards. (§§ 13001; 13200.)

****305** Each regional board is required to adopt a water quality control plan for all areas in the region; the plan must be consistent with the state policy for water quality control. (§ 13240.) A regional water quality control plan is also known as a basin plan. (*City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613, 619, 26 Cal.Rptr.3d 304, 108 P.3d 862.) The State Board reviews and approves the basin plan. (§ 13245.) A basin plan designates or establishes the beneficial uses to be protected, the water quality objectives, and the program of implementation for achieving the water quality objectives. (§ 13050, subd. (j).) A water quality objective sets the limits or levels of water quality constituents or characteristics for reasonable protection of beneficial uses of water or the prevention of nuisance in the specific area. (§ 13050, subd. (h).)

In establishing water quality objectives, the regional board must consider various factors, including, but not limited to: "(a) Past, present, and probable future beneficial uses of water. [¶] (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. [¶] (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. [¶] (d)

(Cite as: 153 Cal.App.4th 1579, 64 Cal.Rptr.3d 302)

Economic considerations. [¶] (e) The need for developing housing within the region. [¶] (f) The need to develop and use recycled water." [¶] (§ 13241.)

The regional board prescribes requirements for waste discharge within the region. (§ 13263.) These requirements shall implement the relevant basin plan and take into consideration the beneficial uses to be protected and the factors set forth in section 13241. (§ 13263, subd. (a).)

The Basin Plan

The California Regional Water Quality Control Board for the Central Valley Region (the Regional Board) adopted a basin plan for the Sacramento River Basin and the San Joaquin River Basin (the Basin Plan). The Basin Plan states the primary goal of water quality planning is the protection and *1584 enhancement of existing and potential beneficial uses. This protection and enhancement of beneficial uses is achieved by setting quality and quantity objectives for surface and ground waters. The Basin Plan sets forth various beneficial use designations. As relevant here, one of the designations is: "Municipal and Domestic Supply (MUN)-Uses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply." Unless otherwise designated by the Regional Board, all ground waters in the region are considered suitable, or potentially suitable, at a minimum, for municipal and domestic water supply (MUN) and various other beneficial uses.

The Basin Plan sets forth water quality objectives. In establishing these water quality objectives, the Regional Board considered the factors set forth in section 13241, including past, present and probable future beneficial uses of water. The Basin Plan sets the water quality objectives for ground waters. These objectives "apply to all ground waters of the Sacramento and San Joaquin River Basins, as the objectives are relevant to the protection of designated beneficial uses." It is the water quality objective for bacteria that is at issue in this case. The Basin Plan sets the water quality objective for bacteria as follows: "In ground waters used for domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml."

The Waste Discharge Requirements

The County owns and operates the Boys Ranch, a youth correctional facility of approximately**306 100 wards and 70 staff. The Boys Ranch is located 12 miles south of Folsom and approximately one mile west of Scott Road. The land around the Boys Ranch is zoned for agricultural and residential uses. Residential properties are a minimum of 40 acres. There is no public water supply utility; all residences must rely on individual wells for water. The Boys Ranch obtains its water supply from a well.

The Boys Ranch has a wastewater treatment facility for its domestic wastewater. The wastewater treatment facility consists of a gravity collection system, a 9,000-gallon temporary storage and holding tank, a sewage distribution box, and two unlined percolation/evaporation ponds. The two ponds cover approximately 2.9 acres. Wastewater is concentrated through evaporation and infiltrates into the bottom soils of the ponds. Approximately 7.6 inches of wastewater infiltrates through the ponds each month. The well for the Boys Ranch is located approximately 10,000 feet west of the ponds. There are fewer than three private residences within a three-mile radius of the facility; the closest is a mile and a half away.

*1585 The Boys Ranch wastewater treatment facility is subject to waste discharge requirements set forth in orders from the Regional Board. The original requirement, adopted in the mid-1960's, required that waste discharge from the Boys Ranch wastewater treatment facility not cause pollution of usable ground or surface waters.

In 1985, the Regional Board issued Order No. 85-200 for waste discharge requirements for the Boys Ranch wastewater treatment facility. It required that discharges not cause pollution or nuisance or degrade the water supply.

In 2001, the Regional Board adopted updated waste discharge requirements for the Boys Ranch wastewater treatment facility. The Regional Board found the wastewater quality had a reasonable potential to impact the underlying ground water and required certain monitoring to determine if the Boys Ranch was employing the best practical treatment and control (BPTC), as required by Resolution 68-16, the anti-

degradation policy. This new waste discharge requirement, Order 5-01-256, established interim ground water limitations that would not unreasonably threaten present and anticipated beneficial uses or result in ground water quality that exceeds water quality objectives in the Basin Plan. The requirements could be reopened after monitoring. The limitation for total coliform organisms in ground was set at "nondetect."

The County sought review of this order before the State Board.

After settlement discussions, the County and the Regional Board resolved many of the disputed issues; four issues remained unresolved. The State Board issued Order WQO 2003-0014 addressing these issues. The County had challenged the interim limits for coliform organisms in groundwater. The State Board found that the Basin Plan set a water quality objective for bacteria that applies to groundwater at a most probable number (MPN) of coliform organism over a seven-day period of less than 2.2/100 ml, and that was also the level at which coliform could be detected. The State Board directed the Regional Board to revise its Waste Discharge Order No. 5-01-256 to include a numeric groundwater limitation. The State Board found the Regional Board had authority to set interim limits for groundwater and those limits must be set at less than 2.2 MPN/100 ml.

**307 In January 2004, the Regional Board adopted a revised waste discharge requirements order for the Boys Ranch wastewater treatment facility. This order, No. R5-2004-0003, set groundwater limitations for total coliform organisms at less than 2.2 MPN/100 ml over any seven-day period.

The County again sought review by the State Board. The County contended these wastewater discharge requirements were invalid. The State *1586 Board dismissed the County's petition for review on the basis that it failed to raise substantial issues that were appropriate for review.

The County then petitioned for a writ of mandate. In a first amended petition, the County challenged State Board Order No. WQO 2003-0014 and Regional Board Orders Nos. 5-01-256 and R5-2004-0003, contending the water quality objective for bacteria applied to the Boys Ranch wastewater treatment facility

was in violation of the law.

The trial court denied the petition. The County appealed.

DISCUSSION

[1] The County contends the State Board and the Regional Board misapplied the water quality objective for bacteria in groundwater set forth in the Basin Plan. The Basin Plan's water quality objective for groundwater states: "In ground waters *used for* domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml." (Italics added.) The County contends this water quality objective is not applicable to the Boys Ranch Wastewater treatment facility because the groundwater in the vicinity is not *used for* domestic or municipal supply. The County asserts this water quality objective applies only where the groundwater is *currently* being used for domestic or municipal supply.

The parties agree that we examine the Boards' interpretation of legal matters utilizing a de novo standard of review. (*County of Los Angeles v. State Water Resources Control Bd.* (2006) 143 Cal.App.4th 985, 997, 50 Cal.Rptr.3d 619 [mod. at 144 Cal.App.4th 589f].) We defer to the Boards' expertise as appropriate in the circumstances. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

Here, the State Board directed the Regional Board to include the numeric groundwater limitation for bacteria in the Basin Plan in a revised order for the Boys Ranch wastewater treatment facility. Thus, the State Board interpreted the Basin Plan's water quality objective to apply where the groundwater was designated MUN.

[2][3][4][5] The County contends the Boards' interpretation is incorrect under the basic rules of statutory construction. As a starting point, the interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute. (*Blumenfeld v. San Francisco Bay Conservation etc. Com.* (1974) 43 Cal.App.3d 50, 59, 117 Cal.Rptr. 327.) However, there is an important difference between the interpretation of a statute and the interpretation of a regulation. "The Legislature has no author-

ity to interpret a *1587 statute." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1158, fn. 6, 278 Cal.Rptr. 614, 805 P.2d 873, quoting *Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8, 185 Cal.Rptr. 582; followed in *People v. Cruz* (1996) 13 Cal.4th 764, 781, 55 Cal.Rptr.2d 117, 919 P.2d 731.) On the other hand, where the language of the regulation is ambiguous, it is appropriate **308 to consider the agency's interpretation. (*Building Industry Assn. of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4th 866, 883, 22 Cal.Rptr.3d 128.) Indeed, we defer to an agency's interpretation of a regulation involving its area of expertise, " 'unless the interpretation flies in the face of the clear language and purpose of the interpretive provision' [Citation.]" (*Divers' Environmental Conservation Organization v. State Water Resources Control Bd.* (2006) 145 Cal.App.4th 246, 252, 51 Cal.Rptr.3d 497.)

As we shall see, in this case, the agency's interpretation of its own regulation makes all the difference.

Relying on dictionary definitions, the County asserts that "used for" cannot mean "designated." The County argues that "designated" is a term of art under the Porter-Cologne Water Quality Control Act and has a clearly distinguishable meaning from "used." Designated beneficial uses include future or potential uses; "used for" is more limited in temporal scope.

The Boards criticize the County's reliance on dictionary definitions to resolve the question of proper interpretation. (See *Stamm Theatres, Inc. v. Hartford Casualty Ins. Co.* (2001) 93 Cal.App.4th 531, 539, fn. 1, 113 Cal.Rptr.2d 300.) They also raise various practical problems with the County's interpretation. Determining a current use may be difficult, especially where there are intermittent uses. The County argues no ground water in the vicinity of the Boys Ranch wastewater treatment facility is currently used for MUN, but fails to define vicinity. Further, if the Regional Board cannot regulate bacteria in ground water unless such water is currently being used as a water supply, such water may become so contaminated that it could never be used for drinking water.

The County also relies upon the different language used in the other water quality objectives in the Basin Plan. While the water quality objective for bacteria, states it applies "in ground waters used for domestic

or municipal supply (MUN)," the water quality objectives for chemical constituents and radioactivity apply to "ground waters designated for use as domestic or municipal supply (MUN)." The County argues this difference in language is meaningful. "When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the *1588 normal inference is that the Legislature intended a difference in meaning. [Citation.]" (*People v. Trevino* (2001) 26 Cal.4th 237, 242, 109 Cal.Rptr.2d 567, 27 P.3d 283.)

[6] The County contends other regional boards have distinguished between a designated use and current use. For example, the ground water quality objective for bacteria in the Basin Plan for the Tulare Lake Basin applies to "ground waters designated MUN." The County requests this court take judicial notice of portions of the Basin Plans for the North Coast Region and the Los Angeles Region to show how regional boards employ the different terms "used for" and "designated" in water quality objectives. The Boards object to consideration of other basin plans as irrelevant to the issue before the court. We agree. At most, these other basin plans show that different terms are used, but not their effect. The County has not offered evidence of the waste discharge requirements issued under these basin plans to show how the differing terms are interpreted. We deny the County's request for judicial notice of exhibits A and B.

**309 We reject the County's contention that the phrase "used for" is limited in temporal scope and cannot include future uses. In general parlance, the phrase is broad and includes both present and future uses. For example, "chairs are used for sitting," is not limited to the chairs' current use.

The term "used for" is thus ambiguous as to whether it includes designated uses or only current uses. Thus, as stated earlier, where the language is ambiguous, we will defer to the agency's interpretation of a regulation involving its area of expertise, " 'unless the interpretation flies in the face of the clear language and purpose of the interpreted provision.' " The Boards' interpretation is completely consistent with the purpose of both the Basin Plan and the Porter-Cologne Water Quality Control Act.

[7][8] The real flaw in the County's argument is that it ignores a fundamental premise of statutory and

regulatory interpretation, that the words must be construed in context. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715, 3 Cal.Rptr.3d 623, 74 P.3d 726.) "The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute [citation], and where possible the language should be read so as to conform to the spirit of the enactment. [Citation.] [Citation.] [¶] Where statutory provisions are unclear, they should be interpreted to achieve the purpose of the statutory scheme and the public policy underlying the legislation. [Citation.]" (*Conrad v. Medical Bd. of California* (1996) 48 Cal.App.4th 1038, 1046, 55 Cal.Rptr.2d 901.)

The trial judge, experienced in water law having read numerous basin plans, noted that both the Porter-Cologne Water Quality Control Act and the *1589 Basin Plan are fundamentally concerned with the protection of present and future beneficial uses of water. The various provisions of the Basin Plan reflect this central concern. It requires water quality objectives to protect beneficial uses. The Basin Plan uses MUN as an abbreviation for the beneficial use of water for community, military, or individual water supply systems. All ground waters in the region are considered suitable or potentially suitable for municipal and domestic water supply (MUN). In establishing water quality objectives, the Regional Board must consider past, present, and probable future beneficial uses. The objectives for ground waters "apply to all ground waters of the Sacramento and San Joaquin River Basins, as the objectives are relevant to the protection of designated beneficial uses."

Read in the context of the Basin Plan as a whole, the water quality objective for "ground waters used for domestic or municipal supply (MUN)" refers to ground waters designated for use as domestic or municipal supply. The reference to the use of water refers to its beneficial use, which has been designated by the Regional Board. All ground waters in the Sacramento and San Joaquin River Basins have been designated as MUN and the designation includes probable future uses. Nothing in the Basin Plan distinguishes between present and future uses of water. Restricting the water quality objective for bacteria to ground waters based on current uses would read in a temporal element not found in the language of the Basin Plan. Such an interpretation would depart from the language and intent of the Basin Plan to a greater

extent than reading "used for" to mean "designated as."

[9] In support of its argument the County cites the Regional Board's proposed amendment to the Basin Plan to change the water quality objective bacteria in ground waters. Instead of reading "In **310 ground waters used for domestic or municipal supply (MUN)," the revision would read "In ground waters designated for use as domestic or municipal supply (MUN)." The Regional Board characterized the change as "non-substantive editing." The County requests that this court take judicial notice of a transcript of an agenda item and minutes of a State Board meeting at which the State Board declined to adopt the amendment, but tabled the matter. The County contends these actions show the Regional Board's interpretation is new or inconsistent with the Basin Plan.

[10] We decline the request for judicial notice. The actions of State Board occurred in May 2004, after the revised waste discharge requirements at issue here were adopted in January 2004. It is not proper to take judicial notice of evidence that was not before the agency at the time it made its decision. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573, fn. 4, 38 Cal.Rptr.2d 139, 888 P.2d 1268.) Furthermore, the State Board's failure to adopt the amendment has little evidentiary value on the question of *1590 the proper interpretation of the Basin Plan. The failure to adopt an amendment evokes conflicting inferences as to whether the amendment was necessary, whether it was merely a clarification or a change in the law. "As evidence of legislative intent, unadopted proposals have been held to have little value. [Citations.]" (*California Court Reporters Assn. v. Judicial Council of California* (1995) 39 Cal.App.4th 15, 32, 46 Cal.Rptr.2d 44.)

We find the water quality orders at issue are consistent with the Basin Plan and effectuate the intent to protect present and future beneficial uses of ground waters. Accordingly, we need not address the County's contention that the Regional Board failed to comply with the Water Code in imposing a new interpretation.

DISPOSITION

The judgment is affirmed. Defendants and respon-

dents shall recover their costs on appeal. (Cal. Rules of Court, rule 8.276(a)(1).)

I concur: SIMS, Acting P.J.

RAYE, J., Dissenting.

The issue that we resolve in this case arises from what respondents' counsel characterized at oral argument as the "unfortunate" drafting of the water quality objective for bacteria in the basin plan for the Sacramento and San Joaquin River Basins (Basin Plan). In other words, the language of the Basin Plan does not read as the Regional Water Quality Control Board for the Central Valley Region (Regional Board) wishes it did and perhaps as the Regional Board intended.

It is not our role to plumb the consciousness of regulation drafters and mold the language of a regulation to comport with their undisclosed intent. As with the construction of statutes, so also in ascertaining the meaning of regulations, we divine intent from the language actually used and not the language one supposes the drafters might have used had they anticipated the legal dispute now before us. To the extent the language does not accurately reflect what the drafters had in mind and application of the language actually used could lead to an environmental catastrophe, the cries of despair should be directed to the governmental bodies empowered to alter the language. This court is not one of those bodies and should not indulge arguments that seek to amend in the guise of interpreting a regulation. Because I believe the majority opinion does that, I must respectfully dissent.

**311 Background

The facts underlying this dispute are remarkably clear. The Regional Board adopted the Basin Plan, which sets forth the water quality objective for *1591 bacteria as follows: "In ground waters used for domestic or municipal supply (MUN) the most probable number of coliform organisms over any seven-day period shall be less than 2.2/100 ml."

In January 2004 the Regional Board adopted a revised waste discharge requirements order for the Boys Ranch wastewater treatment facility. The parties acknowledge that there are fewer than three homes within a three-mile radius of the Ranch, and there is no domestic or municipal water supply serv-

ing those homes. Therefore, the wastewater from the Boys Ranch facility is not released into ground waters used for an existing domestic or municipal water supply. Nonetheless, the majority would approve the Regional Board's application of the Basin Plan's bacteria standards to wastewater discharged from the Boys Ranch treatment facility into underlying ground waters that are not used by any existing domestic or municipal water supply.

There are good reasons for this outcome: basin plans are all about the protection of both present and future beneficial uses of water. Therefore, in establishing water quality objectives, the Regional Board must consider not only present uses but also future uses. To the extent the past offers insight into the future, past uses are also relevant. Moreover, the Regional Board offers a persuasive technical argument, that restricting water quality objectives for bacteria to current ground water uses could allow water to become so contaminated that it could never be used for drinking water.

All this makes perfect sense. But the language of the regulation does not support these policies. Whatever our views on the wisdom of the Regional Board's proposed order, we are not given free reign to import our notions of commonsense and good environmental policy into the language of the regulation-language that we are obliged apply by its terms. And denominating these policy notions as part of the "context" within which the language of the regulation must be construed is at best disingenuous. The interpretation of an administrative regulation is subject to the same principles as the interpretation of a statute. (Blumenfeld v. San Francisco Bay Conservation etc. Com. (1974) 43 Cal.App.3d 50, 59, 117 Cal.Rptr. 327.) We must employ the plain meaning of the regulatory text. (Environmental Charter High School v. Centinela Valley Union High School Dist. (2004) 122 Cal.App.4th 139, 148-149, 18 Cal.Rptr.3d 417 (Environmental Charter).)

There is no doubt the Regional Board could write a basin plan that would support the order it has adopted for the Boys Ranch wastewater treatment facility. However, the existing language does not.

I understand that we defer to an agency's interpretation of a regulation involving its area of expertise. Indeed, the authorities cited by the majority *1592

for this proposition also extend deference to an administrative agency's interpretation of a statute involving its area of expertise. (*Divers' Environmental Conservation Organization v. State Water Resources Control Bd.* (2006) 145 Cal.App.4th 246, 252, 51 Cal.Rptr.3d 497.) However, deference is not capitulation. The responsibility for discerning the meaning of a regulation, like that of a statute, is reposed in this court.

It is tempting to apply a more relaxed standard of review to a regulation; after all, the agency wrote it. However, like the Legislature, administrative agencies are **312 not given unfettered authority to write whatever regulations they desire whenever they choose; procedures must be followed. Water quality control plans are in fact regulations and are neither expressly nor impliedly exempt from the provisions of the Administrative Procedure Act (APA; Gov.Code, §§ 11340 et seq., 11370 et seq.). (*State Water Resources Control Bd. v. Office of Admin. Law* (1993) 12 Cal.App.4th 697, 16 Cal.Rptr.2d 25.) The APA imposes substantial constraints on an agency's rulemaking authority. (See Gov.Code, § 11340 et seq.) Hearings must be held, public comments received, and reviews conducted. We should not permit the process to be circumvented through acquiescence in the Regional Board's interpretive powers.

While the Regional Board criticizes the County of Sacramento's reliance on dictionary definitions in applying the language in question, we often resort to dictionaries in construing the language of statutes and regulations. Indeed, a fundamental tenet of statutory construction is that the court must first consult the words of the statute, giving them their plain meaning. When the language at issue is clear, the courts should not indulge in construction. "A dictionary is a proper source to determine the usual and ordinary meaning of a word or phrase in a statute." (*E.W. Bliss Co. v. Superior Court* (1989) 210 Cal.App.3d 1254, 1258, fn. 2, 258 Cal.Rptr. 783.)

We do not, of course, apply dictionary definitions when it is clear a different meaning was intended, as when words are used in a technical sense. However, the regional boards have proposed no good etymological reason why the nontechnical terms "[i]n ground waters used for domestic or municipal supply (MUN)" should be read as "designated for use." The suggestion that construing the language in the present

tense imports a "temporal element" is no more than skillful word play. Absent additional modifiers, it is not reasonable to suppose the Regional Board was intending to regulate the entire universe of ground water, whether used in the past, in the present, or potentially in the future. Such a construction would, as a practical matter, render what was clearly intended to be a restrictive phrase, "used for domestic or municipal supply (MUN)," unnecessary.

*1593 The majority argues: "In general parlance, the phrase ["used for"] is broad and includes both present and future uses. For example, 'chairs are used for sitting,' is not limited to the chairs' current use." The analogy illustrates the fallacy of the majority's word play. The phrase "used for" only suggests present and future uses when it describes the function of an object without limitation. Thus, if the regulation simply stated "ground waters are used for domestic or municipal supply," I would agree that ground waters have been, can be, and will in the future be used for domestic or municipal water supply. However, the regulation does not simply describe ground waters but places restrictions on substances discharged into ground waters of a certain type, viz: "[i]n ground waters used for domestic or municipal supply." To suggest that such a restriction applies to ground waters that have in the past been used but are not currently used for domestic or municipal supply, or ground waters that may be used for domestic or water supply at some time in this millennium or the next, makes a mockery of the language.

The majority's interpretation defies the plain meaning rule. It is also at odds with the principle that words of a regulation must be interpreted in context, " 'harmonizing to the extent possible all provisions relating to the same subject matter.' " **313 (*Environmental Charter, supra*, 122 Cal.App.4th at p. 149, 18 Cal.Rptr.3d 417.) In addition to the water quality objective for coliform organisms, the same section of the Basin Plan also includes water quality objectives for chemical constituents in ground water and for radioactivity in ground water. However, these water quality objectives only apply to ground waters "designated for use as domestic or municipal supply (MUN)." The use of more restrictive language for the bacteria objective is at odds with the Regional Board's argument that the term "used" includes waters "designated for use." Similarly, at the same time the subject Basin Plan was adopted the Regional

Board also adopted a plan for the Tulare Lake Basin that restricts the water quality objective for coliform organisms to "ground waters designated MUN."

Perhaps this is all "unfortunate" drafting. However, the usual tools employed to discern the meaning of regulations do not permit us to modify language. Instead of seeking relief from this court, the Regional Board should pursue its administrative remedies. I also note that even in the absence of the disputed water quality objective pertaining to bacteria, the Regional Board is empowered to impose the same discharge restrictions under the authority of Water Code section 13263. This statutory procedure is more cumbersome but would address any public health concerns pending changes in the Basin Plan.

*1594 To conclude, I do not agree that the language of the Basin Plan supports the trial court's judgment. For that reason I respectfully dissent.

Cal.App. 3 Dist., 2007.

County of Sacramento v. State Water Resources Control Bd.

153 Cal.App.4th 1579, 64 Cal.Rptr.3d 302, 07 Cal. Daily Op. Serv. 9533, 2007 Daily Journal D.A.R. 12,207

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V

Supreme Court of California
 DAN BRIGGS et al., Plaintiffs and Appellants,
 v.
 EDEN COUNCIL FOR HOPE AND OPPORTU-
 NITY, Defendant and Respondent.
 No. S062156.

Jan. 21, 1999.

SUMMARY

Two owners of residential rental properties brought an action for defamation and infliction of emotional distress against a nonprofit provider of tenant counseling services, alleging that defendant engaged in a pattern of harassment by giving false information to plaintiffs' tenants and making defamatory statements about plaintiffs. The trial court entered an order granting defendant's special motion to strike the complaint under the anti-SLAPP (strategic lawsuit against public participation) statute (Code Civ. Proc., § 425.16), entered a judgment of dismissal, and entered an order awarding attorney fees and costs to defendant. (Superior Court of Alameda County, No. H-180743-5, Bonnie Lewman, Judge.) The Court of Appeal, First Dist., Div. One, Nos. A072446 and A074357, reversed on the ground that defendant failed to make a prima facie showing that plaintiffs' lawsuit arose from a statement or writing in furtherance of defendant's constitutional rights of petition for the redress of grievances or freedom of speech in connection with a public issue.

The Supreme Court reversed the judgment of the Court of Appeal and remanded, holding that the Court of Appeal erred in construing Code Civ. Proc., § 425.16, subd. (e)(1) and (2), as if it contained an "issue of public interest" limitation. The court held that, in accordance with the plain language of the statute, and in consonance with discernible legislative intent, as well as for reasons of sound public policy, a defendant moving to strike a cause of action arising from a statement or writing made in connection with an issue under consideration by, a legally authorized official proceeding need not separately demonstrate that the statement or writing concerned an issue of

public significance. In this case, plaintiffs' causes of action against defendant all arose from defendant's statements or writings made in connection with issues under consideration by official bodies or proceedings, specifically, actual and potential civil litigation and a Department of Housing and Urban Development investigation. Thus, to the extent that plaintiffs failed to establish, pursuant to Code Civ. Proc., § 425.16, subd. (b)(1), a probability of prevailing on their claim, their causes of action were subject to defendant's special motion to strike. (Opinion by Werdegar, J., with George, C. J., Mosk, Kennard and Chin, JJ., concurring. Concurring and dissenting opinion by Baxter, J., with Brown, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Pleading § 93--Motion to Strike Pleading as a Whole-- Statutory Remedy Against SLAPP Suits--Required Prima Facie Showing--Need to Demonstrate That Pertinent Statement Concerned Issue of Public Significance.

In an action brought by two owners of residential rental properties against a nonprofit provider of tenant counseling services related to landlord-tenant disputes, alleging that defendant engaged in a pattern of harassment by giving false information to plaintiffs' tenants and making defamatory statements about plaintiffs, the Court of Appeal erred in reversing the trial court's order granting defendant's special motion to strike the complaint under the anti-SLAPP (strategic lawsuit against public participation) statute (Code Civ. Proc., § 425.16), on the ground that Code Civ. Proc., § 425.16, subd. (e)(1) and (2), contains an "issue of public interest" limitation. In accordance with the plain language of the statute, and in consonance with discernible legislative intent, as well as for reasons of sound public policy, a defendant moving to strike a cause of action arising from a statement or writing made in connection with an issue under consideration by a legally authorized official proceeding need not separately demonstrate that the statement or writing concerned an issue of public significance. In this case, plaintiffs' causes of action against defendant all arose from defendant's statements or writings made in connection with issues under consideration

by official proceedings—specifically, actual and potential civil litigation and a Department of Housing and Urban Development investigation. Thus, to the extent that, as the trial court impliedly found, plaintiffs failed to establish, pursuant to Code Civ. Proc., § 425.16, subd. (b)(1), a probability of prevailing on their claim, their causes of action were subject to defendant's special motion to strike. (Disapproving, to the extent they hold to the contrary: Zhao v. Wong (1996) 48 Cal.App.4th 1114 [55 Cal.Rptr.2d 909]; Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. (1996) 50 Cal.App.4th 1633 [58 Cal.Rptr.2d 613]; Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996) 49 Cal.App.4th 1591 [57 Cal.Rptr.2d 491]; Mission Oaks Ranch, Ltd. v. County of Santa Barbara (1998) 65 Cal.App.4th 713 [77 Cal.Rptr.2d 1].) [See § Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 962 et seq.]

(2) Statutes § 46—Construction—Presumptions—Legislative Intent— Different Words Used in Same Connection in Different Parts of Statute.

Where different words or phrases are used in the same connection in different parts of a statute, it is presumed that the Legislature intended a different meaning.

(3) Statutes § 38—Construction—Giving Effect to Statute—Construing Every Word.

Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage.

(4) Statutes § 39—Construction—Giving Effect to Statute—Conformation of Parts.

Legislative intent is not gleaned solely from the preamble of a statute; it is gleaned from the statute as a whole, which includes the particular directives. Furthermore, every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.

(5) Statutes § 42—Construction—Extrinsic Aids—Propriety.

Where legislative intent is expressed in unambiguous terms, the court must treat the statutory language as conclusive; no resort to extrinsic aids is necessary or proper.

COUNSEL

Knox, Anderson & Blake, Anderson & Blake and Kevin Anderson for Plaintiffs and Appellants.

Brancart & Brancart, Christopher Brancart, Elizabeth Brancart; Mark Goldowitz; John C. Barker; and Elizabeth Bader for Defendant and Respondent.

Levy, Ram & Olson and Karl Olson for California Newspaper Publishers Association et al., as Amici Curiae on behalf of Defendant and Respondent.

James D. Smith for Fair Housing Organizations as Amici Curiae on behalf of Defendant and Respondent. *1109

Catherine I. Hanson and Astrid G. Meghrihan for California Medical Association as Amicus Curiae on behalf of Defendant and Respondent.

Julia Mandeville Damasco for City of Hayward, City of Pleasanton, City of Santa Clara and City and County of San Francisco as Amici Curiae on behalf of Defendant and Respondent.

Hagenbaugh & Murphy, Daniel A. Leipold and Cathy L. Shipé for Cult Awareness Network, Inc., and F.A.C.T.Net, Inc., as Amici Curiae on behalf of Defendant and Respondent.

WERDEGAR, J.

Must a defendant, moving specially under Code of Civil Procedure section 425.16 (hereafter section 425.16 or the anti-SLAPP^{FN1} statute) to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, a legally authorized official proceeding, demonstrate separately that the statement concerned an issue of public significance? In accordance with the plain language of the statute and in consonance with discernible legislative intent, as well as for reasons of sound public policy, we conclude not. Accordingly, we reverse the judgment of the Court of Appeal.

FN1 Strategic lawsuit against public participation. We previously have adopted this acronym for lawsuits affecting speech or petition rights. (See Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394, 412 [58 Cal.Rptr.2d 875, 926 P.2d 1061];

College Hospital, Inc. v. Superior Court (1994) 8 Cal.4th 704, 713-718 [34 Cal.Rptr.2d 898, 882 P.2d 894].) The acronym was coined by Penelope Canan and George W. Pring, professors at the University of Denver. (See generally, Canan & Pring, *Strategic Lawsuits Against Public Participation* (1988) 35 Soc. Probs. 506; Comment, *Strategic Lawsuits Against Public Participation: An Analysis of the Solutions* (1990-1991) 27 Cal. Western L.Rev. 399.)

Background^{FN2}

Plaintiffs Dan and Judy Briggs own residential rental properties. Defendant Eden Council for Hope and Opportunity (ECHO), a nonprofit corporation partly funded by city and county grants, counsels tenants and mediates landlord-tenant disputes. Seeking damages for defamation and intentional and negligent infliction of emotional distress, plaintiffs allege ECHO harassed and defamed them.

FN2 The factual recitation parallels that of the Court of Appeal. No party petitioned for rehearing to suggest the Court of Appeal omitted or misstated any material fact. (Cal. Rules of Court, rule 29(b)(2).)

Plaintiffs allege: In 1990, ECHO counseled Pamela Ford, an African-American woman who rented an apartment from plaintiffs. After Ford *1110 complained to ECHO that plaintiffs were giving her a less favorable electricity offset than that given to a Caucasian tenant, ECHO assisted Ford in filing a complaint with the federal Department of Housing and Urban Development (HUD) and in prosecuting a small claims court action against plaintiffs. HUD exonerated plaintiffs, but Ford prevailed in small claims court. In an unrelated civil action, plaintiffs sought ECHO's files, ultimately obtaining a court order compelling their production and sanctioning ECHO. Plaintiffs allege that during HUD's investigation of Ford's complaint, ECHO employees referred to Dan Briggs as a "racist," and that other defamatory statements, including that Briggs "is a redneck and doesn't like women," were made to a HUD investigator and other persons.

In 1991, Dan Briggs telephoned ECHO asking for the

names and addresses of ECHO's directors so he could complain to them about ECHO's failure to produce the earlier requested documents. Briggs asked to speak with Caroline Peattie, ECHO's assistant executive director. ECHO's receptionist gave Peattie a telephone message slip, and Peattie returned Briggs's call. The subsequently disclosed files revealed that, while talking with Briggs, Peattie wrote and circled on the telephone message slip the letters "KKK." Other ECHO staff members saw the message slip and the "KKK" notation.

The minutes of the ECHO board meetings reveal that at one meeting ECHO's directors discussed whether Dan Briggs was mentally unbalanced. The executive director's notes recorded the view that Briggs was on a "witchhunt." At another meeting, ECHO's executive director stated that Briggs had made racist comments to the city's staff while complaining about city funding of ECHO.

Another of plaintiffs' tenants, Diana Bond, punctured the refrigerator in her apartment while trying to defrost it. The refrigerator was repaired, but malfunctioned a year later. When plaintiffs refused to repair or replace the refrigerator, Bond consulted ECHO. Bond ultimately vacated the apartment, taking the refrigerator with her. Plaintiffs deducted the costs related to the refrigerator from Bond's security deposit, whereupon Bond successfully sued plaintiffs in small claims court. Plaintiffs allege ECHO maliciously gave Bond false advice in connection with this matter.

When plaintiffs' tenants Kirk and Gay-Rita Poates consulted ECHO, a staff member commented, "We know what kind of people you're dealing with." In another incident, involving a dispute between two roommates who also were tenants of plaintiffs, an ECHO staff member told one of the roommates that "this [has] happened [before] with Dan and Judy." The tenant understood the remark to be negative. *1111

After plaintiffs filed this action, ECHO filed a special motion to strike the complaint pursuant to the anti-SLAPP statute. In support, ECHO argued that plaintiffs' claims were based upon statements made in connection with issues pending before or under consideration by executive and judicial bodies (§ 425.16, subd. (e)(1) and (2)), and that plaintiffs had not estab-

lished a probability they would prevail on their claims (§ 425.16, subd. (b)(1)). In opposition, plaintiffs argued that ECHO's alleged activities did not involve matters of "public significance" (§ 425.16, subd. (a)). The trial court granted ECHO's motion, dismissed the complaint, and awarded ECHO attorney fees and costs.

Plaintiffs filed two appeals, one challenging the judgment of dismissal, the other the attorney fees award. The Court of Appeal consolidated the appeals and reversed both the judgment of dismissal and the order awarding attorney fees and costs. The Court of Appeal held that the trial court had erred in striking the complaint under section 425.16, because ECHO had not made a prima facie showing that this lawsuit arose from an act by ECHO in furtherance of its constitutional petition or speech rights in connection with a public issue. Thus, the Court of Appeal impliedly held that a cause of action is not subject to being struck under the anti-SLAPP statute unless it arises from a statement or writing by the defendant which, substantively, addresses an issue of public significance, even if the statement or writing is made before or in connection with an issue under consideration by an official body or proceeding.^{FN3}

FN3 All three Court of Appeal justices concluded (erroneously, as will appear) that a defendant qualifies for anti-SLAPP protection only if the challenged suit arises from a petition or speech in connection with a "public issue." Only the two justices constituting the Court of Appeal majority for reversal, however, concluded that ECHO's statements did *not* have public significance within the meaning of the statute.

We granted ECHO's petition for review.

Discussion

Section 425.16^{FN4} provides, inter alia, that "A cause of action against a person arising from any act of that person in furtherance of the person's right *1112 of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

"As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement *1113 or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law" (*Id.*, subd. (e).)

FN4 In its entirety, section 425.16 reads:

"(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

"(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

"(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

"(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination.

“(c) In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to [Code of Civil Procedure] Section 128.5.

“(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

“(e) As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

“(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing.

“(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The

stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

“(h) For purposes of this section, 'complaint' includes 'cross-complaint' and 'petition,' 'plaintiff' includes 'cross-complainant' and 'petitioner,' and 'defendant' includes 'cross-defendant' and 'respondent.'

“(i) On or before January 1, 1998, the Judicial Council shall report to the Legislature on the frequency and outcome of special motions made pursuant to this section, and on any other matters pertinent to the purposes of this section.”

(1a) Courts of Appeal applying section 425.16 have divided on the question whether a defendant who moves under the statute to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, an “official proceeding” must separately demonstrate that the statement was made in connection with a “public” issue. (Compare *Zhao v. Wong* (1996) 48 Cal.App.4th 1114 [55 Cal.Rptr.2d 909] [section 425.16 applies only to causes of action arising from statements or writings on issues of public significance] with *Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036 [61 Cal.Rptr.2d 58] (*Braun v. Chronicle*) [section 425.16 applies to any cause of action arising from a statement or writing connected to an issue under consideration by an official proceeding].) The Court of Appeal in this matter followed *Zhao v. Wong*, holding that “a lawsuit qualifies as a SLAPP suit only if it challenges a statement made in connection with a public issue made in an official proceeding or a statement made in connection with a public issue under review in an official proceeding.”

For the following reasons, we conclude the Court of Appeal erred.

1. Statute's Plain Language

First, the plain, unambiguous language of section 425.16 encompasses plaintiffs' causes of action

against ECHO, without any separate "public issue" requirement. Section 425.16, subdivision (b)(1) expressly makes subject to a special motion to strike "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue" As noted, for the statute's purposes, an "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) *any* written or oral statement or writing made before a legislative, executive or judicial proceeding, or any other official proceeding authorized by law; [and] (2) *any* written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law" (§ 425.16, subd. (e), italics added.) Thus, plainly read, section 425.16 encompasses any cause of action against a person arising from any statement or writing made in, or in connection with an issue under consideration or review by, an official proceeding or body. *1114

Construing clause (2) of section 425.16, subdivision (e), quoted above, the court in *Zhao v. Wong* nevertheless opined that, even though the clause "contains no reference to 'public issue' or an equivalent phrase," it does not "eliminate[] the requirement, expressed in the language subject to definition, that the oral statement or writing must be 'in connection with a public issue.' The operative language in subdivision (b) ... continues to require that the issue in question, i.e. 'an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law,' be a public issue." (*Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1127, fn. omitted; accord, Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. (1996) 50 Cal.App.4th 1633, 1639 [58 Cal.Rptr.2d 613]; Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers (1996) 49 Cal.App.4th 1591, 1601 [57 Cal.Rptr.2d 491].)

Neither *Zhao v. Wong* nor its progeny provides authority, legal or grammatical, for such a strained construction. As explained, the statute plainly reads otherwise. Moreover, for us to adopt the *Zhao* court's novel understanding would contravene a "longstanding rule of statutory construction-the 'last antecedent

rule'-[which] provides that 'qualifying words and phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.' " (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 [183 Cal.Rptr. 520, 646 P.2d 191], quoting *Board of Port Comms. v. Williams* (1937) 9 Cal.2d 381, 389 [70 P.2d 918].) And as will appear, the Legislature expressly has rejected *Zhao v. Wong*'s analysis and narrowing approach. (See generally, § 425.16, subd. (a); Assem. Com. on Judiciary, Analysis of Sen. Bill No. 1296 (1997-1998 Reg. Sess.) for July 2, 1997, hg., pp. 3-4.)

The record establishes that plaintiffs' three causes of action against ECHO all "arise from"-i.e., are based upon-statements or writings that ECHO personnel made in official proceedings or in connection with issues under consideration or review by executive or judicial bodies or proceedings.

Specifically, plaintiffs in their complaint base their defamation cause of action on ECHO's alleged assisting of tenant Ford "to institute legal action with ... HUD ... against the plaintiffs," and ECHO's alleged "defamatory statements ... made to a HUD investigator and other unknown persons" in connection with Ford's HUD action, "includ[ing] the term 'KKK' being handwritten and circled next to plaintiff Dan Briggs' name on a *1115 telephone message note." ^{FN5} They base their intentional and negligent infliction of emotional distress causes of action on, first, ECHO's alleged provision to tenant Bond of "information with regard to the habitability of [Bond]'s apartment because of a broken refrigerator" about which the Court of Appeal noted Bond had successfully sued plaintiffs in small claims court; second, ECHO's alleged provision of false information and direction to two different tenants involved in a dispute over a security deposit; and, third, ECHO's alleged "failure to comply with a deposition subpoena for production of documents served in an unrelated civil action."

FN5 Plaintiffs in their complaint also allude vaguely to unspecified (except for "We know what kind of people you're dealing with") and assertedly "defamatory statements concerning plaintiffs' character and qualifications in their business of renting residential apartments," made "in or about

June, 1994, [to] another tenant of plaintiffs" and within the hearing of that tenant "and several other persons" on "other occasions."

Thus, plaintiffs' causes of action against ECHO all arise from ECHO's statements or writings made in connection with issues under consideration or review by official bodies or proceedings—specifically, HUD or the civil courts. Plaintiffs concede that "petitioning activity involves lobbying the government, suing, [and] testifying." As pertinent here, "[t]he constitutional right to petition ... includes the basic act of filing litigation or otherwise seeking administrative action." (*Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 784 [54 Cal.Rptr.2d 830], quoting *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 19 [43 Cal.Rptr.2d 350].) Even ECHO's counseling of tenant Bond, apparently, was in anticipation of litigation, and courts considering the question have concluded that "[j]ust as communications preparatory to or in anticipation of the bringing of an action or other official proceeding are within the protection of the litigation privilege of Civil Code section 47, subdivision (b) [citation], ... such statements are equally entitled to the benefits of section 425.16." (*Dove Audio, Inc., supra*, at p. 784, citing *Rubin v. Green* (1993) 4 Cal.4th 1187, 1194-1195 [17 Cal.Rptr.2d 828, 847 P.2d 1044] and *Ludwig v. Superior Court, supra*, 37 Cal.App.4th at p. 19; see also *Mission Oaks Ranch, Ltd. v. County of Santa Barbara* (1998) 65 Cal.App.4th 713, 728 [77 Cal.Rptr.2d 11].)

Thus, to the extent that, as the trial court impliedly found, plaintiffs failed to establish a probability of prevailing on their claim (§ 425.16, subd. (b)(1)),^{FN6} it follows that their causes of action are, in accordance with section 425.16's plain language, "subject to [ECHO's] special motion to strike" (*ibid.*)*1116

FN6 In issuing its order, the trial court expressly stated, "There is such minuscule ... basis for argument on behalf of plaintiff, I'm going to confirm the tentative ruling and strike the action." Thus, the trial court impliedly found plaintiffs had not established a probability that they would prevail on their claim. (See *Murray v. Superior Court* (1955) 44 Cal.2d 611, 619 [284 P.2d 1] [trial court impliedly found "every fact necessary to support its order"].) In the Court of Appeal

and in their briefing before this court, plaintiffs have argued that they met their burden under the anti-SLAPP statute of demonstrating a probability that they would prevail on their claims. Reversing on other grounds, we express no opinion on that question.

Plaintiffs, however, citing *Zhao v. Wong*, argue that section 425.16 does not apply to events that transpire between private individuals. The Court of Appeal in *Zhao* opined that "the Legislature contemplated that the statute would apply only to a limited sphere of activities covered by certain protections of the First Amendment, i.e., activities described by the statement of legislative purpose" (*Zhao v. Wong, supra*, 48 Cal.App.4th at p. 1129), which speaks of encouraging "participation in matters of public significance" (§ 425.16, subd. (a)). According to plaintiffs, section 425.16 protects only statements or writings that defend the speaker's or writer's own free speech or petition rights or that are otherwise "vital to allow citizens to make informed decisions within a government office." Plaintiffs insist tenant counseling activities like ECHO's are not protected by section 425.16 because they neither promoted ECHO's own constitutional right of free speech nor informed the public about possible wrongdoing.

Even assuming, for purposes of argument, that plaintiffs accurately have characterized ECHO's activities as constituting neither self-interested nor general political speech, we cannot conclude such activities thereby necessarily fall outside the protection of the anti-SLAPP statute. Contrary to plaintiffs' implied suggestion, the statute does not require that a defendant moving to strike under section 425.16 demonstrate that its protected statements or writings were made *on its own behalf* (rather than, for example, on behalf of its clients or the general public). We agree, moreover, with the court in *Braun v. Chronicle* that "Zhao is incorrect in its assertion that the only activities qualifying for statutory protection are those which meet the lofty standard of pertaining to the heart of self-government." (*Braun v. Chronicle, supra*, 52 Cal.App.4th at pp. 1046-1047.)

As the *Braun* court explained: "At least as to acts covered by clauses one and two of section 425.16, subdivision (e), the statute requires simply *any* writing or statement made in, or in connection with an issue under consideration or review by, the specified

proceeding or body. Thus these clauses safeguard free speech and petition conduct aimed at advancing self government, as well as conduct aimed at more mundane pursuits. Under the plain terms of the statute it is the context or setting itself that makes the issue a public issue: all that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding. [¶] The answer to *Zhao's* concern over how to harmonize the language of section 425.16, subdivision (e), clause *1117 two with the statement of legislative intent contained in subdivision (a) is now apparent: The Legislature when crafting the clause two definition clearly and unambiguously resorted to an easily understandable concept of what constitutes a public issue. Specifically, it equated a public issue with the authorized official proceeding to which it connects." (*Braun v. Chronicle*, *supra*, 52 Cal.App.4th at p. 1047, italics in original.)

Thus, contrary to the Court of Appeal's construction, "the statutory language is clear. [Citation.] The statute does *not* limit its application to certain types of petition activity." (*Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 949 [52 Cal.Rptr.2d 357], italics added; see also *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 863 [44 Cal.Rptr.2d 46] [anti-SLAPP law protects newspaper's statements relating to issue under consideration by county board of supervisors and federal courts]; *Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 647-648 [49 Cal.Rptr.2d 620] [section 425.16 applies to action to set aside prior personal injury judgment, which resulted from defendant's exercise of his First Amendment litigation rights].)

2. Principles of Statutory Construction

Second, the Court of Appeal's analysis contravenes fundamental principles of statutory construction. (2) Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning. (*Playboy Enterprises, Inc. v. Superior Court* (1984) 154 Cal.App.3d 14, 21 [201 Cal.Rptr. 207].) Clauses (3) and (4) of section 425.16, subdivision (e), concerning statements made in public fora and "other conduct" implicating speech or petition rights, include an express "issue of public interest" limitation;

clauses (1) and (2), concerning statements made before or in connection with issues under review by official proceedings, contain no such limitation. In light of this variation in phraseology, it must be presumed the Legislature intended different "issue" requirements to apply to anti-SLAPP motions brought under clauses (3) and (4) of subdivision (e) than to motions brought under clauses (1) and (2). (*Playboy Enterprises, Inc.*, *supra*, at p. 21.) That the Legislature, when amending section 425.16 in 1997 to add the substance of clause (4), was at pains simultaneously to separate, by parenthetical numbering, subdivision (e)'s resulting four clauses buttresses the point by emphasizing the grammatical and analytical independence of the clauses.

If, as plaintiffs contend, the operative language in section 425.16, subdivision (b), referring to a person's exercise of First Amendment rights "in connection with a public issue," were meant to function as a separate proof *1118 requirement applicable to motions brought under all four clauses of subdivision (e), no purpose would be served by the Legislature's specification in clauses (3) and (4) that covered issues must be "of public interest." (3) "Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage." (*Reno v. Baird* (1998) 18 Cal.4th 640, 658 [76 Cal.Rptr.2d 499, 957 P.2d 1333], quoting *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22 [56 Cal.Rptr.2d 706, 923 P.2d 1].) Accordingly, we reject plaintiffs' contention and adopt, instead, a construction that gives meaning and assigns import to the phrase "of public interest" in subdivision (e)(3) and (4) of section 425.16.

Contrary to plaintiffs' suggestion, that the Legislature, when enacting section 425.16, expressed in the statute's preamble a desire "to encourage continued participation in matters of public significance" (§ 425.16, subd. (a)) does not imply the Legislature intended to impose, in the statute's operative sections, an across-the-board "issue of public interest" pleading requirement. Construing clauses (1) and (2) of section 425.16, subdivision (e) as lacking such a requirement does not diminish their effectiveness in encouraging participation in public affairs. Any matter pending before an official proceeding possesses some measure of "public significance" owing solely to the public nature of the proceeding, and free discussion of such matters furthers effective exercise of

the petition rights section 425.16 was intended to protect. The Legislature's stated intent is best served, therefore, by a construction of section 425.16 that broadly encompasses participation in official proceedings, generally, whether or not such participation remains strictly focused on "public" issues.

As the Court of Appeal in *Braun v. Chronicle* explained: "The term 'significance' supports multiple meanings. It can mean '[t]he meaning or import of something'" and "[i]t can also mean '[i]mportance, consequence.'" (*Braun v. Chronicle, supra*, 52 Cal.App.4th at p. 1048, quoting 15 Oxford English Dict. (2d ed. 1989) p. 458.) Thus, a matter may have "public meaning or significance within the language of section 425.16, subdivision (a) because and solely because ... it occurs within the context of the proceedings delineated in clause one ... or ... in connection with an issue under consideration or review by one of the bodies or proceedings delineated in clause two." (*Braun v. Chronicle, supra*, at p. 1048.)

(4) Of course, "legislative intent is not gleaned solely from the preamble of a statute; it is gleaned from the statute as a whole, which includes the particular directives." (*Braun v. Chronicle, supra*, 52 Cal.App.4th at p. 1048.) And "every statute should be construed with reference to the whole system of law of which it is a part so that all may be harmonized and have *1119 effect." (*Stafford v. Realty Bond Service Corp.* (1952) 39 Cal.2d 797, 805 [249 P.2d 241].) In light of these fundamental principles, "the meaning ascribed to the concept of 'public significance' in the preamble must accommodate the singular, clearly defined protected activities set forth in each clause of section 425.16, subdivision (e)." (*Braun v. Chronicle, supra*, at p. 1048.) Construing the term "significance" in the preamble to denote simply "importance" (15 Oxford English Dict., *supra*, at p. 458) harmonizes the term with a plain reading of subdivision (e)(1) and (2) that imports no additional "public issue" requirement, because such a construction accounts for the measure of public significance possessed by "any written or oral statement or writing" (§ 425.16, subd. (e)(1) and (2), italics added) that is made before, or in connection with, an official proceeding.

3. Legislative Intent

(1b) Third, the Court of Appeal's analysis contravenes the specific legislative intent expressly stated

in section 425.16, as well as that implied by the statute's legislative history as revealed by legislative history materials in the record.

In 1997, after the Court of Appeal's decision in this case, the Legislature amended section 425.16, effecting no substantive changes to the anti-SLAPP scheme, but providing that the statute "shall be construed broadly." (§ 425.16, subd. (a), as amended by Stats. 1997, ch. 271, § 1; cf. *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1114, fn. 3 [57 Cal.Rptr.2d 207] [an appellate court, whenever possible, should interpret the First Amendment and section 425.16 in a manner "favorable to the exercise of freedom of speech, not its curtailment".] FN7 The proviso is not surprising, since the "stated purpose of the [anti-SLAPP] statute ... includes protection of not only the constitutional right to 'petition for the redress of grievances,' but the broader constitutional right of freedom of speech." (*Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1176 [50 Cal.Rptr.2d 62].) Our construction of section 425.16 to protect not just statements or writings on public issues, but all statements or writings made before, or in connection with issues under consideration by, official bodies and proceedings, is consistent with that purpose, as well as with the statute's plain language.

FN7 Although the Court of Appeal did not have the benefit of the Legislature's pronouncement that section 425.16 must "be construed broadly" (§ 425.16, subd. (a)), plaintiffs do not contend that this court's decision depends on the wording of the section before the amendment, but, rather, citing *Roberston v. Rodriguez* (1995) 36 Cal.App.4th 347, 356 [42 Cal.Rptr.2d 464], acknowledge that section 425.16 is a procedural statute that properly is applied prospectively to an existing cause of action.

(5) Where, as here, legislative intent is expressed in unambiguous terms, we must treat the statutory language as conclusive; "no resort to extrinsic *1120 aids is necessary or proper." (*People v. Otto* (1992) 2 Cal.4th 1088, 1108 [9 Cal.Rptr.2d 596, 831 P.2d 1178], citing *Griffin v. Oceanic Contractors, Inc.* (1982) 458 U.S. 564, 570 [102 S.Ct. 3245, 3249-3250, 73 L.Ed.2d 973]; see also *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 804 [268 Cal.Rptr. 753, 789 P.2d 934]; *Board of Supervisors v. Lonergan*

(1980) 27 Cal.3d 855, 866 [167 Cal.Rptr. 820, 616 P.2d 802.] (1c) Accordingly, we need not refer to extrinsic indicators of legislative intent in concluding that section 425.16 applies to plaintiffs' causes of action based on ECHO's statements in connection with actual and potential civil litigation and a HUD investigation. Nevertheless, we observe that available legislative history buttresses the conclusion.

Legislative history materials respecting the origins of section 425.16 indicate the statute was intended broadly to protect, inter alia, direct petitioning of the government and petition-related statements and writings—that is, “any written or oral statement or writing made before a legislative, executive, or judicial proceeding” (§ 425.16, subd. (e)(1)) or “in connection with an issue under consideration or review” (*id.*, subd. (e)(2)) by such. The seminal academic research on which the original version of the statute was based used “an operational definition of SLAPP suits as implicating ‘behavior protected by the Petition Clause.’” (*Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1124, quoting Canan & Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches* (1988) 22 L. & Soc’y Rev. 385, 387.)

The Legislature’s 1997 amendment of the statute to mandate that it be broadly construed apparently was prompted by judicial decisions, including that of the Court of Appeal in this case, that had narrowly construed it to include an overall “public issue” limitation. (See Stats. 1997, ch. 271, § 1; *Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1128 [disagreeing “that the statute was meant to have broad application”]; *Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc.*, *supra*, 50 Cal.App.4th at p. 1638 [opining that “the statute must be given a narrow interpretation”].) The timing of the amendment alone supports the inference: That the Legislature added its broad construction proviso within a year following issuance of *Zhao*, *Linsco/Private Ledger, Inc.*, and the decision below plainly indicates these decisions were mistaken in their narrow view of the relevant legislative intent.

The Assembly Judiciary Committee’s analysis of the amendatory legislation confirms the amendment was intended specifically to overrule *Zhao v. Wong* and the Court of Appeal’s decision in this case. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No.

1296 (1997-1998 Reg. Sess.) for July 2, 1997, hg., pp. 3-4 [stating “proponents have provided ample evidence *1121 that the state’s courts of appeal are issuing conflicting opinions about the breadth of Section 425.16,” noting that *Averill v. Superior Court*, *supra*, 42 Cal.App.4th 1170, *Church of Scientology v. Wollersheim*, *supra*, 42 Cal.App.4th 628, and *Braun v. Chronicle*, *supra*, 52 Cal.App.4th 1036, “have construed the statute broadly,” while *Zhao v. Wong*, *supra*, 48 Cal.App.4th 1114, and the Court of Appeal in this case “have construed it very narrowly,” and stating Sen. Bill No. 1296 “would clarify the Legislature’s intent that the provisions of Section 425.16 be construed broadly”].)

As defendant points out, inferring a separate “public issue” requirement in subdivision (e)(1) and (2) of section 425.16 would result in the anomalous result that much direct petition activity—viz., petition activity connected to litigation that trial courts determine is not focused on an inherently “public” issue—while absolutely privileged under the litigation privilege codified by Civil Code section 47, subdivision (b) and under the federal and state Constitutions, would not be entitled to the procedural protections of the anti-SLAPP law, even though section 425.16 expressly states the Legislature’s intent thereby “broadly” to protect the right of petition (§ 425.16, subd. (a)).^{FN8}

FN8 Plaintiffs, apparently drawing upon the United States Supreme Court’s decision in *Connick v. Myers* (1983) 461 U.S. 138 [103 S.Ct. 1684, 75 L.Ed.2d 708], argue at length that whether a statement or writing is protected under section 425.16, subdivision (e)(1) and (2) must be determined by the content, form, and context of the statement or writing, as revealed by the whole record. *Connick* was concerned primarily with protection of speech by public employees and so is not particularly apposite. Moreover, the high court in *Connick* did “not deem it either appropriate or feasible to attempt to lay down a general standard against which all ... statements [by employees that are critical of their superiors] may be judged.” (*Connick*, *supra*, at p. 154 [103 S.Ct. at p. 1694].) Thus, *Connick*’s suggestion that “[w]hether an employee’s speech addresses a matter of public concern must be determined by the

content, form, and context of a given statement, as revealed by the whole record" (*id.* at pp. 147-148 [103 S.Ct. at p. 1690], fn. omitted), for the purpose of resolving the issue presented in that case, cannot be taken as authority (either binding or persuasive) for construing section 425.16, our state anti-SLAPP statute.

Thus, the timing of the Legislature's amendment, considered together with relevant legislative history and materials related to both the original statute and the amendment, amply demonstrates the Legislature's intent consistently has been to protect all direct petitioning of governmental bodies (including, as relevant here, courts and administrative agencies) and petition-related statements and writings.

4. Public Policy

We also believe that the broad construction expressly called for in subdivision (a) of section 425.16 is desirable from the standpoint of judicial *1122 efficiency and that our straining to construe the statute as the Court of Appeal did would serve Californians poorly. In effectively deeming statements and writings made before or connected with issues being considered by any official proceeding to have public significance per se, the Legislature afforded trial courts a reasonable, bright-line test applicable to a large class of potential section 425.16 motions. As discussed, the "Legislature when crafting the clause two definition clearly and unambiguously resorted to an easily understandable concept of what constitutes a public issue." (*Braun v. Chronicle*, *supra*, 52 Cal.App.4th at p. 1047.) For the sake of clarity, as well as under the compulsion of the legal principles earlier discussed, we shall not disturb the bright-line "official proceeding" test the Legislature has embedded in subdivision (e), clauses (1) and (2).

That the Court of Appeal in this case divided on the question whether defendant ECHO's statements about plaintiffs were in fact connected to a "public issue" illustrates that where a bright-line "official proceeding" test is not available, confusion and disagreement about what issues truly possess "public" significance inevitably will arise, thus delaying resolution of section 425.16 motions and wasting precious judicial resources.^{FN9} The plain language construction we adopt, on the other hand, retains for California courts,

advocates and disputants a relatively clear standard for resolving a large class of section 425.16 disputes quickly, at minimal expense to taxpayers and themselves.

FN9 In a related context, one commentator opines that use of a "public concern" test "amounts to little more than a message to judges and attorneys that no standards are necessary because they will, or should, know a public concern when they see it." (Post, *The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation and Hustler Magazine v. Falwell* (1990) 103 Harv. L.Rev. 603, 669, quoting Langvardt, *Public Concern Revisited: A New Role for an Old Doctrine in the Constitutional Law of Defamation* (1987) 21 Val. U. L.Rev. 241, 259.)

Contrary to the suggestion of the concurring and dissenting opinion, we do not believe our construction will unduly jeopardize meritorious lawsuits. The Legislature already has weighed an appropriate concern for the viability of meritorious claims against the concern "to encourage participation in matters of public significance," as is evident in its having declared that the statute is directed against "lawsuits brought primarily to chill the valid exercise of constitutional rights" and "abuse of the judicial process" (§ 425.16, subd. (a)), and in its having provided that lawsuits based on protected statements are nevertheless *not* subject to being stricken when "the court determines that the plaintiff has established a probability that he or she will prevail on the claim" (*id.*, subd. (b)(1)).

The Legislature, moreover, has provided, and California courts have recognized, substantive and procedural limitations that protect plaintiffs *1123 against overbroad application of the anti-SLAPP mechanism. As we recognized in *Rosenthal v. Great Western Fin. Securities Corp.*, *supra*, 14 Cal.4th at page 412, "This court and the Courts of Appeal, noting the potential deprivation of jury trial that might result were [section 425.16 and similar] statutes construed to require the plaintiff first to *prove* the specified claim to the trial court, have instead read the statutes as requiring the court to determine only if the plaintiff has stated and substantiated a legally sufficient claim. [Citations.]" (Italics in original; see also *College*

Hospital, Inc. v. Superior Court, *supra*, 8 Cal.4th at pp. 718-719 [section 425.16 and similar motions operate "like a demurrer or motion for summary judgment in 'reverse'"].)

We have no reason to suppose the Legislature failed to consider the need for reasonable limitations on the use of special motions to strike. As discussed, the Legislature apparently judged the bright-line "official proceeding" test set out in clauses (1) and (2) of section 425.16, subdivision (e) to be adequate, and thought it unnecessary to add an "issue of public interest" limitation for those two classes of potential cases. For potential cases where an analog to the "official proceeding" bright-line test does not readily appear-viz., "public forum" (§ 425.16, subd. (e)(3)) and "other conduct" (§ 425.16, subd. (e)(4)) cases-the Legislature *did* include an "issue of public interest" limitation. We find no grounds for reweighing these concerns in an effort to second-guess the Legislature's considered policy judgment. If we today mistake the Legislature's intention, the Legislature may easily amend the statute.

Conclusion

For the foregoing reasons, we conclude the Court of Appeal erred in construing section 425.16 as if, contrary to the statute's plain language, clauses (1) and (2) of subdivision (e) contained an "issue of public interest" limitation. Under section 425.16, a defendant moving to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by, a legally authorized official proceeding need *not* separately demonstrate that the statement concerned an issue of public significance.^{FN10} Accordingly, we have neither need nor occasion to consider whether ECHO's statements on which plaintiffs base their causes of action in fact concerned such issues. *1124

FN10 Insofar as they hold to the contrary, *Zhao v. Wong*, *supra*, 48 Cal.App.4th 1114, *Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc.*, *supra*, 50 Cal.App.4th 1633, *Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers*, *supra*, 49 Cal.App.4th 1591, and *Mission Oaks Ranch, Ltd. v. County of Santa Barbara*, *supra*, 65 Cal.App.4th 713, are disapproved.

Disposition

The judgment of the Court of Appeal is reversed and the cause remanded for further proceedings consistent with this opinion.

George, C. J., Mosk, J., Kennard, J., and Chin, J., concurred.

BAXTER, J.,

Concurring and Dissenting.-I concur in the majority's determination to reverse the judgment of the Court of Appeal below. Eden Council for Hope and Opportunity (ECHO), a nonprofit, publicly funded fair housing counseling organization, was plainly acting in furtherance of its right of petition or free speech *in connection with a public issue or issue of public interest* when it assisted tenants in pursuing legal claims against their landlords, and is thus entitled to seek anti-SLAPP (strategic lawsuit against public participation) protection from a landlord's retaliatory lawsuit aimed at punishing the nonprofit organization for assisting tenants in understanding and defending their legal rights.

I dissent from the majority's conclusion that a defendant moving specially under subdivision (e)(1) or (2) of Code of Civil Procedure section 425.16 (hereafter section 425.16 or the anti-SLAPP legislation) to strike a cause of action arising from a statement made before, or in connection with an issue under consideration by a legislative, executive, or judicial body, or any other official proceeding authorized by law, need never further demonstrate that such proceeding involved a public issue or issue of public interest. The anti-SLAPP legislation is a powerful tool to be broadly construed to promote "... the open expression of ideas, opinions and the disclosure of information." (*Beilenson v. Superior Court* (1996) 44 Cal.App.4th 944, 956 [52 Cal.Rptr.2d 357].) It is not, however, generally available to the parties to any civil action, but is instead expressly limited to those lawsuits "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances" 'in connection with a public issue.' (§ 425.16, subds. (a), (b).)" (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 819 [33 Cal.Rptr.2d 446] (*Wilcox*)). The majority's holding in this case belies that carefully delineated legislative purpose and will authorize use of the extraordinary

anti-SLAPP remedy in a great number of cases to which it was never intended to apply.

1

The Legislature has expressly set forth the intent and purpose behind the anti-SLAPP legislation in subdivision (a) of section 425.16: "The Legislature finds and declares that there has been a disturbing increase in lawsuits *1125 brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly."

Accordingly, under the anti-SLAPP statutory scheme, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike" (§ 425.16, subd. (b)(1).)

The legislative intent behind the anti-SLAPP legislation could not be clearer. The Legislature enacted the remedial legislation to curtail the "disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances" because such lawsuits discourage persons from "participation in matters of public significance" and thereby constitute an "abuse of the judicial process." (§ 425.16, subd. (a).)

The anti-SLAPP legislation was enacted in response to a growing number of meritless lawsuits, usually alleging tort liability, brought against persons for exercising their constitutional rights of petition and freedom of speech. (Sen. Bill No. 1264 (1991-1992 Reg. Sess.) enacted as Stats. 1992, ch. 726, § 2, pp. 3523-3524.) The term "SLAPP suit," the acronym for "strategic lawsuit against public participation," was coined by two University of Denver professors, George W. Pring and Penelope Canan, who authored the seminal influential studies on this phenomenon.

In *Hull v. Rossi* (1993) 13 Cal.App.4th 1763, 1769 [

17 Cal.Rptr.2d 457], the court defined a SLAPP suit, plain and simple, as "one brought to intimidate and for purely political purposes."

In *Wilcox, supra*, 27 Cal.App.4th 809, the court characterized the precise nature of SLAPP suits in the following terms: "The paradigm SLAPP is a suit filed by a large land developer against environmental activists or a neighborhood association intended to chill the defendants' continued political or legal opposition to the developers' plans. [Citations.] ... [¶] The favored causes of action in SLAPP suits are defamation, various business torts such as interference with prospective economic advantage, nuisance and intentional infliction of emotional distress. (Barker, *1126 *Common-Law and Statutory Solutions to the Problem of SLAPPs* (1993) 26 Loyola L.A. L.Rev. 395, 402-403.) Plaintiffs in these actions typically ask for damages which would be ruinous to the defendants. (See, e.g., *Protect Our Mountain v. District Court* [(Colo. 1984)] 677 P.2d [1361.] 1364 [developer sought \$10 million compensatory and \$30 million punitive damages]; Barker, *supra*, 26 Loyola L.A. L.Rev. at p. 403 [estimating damage claims in SLAPP's average \$9.1 million].)

"SLAPP suits are brought to obtain an economic advantage over the defendant, not to vindicate a legally cognizable right of the plaintiff. [Citations.] Indeed, one of the common characteristics of a SLAPP suit is its lack of merit. [Citation.] But lack of merit is not of concern to the plaintiff because the plaintiff does not expect to succeed in the lawsuit, only to tie up the defendant's resources for a sufficient length of time to accomplish plaintiff's underlying objective. [Citation.] As long as the defendant is forced to devote its time, energy and financial resources to combating the lawsuit its ability to combat the plaintiff in the political arena is substantially diminished. [Citations.] The SLAPP strategy also works even if the matter is already in litigation because the defendant/cross-complainant hopes to drive up the cost of litigation to the point where the plaintiff/cross-defendant will abandon its case or have less resources available to prosecute its action against the defendant/cross-complainant and to deter future litigation. [Citation.]" (*Wilcox, supra*, 27 Cal.App.4th at pp. 815-816, italics in original.)

To summarize, "while SLAPP suits 'masquerade as ordinary lawsuits' the conceptual features which re-

veal them as SLAPP's are that they are generally meritless suits brought by large private interests to deter common citizens from exercising their political or legal rights or to punish them for doing so. (Pring, *SLAPPs: Strategic Lawsuits Against Public Participation* (1989) 7 Pace Envtl. L.Rev. 3, 5-6, 9.) [Fn. omitted.] Because winning is not a SLAPP plaintiff's primary motivation, defendants' traditional safeguards against meritless actions, (suits for malicious prosecution and abuse of process, requests for sanctions) are inadequate to counter SLAPP's. Instead, the SLAPPER considers any damage or sanction award which the SLAPPEE might eventually recover as merely a cost of doing business. (Barker, *Common-Law and Statutory Solutions to the Problem of SLAPPs*, *supra*, 26 Loyola L.A. L.Rev. at pp. 406-407.) By the time a SLAPP victim can win a 'SLAPP-back' suit years later the SLAPP plaintiff will already have accomplished its underlying objective. Furthermore, retaliation against the SLAPPER may be counter-productive because it ties up the SLAPPEE's resources even longer than defending the SLAPP suit itself. (*Id.* at p. 432; Comment, *Strategic Lawsuits Against Public Participation: An Analysis of the Solutions* [(1991)] 27 Cal. W. L.Rev. [399,] 403.) (Wilcox, *supra*, 27 Cal.App.4th at pp. 816-817.) *1127

In response to the growing incidence of SLAPP suits, legislatures and courts nationwide have sought to fashion procedural remedies to allow for prompt exposure and dismissal of such abusive lawsuits. California's legislative response to the growing problem was the enactment, in 1992, of the anti-SLAPP legislation embodied in section 425.16. The opening paragraph of California's anti-SLAPP statutory scheme leaves no doubt that the specific intent and purpose behind the remedial legislation was to combat the pernicious problem of SLAPP suits described above, a category of litigation the Legislature deemed an "abuse of the judicial process." (425.16, subd. (a).)

^{FN1}

^{FN1} As the court in *Zhao v. Wong* (1996) 48 Cal.App.4th 1114 [55 Cal.Rptr.2d 909] explained: "The legislative history provides further clarity to the statement of legislative purpose. [Fn. omitted.] Without exception, the documents in the chaptered bill file all refer to 'the empirical research of the two University of Denver professors,' in effect

incorporating the scholarship of Canan and Pring into the legislative history. [Fn. omitted.] In addition, the report prepared by the Senate Committee on the Judiciary describes five examples of SLAPP suits [¶] The Legislature's concerns, as revealed by the legislative history, invariably involved activities violating the right of petition. The research of Canan and Pring is in fact based on an operational definition of SLAPP suits as implicating 'behavior protected by the Petition Clause.' [Fn. omitted.] Pring describes SLAPP suits as 'counter-attack[s] against petition-clause-protected activity. [Fn. omitted.] Three of the five examples of SLAPP suits cited by the Senate Committee on the Judiciary involved expressive activity protected by both the right of petition and the right of freedom of speech. The other two examples cited by the Senate Committee on the Judiciary involve retaliation against lawsuits, i.e., judicial petitions. [Citation.]" (48 Cal.App.4th at pp. 1123-1124.)

Given the purpose and intent behind the anti-SLAPP legislation, I conclude the Legislature could not possibly have intended that *any* litigation arising from *any* written or oral statement made during, or in connection with, *any* legislative, executive, judicial, or other "official" proceeding should automatically qualify as a SLAPP suit within the meaning of section 425.16.

None of the foregoing well-recognized attributes of SLAPP suits—i.e., meritless suits brought primarily to obtain an *economic* advantage over defendants by tying up their resources, driving up their costs of litigation, and ultimately deterring the defendants from exercising their political or legal rights, or punishing them for doing so—are acknowledged by the majority as having any significance in resolving the issue of statutory construction posed in this case. Instead, the majority suggest that "[a]ny matter pending before an official proceeding possesses some measure of 'public significance' owing solely to the public nature of the proceeding, and free discussion of such matters furthers effective exercise of the petition rights, section 425.16 was intended to protect. The Legislature's stated intent is best served, therefore, by a construction of section 425.16 that broadly *1128 encompasses participation in official proceedings, gen-

erally, whether or not such participation remains strictly focused on 'public' issues." (Maj. opn., *ante*, at p. 1118, italics added.)

I fail to see how the majority's broad and expansive construction of the statute will effectuate the carefully circumscribed purpose and intent behind the anti-SLAPP legislation explicitly set forth in section 425.16, subdivision (a).

Our task in this case is to construe the provisions of subdivision (e)(1) and (2) of section 425.16 in a manner that best comports with the carefully delineated purpose and intent behind the remedial legislation expressed in subdivision (a). Subdivision (e) provides in its entirety: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) *any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law*; (2) *any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law*; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Italics added.)

The majority conclude that under section 425.16, subdivision (e)(1) and (2) there is no separate requirement that the subject inquiry of the legislative, executive, judicial or other "official" proceeding be shown to involve a public issue or issue of public interest. I do not dispute that the language of all four clauses of subdivision (e), taken as a whole, is susceptible of such a literal interpretation. However, such a construction of subdivision (e)(1) and (2) literally reads right out of the statutory scheme the very heart and purpose of this remedial legislation—legislation expressly designed to discourage the filing of a specifically defined category of lawsuits deemed by the Legislature to constitute an "abuse of the judicial process" because they, by statutory definition expressly set forth in subdivision (a), are "brought primarily to chill the valid exercise of the constitu-

tional rights of freedom of speech and petition for the redress of grievances."

It would be an exercise in futility to attempt to quantify all possible examples of lawsuits based on actionable oral statements or writings which, under the majority's construction of section 425.16, subdivision (e)(1) and *1129 (2), will automatically qualify as retaliatory SLAPP suits as a matter of law. *Any* litigation arising from *any* word uttered in a court of law, in a legislative or executive proceeding, or in any "official" proceeding in California, will henceforth, under the majority's rationale, automatically constitute a retaliatory SLAPP suit. *Any* writing made in connection with *any* such proceeding (for example, every pleading or piece of paper prepared in connection with any legal proceeding transpiring in this state), if actionable on some legal basis and sued upon, will likewise, under the majority's rationale, constitute a retaliatory SLAPP suit as a matter of law. It is highly unlikely the Legislature intended or envisioned that such an enormity of legal actions would automatically qualify as retaliatory SLAPP suits under subdivision (e)(1) and (2) when it enacted legislation specifically designed to curb the abusive practice.

The majority's overly broad construction of section 425.16 subdivision (e)(1) and (2) will also likely have a significant impact on pretrial civil litigation in California. The special motion to strike a SLAPP suit is a drastic and extraordinary remedy. It not only allows an early summary dismissal of the plaintiff's complaint, it also cuts off all discovery upon its filing and authorizes an award of attorney fees to the prevailing defendant. (§ 425.16, subs. (b), (c), (g).) The majority's holding expands the definition of a SLAPP suit to include a potentially huge number of cases, thereby making the special motion to strike available in an untold number of legal actions that will bear no resemblance to the paradigm retaliatory SLAPP suit to which the remedial legislation was specifically addressed.

The decision of the Court of Appeal below (including both the majority and dissenting opinions), an earlier published opinion of the same division of that court (*Zhao v. Wong, supra*, 48 Cal.App.4th 1114), and the published decisions of several other Courts of Appeal (see, e.g., *Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc.* (1996) 50 Cal.App.4th

1633 [58 Cal.Rptr.2d 613]; *Ericsson GE Mobile Communications, Inc. v. C.S.I. Telecommunications Engineers* (1996) 49 Cal.App.4th 1591 [57 Cal.Rptr.2d 491], have all strived to interpret the overbroad and ambiguous language of section 425.16, subdivisions (b)(1) and (e)(1) and (2), in a manner that preserves the original intent, purpose, and mandate of the anti-SLAPP legislation. In my view those courts have reasonably interpreted subdivision (e)(1) and (2) as requiring that the subject-matter inquiry of the legislative, executive, judicial, or other "official" proceeding be shown to involve a public issue or issue of public interest so as to preserve and effectuate the overriding mandate of subdivision (a). The broad construction given subdivision (e)(1) and (2) by the majority, in contrast, effectively abrogates that carefully drafted statement of legislative purpose and intent. *1130

In interpreting subdivisions (b)(1) and (e)(1) and (2) of section 425.16 in a manner at odds with the Legislature's carefully circumscribed definition of SLAPP suits set forth in subdivision (a), the majority invoke a "longstanding rule of statutory construction—the 'last antecedent rule'—[which] provides that 'qualifying words and phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.'" (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 [183 Cal.Rptr. 520, 646 P.2d 191], quoting *Board of Port Comms. v. Williams* (1937) 9 Cal.2d 381, 389 [70 P.2d 918].) (Maj. opn., ante, at p. 1114.) Rules of statutory construction such as the "last antecedent rule" can oftentimes prove useful in gleaning legislative intent behind complex statutes, but they are not immutable. To my mind, "[m]ore in point here is the principle that such rules shall always "be subordinated to the primary rule that the intent shall prevail over the letter.'" (*Estate of Banerjee* (1978) 21 Cal.3d 527, 539 [147 Cal.Rptr. 157, 580 P.2d 657]; accord, *In re Joseph B.* (1983) 34 Cal.3d 952, 957 [196 Cal.Rptr. 348, 671 P.2d 852]; *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 195 [132 Cal.Rptr. 377, 553 P.2d 537].) (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 351 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

The heart of this anti-SLAPP legislation is embodied in subdivision (a) of section 425.16. This is a case in which a practical reading of the clearly stated pur-

pose and intent behind this remedial legislation found in subdivisions (a) and (b) should take precedence over a literal reading of the broadly worded subdivision (e)(1) and (2), since the latter, expansively interpreted, is in patent conflict with the former. Unlike the majority, I conclude the Legislature's primary intent is that this remedial statutory scheme be governed by the restricted scope of the statement of legislative purpose found in subdivision (a). As suggested by the court in *Zhao v. Wong*, supra, 48 Cal.App.4th at page 1129, "The very fact that the Legislature included a precisely drafted statement of legislative purpose in the statute manifests an intent that the application of the statute be governed by this statement of purpose."

The statutory construction invoked by the majority does, in a literal sense, appear to harmonize clauses (1) and (2) with clauses (3) and (4) of section 425.16, subdivision (e), since the latter two clauses expressly require a separate showing of involvement of a public issue or issue of public interest where the constitutionally protected written or oral statement was made "in a place open to the public" (subd. (e)(3)) or any other place (subd. (e)(4)). But that same analysis virtually nullifies the precisely drafted statement of legislative intent contained in subdivision (a) when the availability of the *1131 special motion is being assessed under subdivision (e)(1) or (2), a matter I believe should be of far greater concern to this court in our effort to reasonably construe and effectuate the Legislature's intent and purpose behind the legislation. "[A] court is to construe a statute "so as to effectuate the purpose of the law." (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 681 [183 Cal.Rptr. 520, 646 P.2d 191].) The purpose of the anti-SLAPP legislation is to make available a drastic pretrial remedy designed to discourage the filing of a specifically defined category of lawsuits deemed by the Legislature to constitute an "abuse of the judicial process" because they are "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) The legislation was not intended to make such an extraordinary remedy broadly available in every case involving an actionable statement uttered in a court of law, or in a legislative, executive, or other "official" proceeding.

All three justices comprising the panel that decided petitioner's appeal below, majority and dissenting

alike, agreed that the anti-SLAPP statute was not intended to immunize every statement made before or in connection with an official proceeding, but was instead intended to protect statements on a *public issue* made in an official proceeding and statements made in connection with a *public issue* under consideration or review in an official proceeding. (See also *Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc.*, *supra*, 50 Cal.App.4th at p. 1633; *Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1127.) I would commend what I believe are the key portions of those two separate opinions, which together conclude, contrary to the holding of the majority here, that subdivision (e)(1) and (2) of section 425.16 must be construed to require a separate showing that the legislative, executive, judicial or other "official" proceeding involved inquiry into a public issue or issue of public interest. The section that follows sets forth the relevant portions of the opinions of the Court of Appeal holding to that effect.

II

In the Court of Appeal below in this case (maj. opn. by Dossee, J.; Stein, J., conc.; dis. opn. by Strankman, P. J.), the majority made the following observations in concluding that a defendant seeking anti-SLAPP protection under section 425.16, subdivision (e)(1) or (2), must separately demonstrate that such statement was made in a legislative, executive, judicial or other "official" proceeding involving a public issue or issue of public interest:

"The remedy authorized by the anti-SLAPP statute is a special motion to strike any cause of action which arises from an 'act of [the defendant] in *1132 furtherance of the [defendant's] right of petition or free speech under the United States or California Constitution in connection with a public issue' (§ 425.16, subd. (b); see generally, *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809 [33 Cal.Rptr.2d 446].)

"The special motion to strike a SLAPP suit is a drastic and extraordinary remedy. It not only allows an early dismissal of the plaintiff's complaint; it also authorizes an award of attorney fees to the prevailing defendant. (§ 425.16, subds. (b), (c).)

.....
"Subdivision (e) of section 425.16 [as in effect and

controlling in the instant case] defines an ' "act in furtherance of a person's right of petition or free speech ... in connection with a public issue" ' to include '[1] any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; [2] any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or [3] any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.'

"In the present case, respondent ECHO contends that plaintiffs' lawsuit qualifies as a SLAPP suit because it is based upon petitioning activities which fall within phrases [1] and [2] of section 425.16, subdivision (e).^{FN2} ECHO asserts that statements made in assisting tenants Ford and Bond to complain to HUD and to file small claims court actions, including ECHO's efforts to resist plaintiffs' subpoenas, qualify as statements within an official proceeding under phrase [1]. Further, ECHO asserts that statements made in response to plaintiffs' efforts to challenge ECHO's public funding were connected to the issues under consideration by HUD or the courts and therefore fall within phrase [2].

FN2 ECHO does not rely upon phrase [3], which is expressly limited to the use of a public forum in connection with an issue of public interest.

"On two previous occasions, this division has been called upon to examine the scope of the anti-SLAPP statute, and on both occasions we gave the statute a narrow interpretation. First, in *Zhao v. Wong*, *supra*, 48 Cal.App.4th [at pp.] 1120-1121, 1129.... we concluded that in light of the legislative history and the declared legislative purpose of the anti-SLAPP statute, the statute applies only to lawsuits which are based upon activities closely tied *1133 to the right to petition and the freedom of speech.^{FN3} We emphasized that the challenged petition or speech must have been 'in connection with a public issue.' (*Zhao, supra*, 48 Cal.App.4th at p. 1127.) Specifically, we held in *Zhao* that within phrase [2] of section 425.16, subdivision (e), the 'issue under consideration or review by a legislative, executive, or judicial body' must be a public issue. (48 Cal.App.4th at p. 1127.) More re-

cently, in Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc., *supra*,] 50 Cal.App.4th [at pp.] 1638-1639, we followed the reasoning of *Zhao* to hold that within phrase [1] the statements made before an official proceeding must be on a public issue. In sum, we have concluded that the anti-SLAPP statute was not intended to immunize every statement made before or in connection with an official proceeding, but was instead intended to protect statements on a *public issue* made in an official proceeding and statements made in connection with a *public issue* under consideration or review in an official proceeding. (Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc., *supra*, 50 Cal.App.4th at p. 1639; *Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1127.)

FN3 Subdivision (a) of section 425.16 provides: 'The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process.'

"Recently, Division Four of this district has disagreed with our interpretation of the anti-SLAPP statute. (Braun v. Chronicle Publishing Co. (1997) 52 Cal.App.4th 1036, 1045-1048 [61 Cal.Rptr.2d 58]; see also Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 650 [49 Cal.Rptr.2d 620].) The *Braun* court reasoned that the Legislature equated a public issue with the authorized official proceeding to which it connects. Hence, it is the setting itself-an official proceeding-that makes the issue a public issue: 'all that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding.' (Braun, *supra*, at p. 1047.)

"We cannot accept this construction of the anti-SLAPP statute. Certainly not every issue before the courts and other official bodies is a public issue, and we find it doubtful that the Legislature thought otherwise. (Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc., *supra*, 50 Cal.App.4th at p.

1639; see *Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1131.) Furthermore, such a broad reading of the anti-SLAPP statute would have legal consequences beyond the statute's declared purpose, as the anti-SLAPP statute would supplant the statutory privilege for statements made in official proceedings (Civ. Code, § 47, subd. (b)). (Linsco/Private Ledger, Inc. v. *1134 Investors Arbitration Services, Inc., *supra*, 50 Cal.App.4th at p. 1639; see *Zhao v. Wong*, *supra*, 48 Cal.App.4th at pp. 1129-1130.) We remain committed to our earlier position that a lawsuit qualifies as a SLAPP suit only if it challenges a statement on a *public issue* made in an official proceeding or a statement made in connection with a *public issue* under review in an official proceeding. (Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc., *supra*, 50 Cal.App.4th at p. 1639; *Zhao v. Wong*, *supra*, 48 Cal.App.4th at p. 1127.)"

Although Presiding Justice Strankman dissented below, he disagreed only with the majority's conclusion that the proceedings at which statements were made that were attributed to ECHO's employees and allegedly slandered plaintiff Briggs did not involve a public issue. Presiding Justice Strankman joined in the majority's threshold conclusion that a public issue showing is separately required under subdivision (e)(1) or (2) of section 425.16 in order for the special anti-SLAPP remedy to apply. The portion of his dissenting opinion relevant here read as follows:

"I agree with the majority that a defendant qualifies for anti-SLAPP protection only if the challenged suit arose from the defendant's petitioning or speech 'in connection with a public issue.' ... [¶] ... [¶] The Legislature expressly declared that its intent in enacting the anti-SLAPP statute was 'to encourage continued participation in matters of public significance' and thus granted a person protection from lawsuits arising from 'any act of that person in furtherance of the person's right of petition or free speech ... in connection with a public issue.' (Code Civ. Proc., § 425.16, subs. (a), (b).) If the statute said no more, there would be no question that a defendant lodging an anti-SLAPP motion must make a prima facie showing that plaintiff's suit arises from an act in furtherance of defendant's right of petition or free speech *in connection with a public issue*. But the statute further provides that an 'act in furtherance of a person's right of petition or free speech ... in connection with a public issue' includes '[1] any ... statement ... made

before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; [2] any ... statement ... made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or [3] any ... statement ... made in a place open to the public or a public forum in connection with an issue of public interest.' (Code Civ. Proc., § 425.16, subd. (e).)

"The public issue, or public interest, element is expressly included in only the third definitional category of the anti-SLAPP statute, which has led some courts to conclude that the statute protects any statement made before or in *1135 connection with an official proceeding even if the statement does not concern a public issue. (E.g., Church of Scientology v. Wollersheim (1996) 42 Cal.App.4th 628, 650 [49 Cal.Rptr.2d 620].) We have rejected this interpretation of the anti-SLAPP statute as contrary to the express declaration of legislative intent and general statutory provision protecting a person's exercise of constitutional rights of petition and free speech in connection with a public issue. (Code Civ. Proc., § 425.16, subds. (a), (b); Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc. [, *supra*,] 50 Cal.App.4th 1633, 1639 ...; Zhao v. Wong [, *supra*,] 48 Cal.App.4th 1114, 1127....) I agree with the majority that 'the anti-SLAPP statute was not intended to immunize every statement made before or in connection with an official proceeding, but was instead intended to protect statements on a public issue made in an official proceeding and statements made in connection with a public issue under consideration or review in an official proceeding. (Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc., *supra*, 50 Cal.App.4th at p. 1639; Zhao v. Wong, *supra*, 48 Cal.App.4th at p. 1127.)' [Citation.]"

III

The majority emphasize that in 1997 the Legislature amended section 425.16, to provide that the statute "shall be broadly construed." (§ 425.16, subd. (a), as amended by Stats. 1997, ch. 271, § 1.) The majority concede the 1997 amendment "effect[ed] no substantive changes to the anti-SLAPP scheme" (Maj. opn., *ante*, at p. 1119.) I remain unconvinced the legislative intent behind the statute, as originally enacted or as amended in 1997, was to expand the categories of litigation qualifying as SLAPP suits in as broad

and open-ended a manner as does the majority's rationale and holding in this case.

The 1997 amendment added a single sentence (italized below) to the end of subdivision (a) of section 425.16, which currently reads: "The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. *To this end, this section shall be construed broadly.*" (Italics added.)

Obviously, the opening phrase of the single sentence added by the 1997 amendment—"To this end ..."—reflects the Legislature's intent that the remedial provisions of the anti-SLAPP legislation be "broadly construed" *1136 within the context of the restricted scope of the statement of legislative purpose contained in subdivision (a). (See also Zhao v. Wong, *supra*, 48 Cal.App.4th at p. 1129.) If the Legislature had instead desired to overrule those decisions of the Courts of Appeal that have construed section 425.16, subdivision (e)(1) and (2), as requiring demonstration of involvement of a public issue, it could have easily done so in precise and explicit terms. To my mind, the majority's analysis and holding serve neither the letter nor spirit of the 1997 amendment. Not only does the rule set down in this case fail to "construe[] broadly" the statute's remedial provisions consistent with the ends described in the carefully drawn statement of legislative purpose found in section 425.16, subdivision (a), it literally reads that statement of legislative purpose right out of the statutory scheme by recognizing sweeping new categories of litigation, bearing no resemblance to the abusive litigation practices described in that subdivision, that will henceforth automatically qualify as SLAPP suits under subdivision (e)(1) and (2).

Finally, the majority's expansive reading of section 425.16, subdivision (e)(1) and (2), may have legal consequences well beyond the statute's declared purpose, as the anti-SLAPP legislation thusly interpreted stands to supplant Civil Code section 47, subdivision (b)'s absolute litigation privilege for communications made in any legislative, judicial, or other official pro-

ceeding authorized by law. (See *Linsco/Private Ledger, Inc. v. Investors Arbitration Services, Inc.*, *supra*, 50 Cal.App.4th at p. 1639; *Zhao v. Wong*, *supra*, 48 Cal.App.4th at pp. 1129-1130.) From a practical standpoint, why, under the majority's rationale, would a defendant move, at his own expense, to dismiss an unmeritorious lawsuit based on Civil Code section 47, subdivision (b)'s otherwise applicable litigation privilege for statements made in official proceedings, when, under the majority's expansive interpretation of the anti-SLAPP legislation, he could instead move to specially strike the suit as a retaliatory SLAPP suit and thereby immediately cut off discovery in the litigation and recover his attorney fees if dismissal is ultimately ordered?

The majority suggest it would be "anomalous" for "direct petition activity" that is "not focused on an inherently 'public' issue" to be absolutely privileged under the litigation privilege of Civil Code section 47, subdivision (b), and yet not be otherwise "entitled to the procedural protections of the anti-SLAPP law." (Maj. opn., *ante*, at p. 1121.) Under the majority's rationale, the scope of the anti-SLAPP legislation is seemingly coextensive with, if not broader than, the litigation privilege embodied in Civil Code section 47, subdivision (b). Could that have been the intent of the Legislature in enacting remedial legislation specifically designed and intended to target the abusive practice of SLAPP suits?

The majority suggest in conclusion that, "If we today mistake the Legislature's intention, the Legislature may easily amend the statute." (Maj. opn., *1137 *ante*, at p. 1123.) Of course the converse is true as well—were we to construe section 425.16, subdivision (e)(1) and (2), as requiring demonstration of the involvement of a public issue in the legislative, executive, judicial or "official" proceedings covered under those clauses of subdivision (e), then if the Legislature disagreed with that construction, it could amend those clauses to more clearly and explicitly convey that no such separate showing is required. I would rather this court risk reversal by the Legislature in construing the provisions of subdivision (e)(1) and (2) consistently with the concisely drafted statement of statutory purpose found in subdivision (a), than to interpret those two clauses so broadly as to virtually nullify the very purpose and spirit of the anti-SLAPP legislation by holding that every lawsuit based on any actionable word uttered or written in connection with

any legislative, executive, judicial, or other "official" proceeding in the state of California will henceforth, as a matter of law, be deemed a retaliatory SLAPP suit.

I would hold, consistent with the unanimous determination of the Court of Appeal below, that the Legislature intended involvement of a public issue or issue of public interest be demonstrated under subdivision (e)(1) and (2) of section 425.16.

Brown, J., concurred. *1138
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Cal. 1999.
Briggs v. Eden Council for Hope & Opportunity
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99 Cal. Daily Op. Serv. 554, 99 Daily Journal D.A.R.
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Supreme Court of California
LESLIE FLANNERY, Plaintiff, Cross-defendant and
Appellant,

v.

JOHN F. PRENTICE et al., Defendants and Cross-
complainants and Respondents.

No. S080150.

Aug. 13, 2001.

SUMMARY

The trial court entered summary judgment for attorneys who had represented plaintiff in a prior successful action under the Fair Employment and Housing Act (FEHA), finding that the attorneys, not plaintiff, were entitled to the earlier award of attorney fees under Gov. Code, § 12965, providing that in private actions the court "may award to the prevailing party reasonable attorney's fees." (Superior Court of the City and County of San Francisco, No. 988836, David A. Garcia, Judge.) The Court of Appeal, First Dist., Div. Five, No. A083668, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. Although the court disagreed with the Court of Appeal's legal analysis regarding ownership of unassigned Gov. Code, § 12965, attorney fees, it held that summary judgment was not appropriate on the record, which contained conflicting evidence as to whether a controlling fee agreement existed or what the terms of any such agreement might be. The court held that the fees awarded, excluding fees already paid, belonged, absent an enforceable agreement to the contrary, to the attorneys who labored to earn them. The basic, underlying purpose of FEHA is to safeguard the right of Californians to seek, obtain, and hold employment without experiencing discrimination, and without some mechanism authorizing the award of attorney fees, private actions to enforce such an important public policy would, as a practical matter, frequently be infeasible. Judicial precedent has established that under the private attorney general fee doctrine, awards are properly made to plaintiffs' attorneys rather than to plaintiffs themselves. Neither in enacting nor in amending FEHA

generally or Gov. Code, § 12965, specifically, has the Legislature repudiated such precedents. This construction of § 12965 advances important public policies, including encouraging representation of legitimate FEHA claimants and discouraging nonmeritorious suits, avoiding unjust enrichment, ensuring fairness, addressing ethical concerns, and encouraging written attorney fee agreements. (Opinion by Werdegar, J., with George, C. J., Baxter, Chin, and Brown, JJ., concurring. Dissenting opinion by Kennard, J. (see p. 591).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c) Costs § 20--Attorney Fees--Statutory Provisions--Fair Employment and Housing Act--Award to Party or Attorneys.

Under Gov. Code, § 12965, part of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), providing that in private actions the court "may award to the prevailing party reasonable attorney's fees," the fees awarded, excluding fees already paid, belong, absent an enforceable agreement to the contrary, to the attorneys who labored to earn them. The basic, underlying purpose of FEHA is to safeguard the right of Californians to seek, obtain, and hold employment without experiencing discrimination, and, without some mechanism authorizing the award of attorney fees, private actions to enforce such an important public policy would, as a practical matter, frequently be infeasible. Judicial precedent has established that under the private attorney general fee doctrine, awards are properly made to plaintiffs' attorneys rather than to plaintiffs themselves. Neither in enacting nor in amending FEHA generally or Gov. Code, § 12965, specifically, has the Legislature repudiated such precedents. This construction of § 12965 advances important public policies, including encouraging representation of legitimate FEHA claimants and discouraging nonmeritorious suits, avoiding unjust enrichment, ensuring fairness, addressing ethical concerns, and encouraging written attorney fee agreements.

[See 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 201; West's Key Number Digest, Civil Rights k. 455.]

(2) Statutes § 29--Construction--Language--Legislative Intent.

In construing a statute, the court begins its inquiry by examining the statute's words, giving them a plain and commonsense meaning. In doing so, however, the court does not consider the statutory language in isolation, but rather looks to the entire substance of the statute in order to determine the scope and purpose of the provision, and avoids any construction that would produce absurd consequences.

(3) Parties § 1--Definition--Party--Litigant or Attorney: Words, Phrases, and Maxims--Party.

The word "party" is reasonably susceptible of more than one interpretation. In the countless procedural statutes in which the term "party" is used, it is commonly understood to refer to either the actual litigant or the litigant's attorney of record. Since that is the ordinary import of the term, that is the meaning courts must ascribe to it when it is used in a statute, unless the Legislature has clearly indicated a contrary intent.

(4) Costs § 20--Attorney Fees--Statutory Provisions--Fair Employment and Housing Act--Award to Party or Attorneys.

Gov. Code, § 12965, part of the California Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), providing that in private actions the court "may award to the prevailing party reasonable attorney's fees," expressly authorizes the award only of attorney fees. An award that is not designed to compensate the litigant for payments made to, owed to, or forgiven by an attorney is, in one sense, not an attorney fee at all. Read plainly in accordance with this language, therefore, § 12965 does not authorize awards, such as to the litigant, that the litigant is not (absent agreement, at any rate) obligated to pay as attorney compensation. Indeed, the usual and ordinary meaning of the words "reasonable attorney's fees" is the consideration that a litigant pays or becomes liable to pay in exchange for legal representation.

(5) Costs § 20--Attorney Fees--Statutory Provisions--Fair Employment and Housing Act--Award to Party or Attorneys--Ambiguity.

Gov. Code, § 12965, part of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), providing that in private actions the court "may award to the prevailing party reasonable attorney's fees," is sufficiently ambiguous to warrant

a court's consideration of evidence of the Legislature's intent beyond the words of the statute. Accordingly, in order to ascertain the most reasonable interpretation of § 12965, the court may examine extrinsic information, including the statute's legislative history and underlying purposes.

(6) Costs § 20--Attorney Fees--Statutory Provisions--Fair Employment and Housing Act--Award to Party or Attorneys--Federal Law.

In construing Gov. Code, § 12965, part of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), providing that in private actions the court "may award to the prevailing party reasonable attorney's fees," the court is not bound by lower federal appellate decisions. And while the United States Supreme Court's pronouncements respecting fees awarded under federal statutes may be instructive, they do not control the construction of FEHA's attorney fee provision.

(7) Costs § 13--Attorney Fees--Absence of Agreement.

In the absence of an agreement upon the subject, the client must be deemed to have promised to pay the attorney the reasonable value of the services performed on the client's behalf and with the client's consent and knowledge.

(8) Appellate Review § 10--Decisions Appealable--Consent of Appellant.

A judgment rendered with consent of the appellant is not appealable.

[See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 189.]

(9) Appellate Review § 10--Decisions Appealable--Jurisdiction--Consent of Appellant.

There is substantial authority for the proposition that a party who has invoked or consented to the exercise of jurisdiction beyond the court's authority may be precluded from challenging it afterward, even on a direct attack by appeal.

[See 2 Witkin, Cal. Procedure (4th ed. 1997) Jurisdiction, § 324.]

COUNSEL

Nagley & Meredith, Nagley, Meredith & Miller and Lawrence N. Hensley for Plaintiff, Cross-defendant and Appellant.

Joe Ross McCray; Lewis, D'Amato, Brisbois & Bis-

26 Cal.4th 572, 28 P.3d 860, 110 Cal.Rptr.2d 809, 86 Fair Empl.Prac.Cas. (BNA) 838, 00 Cal. Daily Op. Serv. 6991, 2001 Daily Journal D.A.R. 8530
(Cite as: 26 Cal.4th 572)

gaard, Frederick Bruce Legemes; Law Offices of Richard M. Pearl and Richard M. Pearl for Defendants, Cross-complainants and Respondents.

WERDEGAR, J.

The question presented is to whom, as between attorney and client, attorney fees awarded under Government Code section 12965 (hereafter section 12965),^{FN1} part of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), belong when no contractual agreement provides for their disposition. We conclude that, absent proof on remand of an enforceable agreement to the contrary, the attorney fees awarded in this case belong to the attorneys who labored to earn them.

FN1 Section 12965 addresses elimination of unlawful discriminatory practices through conference, conciliation, persuasion, and accusation, as well as right-to-sue notices and civil actions under FEHA. As relevant here, section 12965 provides: "In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity." (§ 12965, subd. (b).)

Background

The Court of Appeal adequately stated the relevant facts. Plaintiff Leslie Flannery sued her former employer, the California Highway Patrol (CHP), *576 alleging violations of FEHA. The jury awarded plaintiff \$250,000 in damages. The trial court awarded \$1,088,231 in attorney fees, expressly basing the award both on Government Code section 12965, subdivision (b) and on Code of Civil Procedure section 1021.5. (Flannery v. California Highway Patrol (1998) 61 Cal.App.4th 629, 632-633 [71 Cal.Rptr.2d 632](Flannery I).

On appeal by the CHP, the Court of Appeal concluded that the fee award was improper insofar as it was based on Code of Civil Procedure section 1021.5 and that, insofar as it was based on FEHA, the trial court had not applied the correct standards in determining the amount. The Court of Appeal remanded

for reconsideration of the amount of the fee award. (Flannery I, supra, 61 Cal.App.4th at p. 648.) On remand, the trial court applied a reduced multiplier and awarded \$891,042 in fees and expenses for the underlying case and \$80,642 in fees and expenses for fee work. The CHP also appealed that award, and the Court of Appeal unanimously affirmed it.^{FN2}

FN2 We grant defendants' request that we take judicial notice of the appellate record in Flannery v. State of California (Jan. 21, 2000, A086398) (nonpub. opn.), which includes the record of Flannery v. California Highway Patrol (Super. Ct. Alameda County, 1999, No. 726290-8).

Meanwhile, Flannery brought this action against her former counsel, John F. Prentice, John H. Scott, and the law firms of Prentice & Scott, and Bley & Bley, John Prentice's former firm (collectively, defendants). Her amended complaint included causes of action for declaratory relief, breach of fiduciary duties, legal malpractice, and constructive fraud. She sought damages and a judicial declaration that she was entitled to the entire statutory fee awarded in the earlier action. Flannery alleged that she and defendants had orally entered into a contingent fee agreement entitling defendants only to "40% of the net settlement or net award of the jury." She also contended that defendants' failure to advise her of the terms and conditions of their representation and to obtain her full and informed consent to a fee agreement constituted a breach of their fiduciary duties, legal malpractice, and constructive fraud. The amended complaint also included causes of action for breach of fiduciary duty and legal malpractice based on allegations that defendants had in the FEHA litigation failed to present competent evidence of future wage loss.

Prentice & Scott cross-complained against Flannery, seeking a declaration that they were entitled to the statutory fee award and, in the alternative, recovery in quantum meruit or damages for breach of contract. Prentice & Scott contended they had a contingency agreement with Flannery providing they would receive either "forty percent of the amount recovered from a jury *577 verdict or the entirety of statutory fees that might be awarded" Additionally, Bley & Bley cross-complained against Prentice & Scott for equitable indemnity and contractual damages.

Defendants moved for summary judgment on Flannery's complaint. Prentice & Scott also moved for summary adjudication on their declaratory relief cause of action. The trial court granted summary judgment for defendants, concluding as matters of law that Flannery was not entitled to the attorney fee award in the FEHA litigation and that there had been no malpractice. The trial court also granted Prentice & Scott's motion for summary adjudication, declaring that, as a matter of law, they were entitled to the proceeds of the attorney fee award in the FEHA litigation. The remaining claims in the cross-complaints were dismissed voluntarily.

The Court of Appeal reversed, reasoning, in the published portion of its opinion, that attorney fees awarded under section 12965, subdivision (b) belong to the litigant formally awarded them (who may or may not agree to give these fees to counsel as compensation), and that whether any compensation agreement exists in this case presents a triable question of fact.

Discussion

A. Who owns funds awarded pursuant to section 12965 when no contract provides for their disposition?

As noted, in private actions brought under section 12965, "the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees" (§ 12965, subd. (b).) The propriety of the court's having awarded fees in this case is not at issue; our question pertains to the ownership of the statutory award. In such circumstances, our fundamental task is to "ascertain the Legislature's intent in order to effectuate the law's purpose." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572 [88 Cal.Rptr.2d 19, 981 P.2d 944].) As will appear, while the legislative purposes underlying FEHA and its attorney fee provision are relatively clear, which formulation (among various combinations of rules and exceptions proffered by the parties) will most reliably effectuate these purposes is a closer question. (1a) We conclude that any proceeds of a section 12965 fee award exceeding fees the client already has paid belong, absent a contractual agreement validly disposing of them, to the attorneys for whose work they are awarded.

1. Statutory language

(2) We begin our inquiry by examining section 12965's words, giving them a plain and common-sense meaning. (**578 Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476 [66 Cal.Rptr.2d 319, 940 P.2d 906].) In doing so, however, we do not consider the statutory language in isolation. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].) Rather, we look to "the entire substance of the statute ... in order to determine the scope and purpose of the provision" (*West Pico Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal.3d 594, 608 [86 Cal.Rptr. 793, 469 P.2d 665].) We avoid any construction that would produce absurd consequences. (*People v. Mendoza* (2000) 23 Cal.4th 896, 908 [98 Cal.Rptr.2d 431, 4 P.3d 265].)

While it is true that section 12965 authorizes fee awards "to the prevailing party" (§ 12965, subd. (b), italics added), that language does not unambiguously favor plaintiff. (3) "The word 'part[y]' is reasonably susceptible to more than one interpretation." (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 582 [41 Cal.Rptr.2d 878, 896 P.2d 171].) "In the countless procedural statutes in which the term 'party' is used, it is commonly understood to refer to either the actual litigant or the litigant's attorney of record. [Citations.] Since that is the ordinary import of the term, that is the meaning we must ascribe to it when used in [a statute], unless the Legislature has clearly indicated a contrary intent" (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1164 [69 Cal.Rptr.2d 692], citing *Levy v. Superior Court*, *supra*, at p. 583; see also *Trope v. Katz* (1995) 11 Cal.4th 274, 282 [45 Cal.Rptr.2d 241, 902 P.2d 259].) ^{FN3}

FN3 That this court, as the dissent observes, "has invalidated statutory awards of attorney fees when ordered paid directly to a party's lawyer" (dis. opn. of Kennard, J., *post*, at p. 594) does not undermine our conclusion, as the cases cited by the dissent all rely, ultimately, on our holding in *Sharon v. Sharon* (1888) 75 Cal. 1, 38 [16 P. 345], that the Legislature, in authorizing divorce courts to "require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action" (former Civ. Code, § 137) plainly intended that the money be paid

to the wife, rather than directly to her attorneys. No such plain intent obtains in this case.

(1b) Even if we were to construe "party" in section 12965 formally to designate a litigant only, that would not preclude our also declaring that beneficial ownership of section 12965 fees remains, absent contract, with the attorneys they are designed to compensate. (Cf. U.S. v. Jerry M. Lewis Truck Parts & Equipment (9th Cir. 1996) 89 F.3d 574, 577, cert. den. (1997) 519 U.S. 1109 [117 S.Ct. 945, 136 L.Ed.2d 834] (*Virani*) [concluding, in an action under the federal False Claims Act, that a client's "right" to reasonable attorney fees "is really a power to obtain fees for his attorney; the attorneys' right does not come into being until the client exercises that power; the defendant's liability will only arise if that power is exercised"].)

(4) Section 12965 expressly authorizes the award only of attorney fees. An award that does not compensate the litigant for payments made to, owed *579 to, or forgiven^{FN4} by an attorney or attorneys is, in one sense, not an "attorney's fee" at all. Read plainly in accordance with this language, therefore, section 12965 does not authorize awards that the litigant is not (absent agreement, at any rate) obligated to pay as attorney compensation. Indeed, as we previously have recognized, "the usual and ordinary meaning of the words 'reasonable attorney's fees' is the consideration that a litigant pays or becomes liable to pay in exchange for legal representation." (Trope v. Katz, *supra*, 11 Cal.4th at p. 282.)^{FN5}

FN4 As, for example, in the event an attorney for charitable, ethical, or other professional reasons provides services pro bono or at a reduced rate. (See fn. 5, *post*.)

FN5 Of course, the above general definition of attorney fees "was not intended to imply that fees can be recovered only when, and to the extent that, a litigant incurs fees on a fee-for-service basis, a question not raised therein." (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1097, fn. 5 [95 Cal.Rptr.2d 198, 997 P.2d 511] [entity represented by in-house counsel may recover attorney fees under Civ. Code, § 1717].)

(5) Despite the foregoing, section 12965 is nevertheless, in our view, "sufficiently ambiguous to warrant our consideration of evidence of the Legislature's intent beyond the words of the statute." (Snukal v. Flightways Manufacturing, Inc. (2000) 23 Cal.4th 754, 779 [98 Cal.Rptr.2d 1, 3 P.3d 286].) Accordingly, in order to ascertain the most reasonable interpretation of section 12965, we may examine extrinsic information, including the statute's legislative history and underlying purposes. (Hughes v. Board of Architectural Examiners (1998) 17 Cal.4th 763, 776 [72 Cal.Rptr.2d 624, 952 P.2d 641].)

2. Legislative intent

Plaintiff takes the position that, because she is the "prevailing party" and defendants are unable to prove the existence of a compensation agreement, she is entitled to retain not only the jury's \$250,000 damages judgment—which, minus some costs, already has been disbursed to her—but, in addition, the full amount of the court's attorney fee award. We do not believe our Legislature could have intended such an outcome.

Plaintiff urges us to construe section 12965 in the light of federal cases construing certain federal statutory attorney fee provisions. Generally speaking, the cases cited have recognized the right of the client, rather than the attorney, to seek, recover, or waive statutory fees. (6) We are of course not bound by lower federal appellate decisions. (People v. Zapien (1993) 4 Cal.4th 929, 989 [17 Cal.Rptr.2d 122, 846 P.2d 704]; see, e.g., Commodore Home Systems, Inc. v. Superior Court (1982) 32 Cal.3d 211, 217-218 [185 Cal.Rptr. 270, 649 P.2d 912] [declining to follow federal decisions barring punitive damages in federal discrimination actions].) And while the high *580 court's pronouncements respecting fees awarded under federal statutes may be instructive, they do not control our construction of FEHA's attorney fee provision. (Cf. Romano v. Rockwell Internat., Inc. (1996) 14 Cal.4th 479, 495-498 [59 Cal.Rptr.2d 20, 926 P.2d 1114] [declining in FEHA matter to follow United States Supreme Court decisions concerning federal statute of limitations for wrongful termination actions].) As has been recognized (see, e.g., Flannery I, supra, 61 Cal.App.4th at p. 643), the federal decisions urged by plaintiff are to some extent based on federal legislative history, which is without California parallel. (See, e.g., Evans v. Jeff D. (1986) 475

U.S. 717, 731 [106 S.Ct. 1531, 1539-1540, 89 L.Ed.2d 747](Evans) [discussing 42 U.S.C. § 1988 "and its legislative history"].)

Plaintiff relies most heavily on two United States Supreme Court cases involving attorney fees awarded under 42 United States Code section 1988.^{FN6} In Evans, supra, 475 U.S. 717, a class action, the issue of who "owns" an attorney fee award arose because the clients sought to waive that remedy in order to effect settlement. The high court held the district court in that case had not abused its discretion by approving a settlement that included a fee waiver (id. at pp. 729-730 [106 S.Ct. at pp. 1538-1539]), noting that a "straightforward reading of § 1988" (id. at p. 730, fn. 19 [106 S.Ct. at p. 1539]) indicates Congress bestowed fee award eligibility "on the 'prevailing party'" (id. at p. 730 [106 S.Ct. at p. 1538]). Congress in section 1988 "did not prevent the party from waiving this eligibility anymore than it legislated against assignment of this right to an attorney" (Evans, supra, at pp. 730-731 [106 S.Ct. at p. 1539]), the court reasoned. More recently, in Venegas v. Mitchell (1990) 495 U.S. 82 [110 S.Ct. 1679, 109 L.Ed.2d 74](Venegas), the high court held that 42 United States Code section 1988 did not invalidate a contingent attorney fee contract requiring a prevailing civil rights plaintiff to pay his attorney more than the statutory fees awarded by the court. (Venegas, supra, at pp. 83-84, 90 [110 S.Ct. at pp. 1680-1681, 1684].) In so holding, the court reiterated that "it is the party, rather than the lawyer, who is ... eligible" (id. at p. 87 [110 S.Ct. at p. 1682]) for a section 1988 award.

^{FN6} Title 42 United States Code section 1988 provides, inter alia, that, in certain federal civil rights actions, "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." (42 U.S.C. § 1988(b).)

To the extent the high court's construction of 42 United States Code section 1988 properly may inform our construction of Government Code section 12965, of course, Evans and Venegas would support the view that it was plaintiff (as opposed to defendants) who was "eligible" to seek the fee award in the FEHA litigation below. "Neither case, however, expressly considered the narrow question we face:

whether a party may receive or keep the proceeds of a fee award when she has neither agreed to pay her *581 attorneys nor obtained from them a waiver of payment." The United States Supreme Court has not spoken to that precise question, and " 'an opinion is not authority for a proposition not therein considered.' " (Aguilar v. Avis Rent A Car System, Inc. (1999) 21 Cal.4th 121, 143 [87 Cal.Rptr.2d 132, 980 P.2d 846].)^{FN7}

^{FN7} The holding of Evans, moreover, expressly was limited to "the facts of record in this case" (Evans, supra, 475 U.S. at p. 729 [106 S.Ct. at p. 1538]) bearing on whether the public agency defendants sought fee waivers as a matter of policy or sought generally "to deter attorneys from representing plaintiffs in civil rights suits" (id. at p. 740 [106 S.Ct. at p. 1544]), a question not presented in this case.

In any event, the high court's analysis of 42 United States Code section 1988 fee eligibility is not incompatible with the trial court's ruling that defendants Prentice & Scott are entitled to the proceeds of the fee award that plaintiff concedes she authorized defendants to seek. As the Ninth Circuit Court of Appeals explained in Virani, supra, 89 F.3d 574, Evans stands for the proposition that, under 42 United States Code section 1988, only a plaintiff has the power to demand that a defendant pay the fees of the plaintiff's attorney, and "the defendant's liability will only arise if that power is exercised" (Virani, supra, at p. 577). But once the client's power to demand attorney fees is exercised, the attorney's right to receive them "come[s] into being." (Ibid.) Accordingly, and as pertinent for our purposes, "[t]he plaintiff has no power to confer the fee upon himself." (Ibid.; but see Gilbrook v. City of Westminster (9th Cir. 1999) 177 F.3d 839, 874-875 [holding 42 U.S.C. § 1988 fee award payable directly to party rather than counsel].)

Outside of the 42 United States Code section 1988 fee eligibility context, federal fee-shifting jurisprudence is not uniform; federal courts vary their handling of attorney fee awards depending on the context, sometimes awarding fees to litigants and sometimes directly to counsel.^{FN8} Despite this lack of uniformity, however, "[t]he propriety of a direct award to the plaintiffs' attorney, rather than to plaintiffs themselves, in the exercise of the court's *582 equita-

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ble powers, is no longer questioned in the federal courts." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 47, fn. 21 [141 Cal.Rptr. 315, 569 P.2d 1303], citing numerous authorities.)^{FN9}

FN8 Compare, e.g., *Freeman v. B & B Associates* (D.C. Cir. 1986) 790 F.2d 145 (attorney cannot sue for fees under Truth-in-Lending Act) and *First Iowa Hydro Elec. Coop. v. Iowa-Illinois Gas & E. Co.* (8th Cir. 1957) 245 F.2d 630 (Clayton Act fees accrue only to party injured) with *Rodriguez v. Taylor* (3d Cir. 1977) 569 F.2d 1231, 1245 (to avoid windfall, Age Discrimination in Employment Act fee awards "must accrue to counsel"); *Hairston v. R & R Apartments* (7th Cir. 1975) 510 F.2d 1090, 1093 (to avoid windfall, fees granted under Fair Housing Act "should go directly to the organization providing the services"); *Brandenburger v. Thompson* (9th Cir. 1974) 494 F.2d 885, 889 (equitable fee award "should be made directly to the organization providing the services to ensure against a windfall to the litigant"); *Miller v. Amusement Enterprises, Inc.* (5th Cir. 1970) 426 F.2d 534, 539 (in awarding fees under the public accommodations provisions of Civil Rights Act of 1964, court has "equitable powers [to] assure that the fees allowed are to reimburse and compensate for legal services rendered and will not go to the litigants, named or class").

FN9 Plaintiff acknowledges that federal authority exists for awarding statutory fees directly to an attorney when it is uncontested that the lawyer is contractually entitled to the fee award, citing, inter alia, *Richardson v. Penfold* (7th Cir. 1990) 900 F.2d 116, 117 and *Dennis v. Chang* (9th Cir. 1980) 611 F.2d 1302, 1309.

Until the Court of Appeal rendered an opinion in this case, no California court had published a view as to whether attorney fees awarded under section 12965 belong, absent contract, to the party or to the party's attorneys, or whether the term "prevailing party" as used in that statute may in appropriate circumstances be construed to include counsel. But at the time the statutory language, originally part of the Labor Code,

was first enacted (see *Commodore Home Systems, Inc. v. Superior Court*, supra, 32 Cal.3d at p. 216, citing Stats. 1978, ch. 1254, § 10, p. 4073), California courts, including this court, had determined that courts awarding attorney fees, including statutory fees, could pay them directly to the prevailing litigant's attorney. (See, e.g., *Serrano v. Priest*, supra, 20 Cal.3d at p. 47 [upholding award of "private attorney general" fees directly to attorneys for plaintiffs who challenged state school funding scheme]; *Horn v. Swoap* (1974) 41 Cal.App.3d 375, 383-384 [116 Cal.Rptr. 113] [Welf. & Inst. Code, § 10962 fees properly paid "directly to counsel for petitioner" who challenged welfare regulation]; *Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 & fn. 14 [81 Cal.Rptr. 683] [court in class action had discretion under city charter to award fees directly to counsel].)

In 1982, upholding an attorney fee award under Code of Civil Procedure section 1021.5, which codifies the "private attorney general" fee doctrine,^{FN10} we considered it "established that awards are properly made to plaintiffs' attorneys rather than to plaintiffs themselves." (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 682 & fn. 26 [186 Cal.Rptr. 589, 652 P.2d 437].) Neither in enacting nor in amending Government Code section 12965,^{FN11} or FEHA generally, has the Legislature repudiated such precedents.

FN10 In pertinent part, Code of Civil Procedure section 1021.5 provides that, under specified circumstances, a court "may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest."

FN11 Section 12965 was added by the 1980 Statutes and Amendments to the Codes (Statutes), chapter 992, section 4, page 3157 and amended by Statutes 1980, chapter 1023, section 9, page 3284; Statutes 1984, chapter 217, section 1, page 688; Statutes 1984, chapter 420, section 1.5, page 1792; Statutes 1992, chapter 911, section 5, page 4240; Statutes 1992, chapter 912, section 7.1, page 4276; Statutes 1998, chapter 931, section 183; Statutes 1999, chapter 591, section 12; and Statutes 2000, chapter 189, sec-

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tion 1.

The basic, underlying purpose of FEHA is to safeguard the right of Californians to seek, obtain, and hold employment without experiencing *583 discrimination on account of race, religious creed, color, national origin, ancestry, physical disability, medical disability, medical condition, marital status, sex, age, or sexual orientation. (Gov. Code, § 12920; *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 891 [66 Cal.Rptr.2d 888, 941 P.2d 1157].) There is no doubt that "privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions" (*Baggett v. Gates* (1982) 32 Cal.3d 128, 142 [185 Cal.Rptr. 232, 649 P.2d 874]), and "[w]ithout some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Ibid.*)^{FN12}

FN12 See also *Stephens v. Coldwell Banker Commercial Group, Inc.* (1988) 199 Cal.App.3d 1394, 1405 [245 Cal.Rptr. 606] (if § 12965 awards "were doubtful in California courts, ... [t]his would effectively defeat the policy of keeping the California law as an effective remedy against age discrimination"); *Crommie v. State of Cal., Public Utilities Com'n* (N.D.Cal. 1994) 840 F.Supp. 719, 723, footnote 2 (acknowledging that, "without the possibility of an award of fees," age discrimination plaintiffs would not have been able to obtain counsel); *Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 244 [261 Cal.Rptr. 520] (same, in sex discrimination case).

Attorneys considering whether to undertake cases that vindicate fundamental public policies may require statutory assurance that, if they obtain a favorable result for their client, they will actually receive the reasonable attorney fees provided for by the Legislature and computed by the court. As the high court has recognized, the aim of fee-shifting statutes is "to enable private parties to obtain legal help in seeking redress for injuries resulting from the actual or threatened violation of specific ... laws. Hence, if plaintiffs ... find it possible to engage a lawyer based on the statutory assurance that he will be paid a 'reasonable fee,' the purpose behind the fee-shifting stat-

ute has been satisfied." (*Pennsylvania v. Del. Valley Citizens' Council* (1986) 478 U.S. 546, 565 [106 S.Ct. 3088, 3098, 92 L.Ed.2d 439] [discussing federal Clean Air Act].)

Because contracts are not always obtainable or obtained and always may be disputed, were we to interpret section 12965 as plaintiff urges, vesting ownership of fees awarded thereunder and not disposed of by contract in the litigant, rather than in counsel, we would diminish the certainty that attorneys who undertake FEHA cases will be fully compensated, and to that extent we would dilute section 12965's effectiveness at encouraging counsel to undertake FEHA litigation. Such an interpretation of section 12965, thus, ultimately would tend to undermine the Legislature's expressly stated purpose of FEHA "to provide effective remedies that will eliminate these discriminatory practices." (Gov. Code, § 12920.)

Construing section 12965 as vesting ownership of unassigned fees (i.e., fees not disposed of by contract) awarded thereunder in the litigant rather *584 than counsel also would be inconsistent with the established method for calculating reasonable attorney fees under FEHA. Pursuant to long-established precedent and practice, section 12965 fees are calculated by determining the number of hours reasonably worked by the attorneys who prosecuted the matter and multiplying that number by the reasonable hourly rate those attorneys should receive for such work. Depending on the circumstances, consideration may also be given to the attorneys' experience, the difficulty of the issues presented, the risk incurred by the attorneys in litigating the case, the quality of work performed by the attorneys, and the result the attorneys achieved. (*Serrano v. Priest, supra*, 20 Cal.3d at p. 48.) Again, never in its frequent amendments to FEHA has the Legislature questioned this practice or the precedents validating it.

3. Public policy

Construing section 12965 as vesting ownership of unassigned attorney fees awarded thereunder in counsel rather than the litigant (to the extent fees are not otherwise paid) will, moreover, advance important public policies. Specifically, such a construction will:

a. Encourage representation of legitimate FEHA

claimants and discourage nonmeritorious suits

It need hardly be reiterated that "[t]he policy that promotes the right to seek and hold employment free of prejudice is fundamental. Job discrimination 'fosters domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interest of employees, employers, and the public in general.'" (*Commodore Home Systems, Inc. v. Superior Court, supra*, 32 Cal.3d at p. 220, quoting Gov. Code, § 12920.) As California courts long have recognized, section 12965 fees are intended to provide "fair compensation to the attorneys involved in the litigation at hand and encourage [] litigation of claims that in the public interest merit litigation." (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1172 [74 Cal.Rptr.2d 510].) As discussed above, our construing section 12965 to vest ownership of fees awarded thereunder in counsel, when, for whatever reason, no contract exists disposing of them, thus diminishing the risk of noncompensation or undercompensation, will enhance the likelihood that attorneys who undertake FEHA cases will be fully compensated, and to that extent will enhance the *585 fee provision's effectiveness in encouraging counsel to undertake FEHA litigation. ^{FN13}

FN13 Contrary to plaintiff's implication, such enhancement of section 12965's (and FEHA's) underlying antidiscrimination purposes is, as the high court has recognized in another context, "a goal not invariably inconsistent with [recognizing litigants' right of] conditioning settlement on the merits on a waiver of statutory attorney's fees." (*Evans, supra*, 475 U.S. at p. 732 [106 S.Ct. at p. 1540].)

The availability of FEHA fees, moreover, is reciprocal, benefiting defendants forced to defend frivolous suits, as well as plaintiffs who bring meritorious suits. (See, e.g., *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1126 [75 Cal.Rptr.2d 27] [awarding § 12965 fees on appeal to defendant employers in sex discrimination case].) Accordingly, our construing section 12965's attorney fee provision to assure compensation of attorneys who successfully represent FEHA litigants will further the important public policy of discouraging frivolous suits as the policy of encouraging meritorious ones. ^{FN14}

FN14 On the other hand, if we were to decide this case as plaintiff urges, we would risk encouraging litigants who have not expressly assigned fees to run up their lawyers' bills as high as possible, in order to increase their recovery with every hour of work their attorneys are performing.

b. Avoid unjust enrichment

The "usual fee-shifting statute" is not "intended to replicate exactly the fee an attorney could earn through a private fee arrangement with his client." (*Pennsylvania v. Del. Valley Citizens' Council, supra*, 478 U.S. at p. 565 [106 S.Ct. at p. 3099].) In a particular case, an award of "reasonable" attorney fees under a fee-shifting statute might not match the actual amount a client has paid or agreed to pay, because such awards generally "are computed from their reasonable market value" (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 643 [186 Cal.Rptr. 754, 652 P.2d 985]) even if the attorney has performed services pro bono or for a reduced fee. (See also *Blum v. Stenson* (1984) 465 U.S. 886, 895 [104 S.Ct. 1541, 1547, 79 L.Ed.2d 891] ["'reasonable fees' under [42 U.S.C.] § 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or nonprofit counsel".]) In this case, of course, plaintiff, the client, has not paid defendants any fees, and it remains disputed whether any enforceable contract provides for disposition of the fee award.

An attorney who appears in propria persona, doing all the legal work involved in a matter, is not entitled to collect statutory attorney fees. (*Trope v. Katz, supra*, 11 Cal.4th at p. 292 [fees sought under Civ. Code, § 1717]; *586 *Kay v. Ehrler* (1991) 499 U.S. 432, 437-438 [111 S.Ct. 1435, 1437-1438, 113 L.Ed.2d 486] [same, in 42 U.S.C. § 1988 case].) A fortiori, defendants argue, a person who is represented by counsel, and thus has done none of the legal work for which statutory attorney fees are intended as compensation, should not (absent agreement) be entitled to retain any such that may be awarded.

Without concluding that such reasoning would hold in every context, it seems evident that, in general, where attorney compensation has neither been paid nor forgiven and there is no contract assuring it, al-

lowing a victorious litigant to retain the proceeds of a fee award (in addition to a substantial damages judgment) would confer an unjustified windfall.

c. Ensure fairness

Vesting ownership of unassigned section 12965 fees in counsel rather than the prevailing litigant (to the extent fees are not otherwise paid) is fairer than the alternative to the litigants who must pay such fees. Statutory attorney fees are not of course intended to compensate the "prevailing party" for damages suffered. (See Elton v. Anheuser-Busch Beverage Group, Inc. (1996) 50 Cal.App.4th 1301, 1308 [58 Cal.Rptr.2d 303].) Nor by definition do they compensate the party for litigation costs when no agreement requiring attorney compensation exists and no fees have been paid. Paying the proceeds of a section 12965 award to the party rather than to counsel in such circumstances would, from the perspective of those paying them, transform the award, without legislative authorization, into a kind of punitive damages.

d. Address ethical concerns

Allowing litigants to keep the unassigned proceeds of section 12965 awards would amount, defendants contend, to improper sharing of legal fees by nonlawyers. With exceptions not relevant here, California attorneys are enjoined not to "directly or indirectly share legal fees with a person who is not a lawyer." (Rules Prof. Conduct, rule 1-320(A).)

Plaintiff argues, on the other hand, that any rule permitting payment of section 12965 fees directly to counsel would contravene conflict of interest principles barring attorneys from obtaining pecuniary interests adverse to their clients. As defendants cannot produce a written agreement entitling them to the disputed award, plaintiff argues, those proceeds cannot be paid directly to them. (See Rules Prof. Conduct, rule 3-300 (rule 3-300); State Bar Standing Com. on Prof. Responsibility and Conduct, Formal Opn. No. 1994-136 (1994) pp. 1, 2 (State Bar Advisory Opinion [in order ethically to *587 obtain "exclusive possession of the right to collect attorney's fees, and therefore to control settlement, ... a 'possessory interest' adverse to the client[,] ... the member must comply with rule 3-300" by obtaining client consent to fair and reasonable terms after full disclo-

sure in writing].)

We agree with defendants that plaintiff's proffered construction would implicate in some measure the policy our fee-splitting prohibition is designed to advance. Plaintiff's argument premised on rule 3-300, on the other hand, is less persuasive, as the State Bar Advisory Opinion construing that rule "only addresses the propriety of such agreements in the context of actions brought under 42 United States Code section 1988" (State Bar Advisory Opn., *supra*, at p. 1) and expressly was "advisory only" (*id.* at p. 5), "not binding on the courts, the State Bar of California, its Board of Governors, any persons or tribunals charged with regulatory responsibilities, or any member of the State Bar" (*ibid.*). More fundamentally, in recognizing that counsel should, absent contract, receive the proceeds of any section 12965 award exceeding fee payments made, we would confer no "exclusive possession of the right to collect attorney's fees" (State Bar Advisory Opn., *supra*, at p. 2) such as might compromise public policy favoring client control over settlement of FEHA cases. We would merely reconcile that policy with those underlying FEHA's attorney fee provision and FEHA generally.^{FN15}

FN15 We need neither affirm nor reject the State Bar Advisory Opinion on its merits. The specific question treated there—what limits the rules of professional conduct may place on attorneys' freedom to contract with clients regarding ownership of statutory attorney fees—is not before us.

Ultimately, we are not persuaded we can dispose of the question presented solely through consideration of these somewhat competing ethical considerations. Obviously, it is not necessary that we deprive attorneys of FEHA fees in cases where they have in fact been sought and awarded in order to vindicate the principle that a civil rights plaintiff may, in order to effect settlement, agree to waive the right to seek fees. (See State Bar Advisory Opn., *supra*, at p. 3 [recognizing that attorneys may contract for ownership of 42 U.S.C. § 1988 fees].)

The Court of Appeal opined that section 12965 ought not to be construed so that the successful litigant's attorney will own any unassigned fee award, because such a construction would risk prompting attorneys to

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contract with clients for a percentage of the damages without advising them about the possibility of a statutory fee award, thus undermining the public policy favoring full compensation of victims of unlawful discrimination. We do not believe such a concern need detain us. Plaintiff's own authority implies that *588 an attorney is not permitted to proceed as the Court of Appeal theorized. (State Bar Advisory Opn., *supra*, at pp. 2-3 [requiring client consent to fair and reasonable terms after full disclosure in writing before an attorney can acquire interest in fee award potentially adverse to client's interest].)

More fundamentally, nothing we say in this opinion concerning ownership of unassigned Government Code section 12965 proceeds alters existing rules forbidding attorneys to charge or obtain unreasonable fees, or diminishes clients' established remedies if unreasonable fees are sought or exacted. (See, e.g., Bus. & Prof. Code, § 6200 et seq. [arbitration of attorney fees].) And, even assuming the Court of Appeal identified a theoretical contracting scenario to some extent not remediable under existing rules, the court did not demonstrate that its proposed resolution has significant comparative benefits over existing incentives. FN16

FN16 This case involves the unusual situation where section 12965 fees have been sought and awarded but no agreement disposing of them may be provable. In most FEHA cases, of course, attorney compensation-including disposition of section 12965 award proceeds-will proceed voluntarily, or be enforced, according to terms agreed on by the parties. There is no indication and neither party suggests the Legislature intended FEHA's attorney fee provision to displace or diminish FEHA plaintiffs' freedom to contract with their attorneys. As we observed in another context, section 12965's "sole aim appears to have been to contravene the general rule in California that, absent contrary agreement, litigants are not entitled to fees." (Commodore Home Systems, Inc. v. Superior Court, supra, 32 Cal.3d at p. 216.) In general, "[a]llowing lawyers to contract with their clients for an assignment of the right to fees should enhance the public's access to competent counsel." (State Bar Advisory Opn., *supra*, at p. 3.)

e. *Encourage written fee agreements*

While they dispute the facts relating to their respective efforts, the parties each claim they took steps to obtain from the other a written agreement respecting attorney compensation in the FEHA litigation. At least to that extent, the Court of Appeal would appear correct in having opined that the "problem in this case arises ... because counsel failed to secure or retain a written fee agreement." Plaintiff contends our awarding her the disputed proceeds in this case would provide a strong incentive for attorneys to secure written fee agreements in FEHA cases and thus would further public policies generally favoring such agreements. Plaintiff correctly points out, also, that our construing section 12965 in her favor would not diminish defendants' right to enforce any compensation right in quantum meruit. (See, e.g., Elconin v. Yalen (1929) 208 Cal. 546, 549 [282 P. 791].)

As the Court of Appeal noted, Business and Professions Code section 6147 requires a written fee agreement in most classes of cases where an attorney agrees to represent a client on a contingency fee basis. Plaintiff argues that for us to require that attorneys secure written fee agreements as *589 a prerequisite to receiving monies awarded under section 12965 would be reasonable and consistent with the legislative intent underlying Business and Professions Code section 6147. While this argument has some surface appeal, we reject it.

Ordering that section 12965 fee awards be paid directly to plaintiffs whenever there exists no contrary agreement between plaintiffs and their counsel (such that plaintiffs realize a windfall at counsel's expense) could make sense only if the law treated attorneys who fail to secure fee agreements as deserving of such punishment. (See, e.g., Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43 [86 Cal.Rptr. 860] [attorney with conflict of interest not entitled to recover fee for services]; Hardy v. San Fernando Valley C. of C. (1950) 99 Cal.App.2d 572, 576 [222 P.2d 314] [same, regarding attorney who was not a member of the State Bar].) But that is not the case. (7) The well-established rule is, to the contrary, that, "[i]n the absence of an agreement upon the subject, [the client] must be deemed to have promised to pay [the attorney] the reasonable value of the services performed in his behalf and with his consent and knowledge." (

Batcheller v. Whittier (1909) 12 Cal.App. 262, 266-267 [107 P. 141]; see also Elconin v. Yalen, *supra*, 208 Cal. at p. 549; 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 220, pp. 280-281.)

Even in circumstances where the Legislature has required a written fee agreement (e.g., Bus. & Prof. Code, §§ 6147 [contingency fee agreements], 6148 [other agreements for fees exceeding \$1,000]), it has provided that, while noncompliance renders the agreement voidable, the attorney nevertheless is "entitled to collect a reasonable fee" (*id.*, §§ 6147, subd. (b), 6148, subd. (c)). To that extent, the Legislature expressly has declined to sanction failure to obtain a written agreement as plaintiff proposes.

Plaintiff's categorical assertion that an attorney can always obtain protection by complying with the Rules of Professional Conduct is—as a matter of logic—false in every noncontingency fee case where to obtain a writing is "impractical" (Bus. & Prof. Code, § 6148, subd. (d)(1)), as the requirement of obtaining a written agreement expressly does not apply in such cases. More broadly, because written fee agreements are not always required, our construing section 12965 as plaintiff requests would risk punishing lawyers who do not violate the Business and Professions Code, as well as those who do. Written fee agreements are not required for noncontingency fee representation when the client is a corporation (as will often be the case, presumably, with nonprofit and public interest groups), when the client for whatever reason is not obligated to pay anything, when an agreement can be implied from counsel's prior representation of the client, in an emergency situation *590 when the attorney must act to avoid prejudice to the client, or, as noted, where a writing is otherwise impractical. (Bus. & Prof. Code, § 6148, subd. (d).)

FN17

FN17 In many civil rights cases particularly, written fee agreements may be neither required nor effective. In a class action, for example, written fee agreements with the entire class may not be feasible and any fee agreement class attorneys have with named plaintiffs does not bind other class members or the court. (Long Beach City Employees Assn., Inc. v. City of Long Beach (1981) 120 Cal.App.3d 950, 959 [172 Cal.Rptr. 277].) The realities of pro bono litigation often in-

volve attorneys from several firms or pro bono organizations banding together to work on cases that otherwise would go begging. Such cases may be brought on an emergency basis or involve relatively small damages. Indeed, injunctive relief may be the primary goal of such litigation. A retainer agreement that covers all such counsel or circumstances may not be practical or feasible in light of time and resource constraints. (See Evans, *supra*, 475 U.S. at p. 721 [106 S.Ct. at p. 1534] ["the special character of both the class [of handicapped children] and its attorney-client relationship [with an Idaho Legal Aid Society attorney] explains why it did not enter into any agreement covering the various contingencies that might arise during the course of settlement negotiations".])

(1c) For the foregoing reasons, we conclude that attorney fees awarded pursuant to section 12965 (exceeding fees already paid) belong, absent an enforceable agreement to the contrary, to the attorneys who labored to earn them. The preceding analysis, of course, may not be dispositive—indeed, will not even come into play—where the parties have made an enforceable agreement disposing of an award's proceeds. Whether an enforceable agreement exists, or what its terms may be in any given case, are of course questions of fact.

The Court of Appeal, in holding (incorrectly, as we have explained) that a section 12965 award invariably belongs to the party rather than counsel in the first instance, remanded for further proceedings on the question of fact whether an agreement between Flannery and her counsel created in defendants an entitlement to the disputed proceeds. While, as explained, we disagree with the Court of Appeal's legal analysis regarding ownership of unassigned section 12965 proceeds, we agree summary judgment is not appropriate on this record, which contains conflicting evidence as to whether a controlling agreement exists or what the terms of any such may be. Accordingly, we affirm the judgment of the Court of Appeal.

B. Venue for resolution of fee award ownership disputes

Defendants asked in their petition for review that we announce in this case a rule requiring that all litigated

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disputes between attorneys and their clients over statutory fee awards be resolved by the trial judge who handled proceedings in the matter to which the fees relate. They ask us to bar "collateral" proceedings like the instant suit. Defendants, however, did not *591 raise this issue in the Court of Appeal. As a matter of policy, on petition for review, we normally do not consider any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal. (Cal. Rules of Court, rule 29(b)(1).) Citing Fisher v. City of Berkeley (1984) 37 Cal.3d 644, 654 [209 Cal.Rptr. 682, 693 P.2d 261], defendants suggest that our considering their additional issue notwithstanding our normal policy would not prejudice plaintiff, and that we should, therefore, address it as one involving "an important question of law implicating the jurisdiction of the courts."

Defendants obtained summary judgment in the trial court, both as defendants and as cross-complainants. (8) "A judgment rendered with consent of the appellant is not appealable." (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 189, p. 244.) It was plaintiff, of course, who appealed the trial court's summary judgment rulings with the result that led to defendants' petitioning us for review. Nevertheless, it ill behooves defendants to disparage the trial court's competence to hear the merits of the instant suit, inasmuch as defendants themselves sought affirmative relief—a declaration of their entitlement to the disputed fees—in the trial court. (9) "There is substantial authority for the proposition that a party who has invoked or consented to the exercise of jurisdiction beyond the court's authority may be precluded from challenging it afterward, even on a direct attack by appeal." (2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 324, p. 900, citing numerous authorities.)

Defendants do not persuade us that we should depart from our ordinary policy in this case. Ultimately, we cannot conclude that defendants' novel proposal regarding fee dispute resolution raises "extremely significant issues of public policy and public interest" (Fisher v. City of Berkeley, *supra*, 37 Cal.3d at p. 655, fn. 3) such as may have caused us on infrequent prior occasions to depart from it.

Disposition

For the foregoing reasons, we affirm the judgment of the Court of Appeal.

George, C. J., Baxter, J., Chin, J., and Brown, J., concurred.

KENNARD, J., Dissenting.

In clear and unequivocal language, Government Code section 12965, subdivision (b) authorizes courts to award reasonable attorney fees "to the prevailing party" in civil rights actions brought under the Fair Employment and Housing Act. ^{FN1} According to the majority, however, the statute does not mean what it says: "prevailing party" does not *592 mean prevailing party but prevailing lawyer. That construction ignores the plain language of the statute as well as persuasive United States Supreme Court precedent construing virtually identical language in the federal civil rights law. Therefore, I dissent.

FN1 Further undesignated statutory references are to the Government Code.

I.

I begin with a brief discussion of the circumstances leading to the California Legislature's enactment of the attorney fee provision at issue here.

"In the United States, the prevailing litigant is ordinarily *not* entitled to collect a reasonable attorneys' fee from the loser." (Alyeska Pipeline Service Co. v. Wilderness Society (1975) 421 U.S. 240, 247 [95 S.Ct. 1612, 1616, 44 L.Ed.2d 141]) (Alyeska Pipeline), italics added.) This is known as the "American Rule," to distinguish it from the practice in England where "for centuries ... there has been statutory authorization to award costs, including attorneys' fees" to the party who prevails in a lawsuit. (*Ibid.*; see Code Civ. Proc., § 1021; 7 Witkin, Cal. Procedure (4th ed. 1997) Judgment, § 145, p. 659 [describing Code Civ. Proc., § 1021 as "the California version of the 'American rule' under which each party must pay its own legal fees"].)

In 1975, the United States Supreme Court reaffirmed the American Rule when it decided Alyeska Pipeline. At issue there was a federal appeals court order requiring the Alyeska Pipeline Company to pay the attorney fees incurred by environmental groups who had successfully challenged the Department of Interior's issuance of permits to Alyeska for construction of the trans-Alaska oil pipeline. No federal statute authorized fee shifting to the losing party in such

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cases. Nevertheless, the appellate court considered the award of attorney fees to be within its equitable powers as necessary to encourage private litigants to bring public interest suits as private attorneys general. (*Ayeska Pipeline, supra*, 421 U.S. at pp. 241-246 [95 S.Ct. at pp. 1613-1616].) The high court disagreed. It noted that although Congress had statutorily authorized attorney fees in some instances to encourage private litigation as a means of implementing public policy, "congressional utilization of the private-attorney-general concept can in no sense be construed as a grant of authority to the Judiciary to jettison the traditional rule against nonstatutory allowances to the prevailing party and to award attorneys' fees whenever the courts deem the public policy ... important enough to warrant the [fee] award." (*Id.* at p. 263 [95 S.Ct. at pp. 1624-1625].)

In the wake of *Ayeska Pipeline, supra*, 421 U.S. 240, Congress in 1976 amended 42 United States Code section 1988 (title 42, section 1988) by *593 expressly authorizing courts in civil rights actions, in their discretion, to award "the prevailing party ... a reasonable attorney's fee." The next year, California's Legislature enacted a similar statute, Code of Civil Procedure section 1021.5, which provides that "a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest." Both the federal and the California statutes were legislative responses to the high court's decision in *Ayeska Pipeline*. (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 680, fn. 20 [186 Cal.Rptr. 589, 652 P.2d 437].) Both authorize courts to award attorney fees in certain situations.

In 1980, the California Legislature enacted the attorney fee provision at issue here. (§ 12965, subd. (b).) Like the federal attorney fee statute, it applies to civil rights actions—those that are brought under the Fair Employment and Housing Act (FEHA) and assert employment or housing discrimination. (See § 12900 et seq.) In relevant part, the FEHA fee statute provides: "[T]he court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity." (§ 12965, subd. (b), italics added.) At issue here is the meaning of the phrase "prevailing party."

II.

A.

In interpreting the FEHA attorney fee provision in subdivision (b) of section 12965, courts must, as with any statute, follow settled principles of statutory construction. (*Summers v. Newman* (1999) 20 Cal.4th 1021, 1026 [86 Cal.Rptr.2d 303, 978 P.2d 1225].) "The aim of statutory construction is to discern and give effect to the legislative intent. (*Phelps v. Stosad* (1997) 16 Cal.4th 23, 32 [65 Cal.Rptr.2d 360, 939 P.2d 760].) The first step is to examine the statute's words because they are generally the most reliable indicator of legislative intent. (*Holloway v. United States* (1999) 526 U.S. 1, [6] [119 S.Ct. 966, 969, 143 L.Ed.2d 1]; *People v. Gardeley* (1996) 14 Cal.4th 605, 621 [59 Cal.Rptr.2d 356, 927 P.2d 713].) To resolve ambiguities, courts may employ a variety of extrinsic construction aids, including legislative history, and will adopt the construction that best harmonizes the statute both internally and with related statutes. (*Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143, 1152 [69 Cal.Rptr.2d 329, 947 P.2d 291]; *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871 [39 Cal.Rptr.2d 824, 891 P.2d 804].)" (*Ibid.*)*594

Subdivision (b) of section 12965 states that a court may award "reasonable attorney's fees and costs, including expert witness fees" to the "prevailing party." The statutory language could not be clearer: An award of attorney fees by the trial court is to the "prevailing party," not the latter's lawyer. In those instances where the Legislature intended an award of attorney fees to go directly to a lawyer for a party, it has expressly said so. (See § 13969.1, subd. (d)(1) ["the court may order the board to pay to the applicant's attorney reasonable attorney's fees" (italics added)]; Fam. Code, § 272, subd. (a) [making "fees and costs ... payable in whole or part to the attorney" (italics added)]; Lab. Code, former § 3371, added by Stats. 1976, ch. 1347, § 6, p. 6139 and repealed by Stats. 1994, ch. 497, § 4, p. 2689 ["The attorney ... shall be awarded a reasonable fee" (italics added)].) The wording in these statutes and the one at issue here show that the Legislature knows how to use language that clearly expresses its intent in the attorney fee area. (See *People v. Murphy* (2001) 25 Cal.4th 136, 159 [105 Cal.Rptr.2d 387, 19 P.3d 1129]; *City*

of Port Hueneme v. City of Oxnard (1959) 52 Cal.2d 385, 395 [34] P.2d 318 ["Where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different [legislative] intention existed."].)

One more point: Statutes providing for the payment of fees to a party's lawyer are an exception to California's general rule for statutory attorney fees. Such fees are considered an element of costs (7 Witkin, Cal. Procedure, *supra*, Judgment, § 146, p. 661), and costs are payable *directly to a prevailing party* (Code Civ. Proc., § 1032, subd. (b)). Accordingly, this court has invalidated statutory awards of attorney fees when ordered paid directly to a party's lawyer. (See Stevens v. Stevens (1932) 215 Cal. 702, 704 [12 P.2d 432] ["The attorneys were not parties to the action and any award of counsel fees should have been made to the parties litigant"]; see also Keck v. Keck (1933) 219 Cal. 316, 322 [26 P.2d 300]; Henry v. Superior Court (1892) 93 Cal. 569, 570 [29 P. 230].)

B.

My construction of section 12965, subdivision (b) also comports with the United States Supreme Court's construction of title 42, section 1988, which is the federal civil rights fee statute and, just like the state statute at issue here, authorizes a court's discretionary award of attorney fees to the "prevailing party." (See Evans v. Jeff D. (1986) 475 U.S. 717, 730 [106 S.Ct. 1531, 1539, 89 L.Ed.2d 747](Jeff D.).)

In Jeff D., the issue was whether, in a civil rights case brought as a class action, the representative plaintiff could waive entitlement to *595 title 42, section 1988 attorney fees in order to secure from the defendant a favorable settlement agreement. The high court upheld such a waiver, noting that under the plain language of the statute the entitlement to attorney fees belonged not to the lawyer but to the prevailing party: "Congress bestowed on the 'prevailing party' (generally plaintiffs) a statutory eligibility for a discretionary award of attorney's fees in specified civil rights actions. It did not prevent the party from waiving this eligibility any more than it legislated against assignment of this right to an attorney" (Jeff D., supra, 475 U.S. at pp. 730-731 [106 S.Ct. at p. 1539], *fn.* omitted.) Although shifting the cost of plaintiffs' attorney fees to defendants was intended "to attract

competent counsel to represent citizens deprived of their civil rights," the high court stressed that Congress had *not* "bestowed fee awards upon attorneys" but rather included entitlement to counsel fees among "the arsenal of remedies available to combat violations of civil rights, a goal not invariably inconsistent with conditioning settlement on the merits on a waiver of statutory attorney's fees." (Id. at pp. 731-732 [106 S.Ct. at p. 1540], *italics added, fn.* omitted.) The court added that its construction of title 42, section 1988 as vesting the right to attorney fees in the "prevailing party" rather than in that party's lawyer was consistent with the decisions of most federal appellate courts that had considered the issue. (Jeff D., at p. 732, fn. 19 [106 S.Ct. at p. 1539]; see Jonas v. Stack (11th Cir. 1985) 758 F.2d 567, 570, fn. 7; Brown v. General Motors Corp. (2d Cir. 1983) 722 F.2d 1009, 1011 ["Under [42 U.S.C. § 1988] it is the prevailing party rather than the lawyer who is entitled to the attorney's fees"]; White v. New Hampshire Dept. of Employment Security (1st Cir. 1980) 629 F.2d 697, 703 ["award of attorney's fees goes to 'prevailing party,' rather than attorney"].)

Four years later, the high court reiterated that holding when it concluded in Venegas v. Mitchell (1990) 495 U.S. 82 [110 S.Ct. 1679, 109 L.Ed.2d 74](Venegas) that title 42, section 1988 did not preclude civil rights plaintiffs from entering into contingency fee contracts with their lawyers: "[J]ust as we have recognized that it is the party's entitlement to receive the fees in the appropriate case, so have we recognized that as far as § 1988 is concerned, it is the party's right to waive, settle, or negotiate that eligibility." (Venegas, supra, at p. 88 [110 S.Ct. at p. 1683], *italics added*.) Parenthetically, here there was no written fee agreement between the FEHA plaintiff and her counsel, and she objected to the trial court's award of attorney fees directly to counsel.

As I noted earlier, just four years after Congress added the attorney fee provision to the federal civil rights law, the California Legislature adopted virtually identical language in its enactment of section 12965, subdivision (b), the attorney fee provision in FEHA, California's civil rights law. In *596 construing the term "prevailing party" in the federal statute as indeed meaning prevailing party and not the prevailing lawyer, the high court's decisions in Jeff D., supra, 475 U.S. 717, and in Venegas, supra, 495 U.S. 82, provide strong support for my similar conclusion

here with respect to section 12965, subdivision (b).

III.

In reaching a contrary conclusion, the majority feebly attempts to distinguish the United States Supreme Court's decisions in Venegas, supra, 495 U.S. at page 88 [110 S.Ct. at page 1683], and in Jeff D., supra, 475 U.S. at page 730 [106 S.Ct. at pages 1538-1539], by asserting that "[n]either case, however, expressly considered the narrow question we face: whether a party may receive or keep the proceeds of a fee award when she has neither agreed to pay her attorneys nor obtained from them a waiver of payment." (Maj. opn., *ante*, at pp. 580-581.) The majority is wrong. In Jeff D., there was "no agreement requiring any of the [plaintiffs] to pay for the costs of litigation or the legal services ... provided." (Jeff D., supra, at p. 721 [106 S.Ct. at p. 1534].) And the issue there was whether a plaintiff could, as part of a settlement agreement, waive entitlement to attorney fees. (*Id.* at p. 730 [106 S.Ct. at pp. 1538-1539].) With respect to Venegas, there the high court simply reaffirmed its holding in Jeff D. The distinction the majority tries to draw between a party's right to receive and keep a fee award and a party's right to forgo a fee award is one without any material difference.

In yet another futile attempt to support its holding, the majority points to this court's decision in Levy v. Superior Court (1995) 10 Cal.4th 578, 583 [41 Cal.Rptr.2d 878, 896 P.2d 171], for the proposition that the term "party" in procedural statutes can mean "not only the actual litigant, but also the litigant's attorney of record." (See maj. opn., *ante*, at p. 578 [citing Levy for its conclusion that the word "party" is ambiguous].) But the majority conveniently ignores Levy's further discussion of that point. Levy noted that the statutes in which the term "party" can include the party's counsel of record are those involving motions "routinely made by attorneys in the course of representing their clients." (Levy, supra, at p. 583.) By contrast, the fee provision here does not involve an attorney's appearance on a routine motion on behalf of a client; instead, it sets forth to whom the trial court is to award attorney fees: "to the prevailing party." The provision thus falls within that category of statutes that Levy described as affecting "the substantial rights of the litigants themselves," in which "the term 'party' literally means the party litigant, not the litigant's attorney." (*Ibid.*)

According to the majority, its holding is necessary to ensure "that attorneys who undertake FEHA cases will be fully compensated." (Maj. opn., *597 *ante*, at p. 583.) Again, I disagree. Lawyers are free to enter into contracts with their clients for the payment of attorney fees, as long as they do so in a manner consistent with their ethical obligations to serve their clients' interests over their own. (See Rules Prof. Conduct, rule 3-300 [setting conditions for lawyers acquiring pecuniary interests adverse to a client].) The fee dispute between the lawyers and the client in this case resulted from the lawyers' failure to obtain a *written* contract regarding the payment of their fees. To give effect to the plain language in section 12965, subdivision (b) that a trial court's award of attorney fees is made to the prevailing party, not the prevailing lawyer, does not leave the lawyer without protection against a client who retains the fee award and does not pay the lawyer. Attorney fee contracts between lawyer and client can include a provision creating a lien in favor of the lawyer against the plaintiff's anticipated recovery in the case, including the statutory attorney fees. (See Cetenko v. United California Bank (1982) 30 Cal.3d 528, 531 [179 Cal.Rptr. 902, 638 P.2d 1299, 34 A.L.R.4th 657].)*598

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HSupreme Court of California
THE PEOPLE, Plaintiff and Respondent,

v.

JEFFREY G. HAMMER, Defendant and Appellant.
No. S104303.

May 29, 2003.

SUMMARY

A jury found defendant guilty of two counts of committing lewd acts upon a child under the age of 14 (Pen. Code, § 288, subd. (a)), one count of committing lewd acts upon a child under the age of 14 by force (Pen. Code, § 288, subd. (b)(1)), and assault (Pen. Code, § 240). Defendant admitted a prior conviction of Pen. Code, § 288, subd. (a), for which he had been granted probation under Pen. Code, § 1203.066, subd. (c), as an intrafamily sex offender. The trial court sentenced defendant to a total term of 55 years to life in prison, consisting of two consecutive terms of 25 years to life imposed under both the one strike law (Pen. Code, § 667.61) and the habitual sexual offender law (Pen. Code, § 667.71), plus a five-year sentence enhancement imposed under Pen. Code, § 667, subd. (a) (serious prior felony). (Superior Court of San Diego County, No. SCN109385, Timothy M. Casserly, Judge.) The Court of Appeal, Fourth Dist., Div. One, No. D037349, affirmed.

The Supreme Court affirmed the judgment of the Court of Appeal and remanded for a new sentencing hearing. The court held that defendant's prior conviction of Pen. Code, § 288, subd. (a), subjected him to a mandatory sentence of 25 years to life under the one strike law (Pen. Code, § 667.61, subds. (a), (c)(7), (d)(1)), even though he had been granted probation for that previous conviction. Pen. Code, § 667.61, subd. (d)(1), mandates such sentence, and the qualifying language of Pen. Code, § 667.61, subd. (c)(7), "unless the defendant qualifies for probation," has no application to a determination of a qualifying prior conviction. The policy considerations that underlie an intrafamily molester's eligibility for probation under Pen. Code, § 1203.066, subd. (c), cease to be attainable when the defendant is a repeat offender. The

court further held that remand was warranted for the trial court to exercise its discretion whether to utilize defendant's prior conviction for sentencing under the three strikes law (Pen. Code, § 667, subds. (b)-(i)), and whether to strike the prior conviction for purposes of sentencing defendant under the three strikes law and the habitual sexual offender law. (Opinion by George, C. J., expressing the unanimous view of the court.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d, 1e) Lewdness, Indecency, and Obscenity § 28-- Lewd Acts with Children--Punishment--One Strike Law--Effect of Probation for Prior Offense.

Defendant, who was convicted of committing lewd acts upon a child under the age of 14 (Pen. Code, § 288, subd. (a)) and committing lewd acts upon a child under the age of 14 by force (Pen. Code, § 288, subd. (b)(1)), was properly sentenced under the mandatory provisions of the one strike law (Pen. Code, § 667.61), to two consecutive prison terms of 25 years to life, even though he had been granted probation upon his previous conviction of Pen. Code, § 288, subd. (a), as an intrafamily sex offender under Pen. Code, § 1203.066, subd. (c). Pen. Code, § 667.61, subd. (d)(1), mandates a sentence of 25 years to life when the defendant has been previously convicted of Pen. Code, § 288, subd. (a), and the qualifying language of Pen. Code, § 667.61, subd. (c)(7), "unless the defendant qualifies for probation," has no application to a determination of a qualifying prior conviction. The legislative history and purpose of the one strike law overwhelmingly support this interpretation. Further, the policy considerations that underlie an intrafamily molester's eligibility for probation under Pen. Code, § 1203.066, subd. (c), cease to be attainable when the defendant is a repeat offender, since that defendant has proven to be impervious to treatment, the threat to family harmony posed by long-term incarceration is overshadowed by the greater threat of continued abuse, and the pressures on the victim are diminished by the fact that the molester's punishment is not solely attributable to the current report of abuse.

[See 3 Witkin & Epstein, *Cal. Criminal Law* (3d ed. 2000) Punishment, § 386 et seq.; West's Key Digest System, Sentencing and Punishment ¶1251.]

(2) Statutes § 29--Construction--Language--Legislative Intent.

A court's fundamental task in construing a statute is to determine the Legislature's intent so as to effectuate the law's purpose. The court begins by examining the words of the statute, giving them a plain and commonsense meaning. Rather than considering the statutory language in isolation, the court looks to the entire substance of the statute in order to determine the scope and purpose of the provision. The court construes the words in question in context, keeping in mind the nature and obvious purpose of the statute. The construing court must harmonize the various parts of a statutory enactment by considering the particular clause or section in the context of the statutory framework as a whole.

(3) Lewdness, Indecency, and Obscenity § 28--Lewd Acts with Children--Punishment--Based on Recidivist Status--Trial Court Discretion:Criminal Law § 689.2--Punishment.

The same prior conviction may be used for sentencing under the one strike law (Pen. Code, § 667.61), the habitual sexual offender law (Pen. Code, § 667.71), and the three strikes law (Pen. Code, § 667, subds. (b)-(i)). Under the habitual sexual offender law and the three strikes law, the trial court retains authority to strike any punishment-enhancing circumstance, including a prior strike conviction, in the interests of justice. In contrast, the sentencing court has no such discretion under the one strike law; sentencing under the full and severe terms of the one strike law is mandatory (Pen. Code, § 667.61, subd. (f)).

(4) Lewdness, Indecency, and Obscenity § 28--Lewd Acts with Children--Punishment--Probation for Intrafamily Molesters--Policy Considerations.

The exception set out in Pen. Code, § 1203.066, subd. (c), which provides that an intrafamily child molester who is convicted of committing lewd acts upon a child under the age of 14 (Pen. Code, § 288, subd. (a)) is eligible for probation, is premised upon policy considerations. In contrast to pedophiles who have an exclusive lifelong attraction to children, some adults with age-appropriate mates regress by molesting young family or household members for situational or opportunistic reasons. Such molesters can successfully reform if they receive both punish-

ment and treatment, and mandatory prison sentences, as opposed to jail time and probation, could do more harm than good in some intrafamily molestation cases, as the victim could feel a sense of guilt for bringing shame on the family or causing the household to dissolve. In addition, loved ones who are emotionally or financially dependent on the molester could blame or even abandon the victim, which in turn could deter victims and their families from reporting the crime, from cooperating with law enforcement officials, and from participating in counseling to repair the damaged relationship.

(5) Statutes § 23--Construction--Penal Statutes.

When language that is susceptible of two constructions is used in a penal law, the policy is to construe the statute as favorably to the defendant as its language and the circumstance of its application reasonably permit. However, this rule applies only when statutory language is ambiguous and the defendant's proposed interpretation is at least as plausible as that of the People.

COUNSEL

Christopher Blake, under appointment by the Supreme Court, for Defendant and Appellant. *759

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Robert M. Foster, Steven T. Oetting and Elizabeth S. Voorhies, Deputy Attorneys General, for Plaintiff and Respondent.

GEORGE, C. J.

Penal Code section 667.61, known as the "One Strike" law, requires imposition of a sentence of 25 years to life in prison if a person is convicted of one of the sexual offenses listed in subdivision (c) of the statute and certain other triggering circumstances are found to exist. (Pen. Code, § 667.61, subds. (a), (c), (d) & (e).) ^{FNI} One of the triggering circumstances is that the person *previously* has been convicted "of an offense specified in subdivision (c)." (*Id.*, subd. (d)(1).) The list of offenses set forth in subdivision (c) includes the following: "(7) A violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066." In this case, defendant previously was convicted in 1988 of a violation of section 288, sub-

division (a), but in that prior proceeding defendant qualified for, and was granted, probation. More than 10 years later, defendant was convicted in the present proceeding of new specified offenses under the One Strike law, including new violations of section 288, subdivision (a). The question presented is whether the prior conviction of the earlier section 288, subdivision (a) charge, as to which defendant qualified for probation, subjects defendant to sentencing under the One Strike law for his present offenses. The Court of Appeal concluded that the 1988 prior constituted such a qualifying prior conviction, and upheld sentencing under the One Strike law. We conclude that the judgment of the Court of Appeal should be affirmed.

FN1 All further undesignated statutory references are to the Penal Code.

I

In 1985, defendant Jeffrey G. Hammer married J. and adopted her then-four-year-old daughter, M. In 1988, while J. was pregnant with their younger daughter K., defendant forced M., who was then six or seven years of age, to orally copulate him on several occasions. J. learned of these incidents, and on the basis of that conduct defendant subsequently was charged and convicted in 1988 of a violation of section 288, subdivision (a). Upon sentencing for that conviction, defendant qualified for and received probation, which he subsequently completed successfully. In 1991, defendant and J. divorced.

In 1997, defendant and J. reconciled and defendant moved back into the home with J., M., and K., who was then nine years of age. Thereafter, on *760 separate occasions in August 1998 and December 1999, defendant molested K.—rubbing lotion on her breasts and twisting her nipples in the earlier incident, and attempting to force her to orally copulate him in the later incident.

After the December 1999 incident, defendant's actions were reported to the police, and defendant was arrested. He was charged with committing, among other crimes, violations of section 288, subdivisions (a) (lewd acts upon a child under the age of 14 years) and (b)(1) (forcible lewd acts upon a child under the age of 14 years) against K. The People also alleged that defendant's prior 1988 conviction for violating

section 288, subdivision (a), operated to enhance defendant's current sentence under three separate statutory schemes. First, the People asserted, the 1988 prior conviction qualified as a triggering circumstance within the meaning of the One Strike law, section 667.61, subdivisions (a), (c)(7), and (d)(1), thereby subjecting defendant to a sentence of 25 years to life in prison for each qualifying current offense. Second, the People asserted, the 1988 prior conviction qualified as a felony conviction within the meaning of the "Habitual Sexual Offender" law, section 667.71, subdivisions (a), (b), and (c)(4), thereby subjecting defendant to a sentence of 25 years to life in prison for each qualifying current offense. Finally, the People asserted, the 1988 prior conviction constituted a "serious" prior felony under section 667, subdivision (a), thus subjecting defendant to a five-year sentence enhancement.^{FN2}

FN2 The People at trial did not seek to invoke the sentence-doubling provisions of the "Three Strikes" law (§ 667, subd. (e)(1))—but see *post*, part III.

Defendant was convicted by a jury in the present proceeding on two counts (counts two and four of the information) of committing lewd acts upon a child under the age of 14 years (§ 288, subd. (a)) and one count (count one of the information) of committing lewd acts upon a child under the age of 14 years *by use of force* (§ 288, subd. (b)(1)).^{FN3}

FN3 In addition, defendant was convicted of one count of assault, a violation of section 240.

Defendant admitted the prior conviction allegations, and the trial court sentenced him to 55 years to life in prison. The sentence was calculated as follows: (i) on count one (the section 288, subdivision (b)(1) charge), a term of 25 years to life was imposed under both the One Strike law, section 667.61, subdivisions (a), (c)(7) and (d)(1), and the Habitual Sexual Offender law, section 667.71, subdivisions (a), (b) and (c)(4); (ii) on count four (one of the two section 288, subdivision (a) charges), a consecutive term of 25 years to life was imposed under both the One Strike law (§ 667.61, subds. (a), (c)(7), & (d)(1)) and the Habitual Sexual Offender law (§ 667.71, subds. (a), (b) & (c)(4)); and finally (iii) a consecutive five-year enhancement was *761 imposed under section 667,

subdivision (a).^{FN4} The Court of Appeal affirmed defendant's convictions and sentence.

FN4 The trial court imposed, but stayed, additional terms for the other section 288, subdivision (a) count and for the assault count (see *ante*, fn. 3).

(1a) The principal issue raised in this appeal is whether the trial court properly based the 25-year-to-life terms imposed for counts one and four in part upon the One Strike law, section 667.61, subdivisions (a), (c)(7), and (d)(1), in light of the circumstance that defendant qualified for (and indeed was granted) probation following his prior 1988 conviction for violating section 288, subdivision (a).

II

A

The One Strike law, section 667.61, requires a sentence of 25 years to life in prison whenever a defendant (1) is convicted of a current offense specified in subdivision (c),^{FN5} and (2) either "one or more of the circumstances specified in subdivision (d)"^{FN6} or "two or more of the circumstances specified in subdivision (e)" are present.^{FN7} (§ 667.61, subd. (a).) The law expressly divests trial courts of authority to avoid these severe sentences: it provides that courts are barred from exercising their traditional discretion to "strike" any of the triggering circumstances specified in the One Strike law. (*Id.*, subd. (f).) *762

FN5 Subdivision (c) reads in full: "This section shall apply to any of the following offenses: [¶] (1) A violation of paragraph (2) of subdivision (a) of Section 261. [¶] (2) A violation of paragraph (1) of subdivision (a) of Section 262. [¶] (3) A violation of Section 264.1. [¶] (4) A violation of subdivision (b) of Section 288. [¶] (5) A violation of subdivision (a) of Section 289. [¶] (6) Sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. [¶] (7) A violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066."

FN6 Subdivision (d) provides in relevant part: "The following circumstances shall apply to the offenses specified in subdivision (c): [¶] (1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in another jurisdiction that includes all of the elements of an offense specified in subdivision (c)...." Other "circumstances" enumerated in subdivision (d), but not alleged in the case before us, include various offense-specific triggering factors, such as the circumstance that the present offense involves certain forms of kidnapping, or infliction of aggravated mayhem, or torture, or burglary.

FN7 Subdivision (e), listing "circumstances [that] apply to the offenses specified in subdivision (c)," includes as offense-specific triggering factors that the present offense involves certain forms of kidnapping, burglary, infliction of great bodily injury, use of a dangerous or deadly weapon or firearm, multiple victims, tying or binding of the victim or another person, or administering of a controlled substance to the victim by force, violence, or fear. A defendant who is convicted of a current offense specified in subdivision (c), but with only one of the triggering factors set forth in subdivision (e) and no other triggering factors under section 667.61, is to be sentenced to imprisonment of 15 years to life. (§ 667.61, subd. (b).)

There is no controversy in this case concerning the first requirement—conviction in the *present* case of at least one of the offenses listed in section 667.61, subdivision (c). As defendant concedes, this condition is satisfied by virtue of the present conviction on the section 288, subdivision (b)(1) count (forcible lewd conduct upon a child under the age of 14 years), and, additionally, the two convictions in the present case on the section 288, subdivision (a) counts (non-forcible lewd conduct upon a child under the age of 14 years), as to which defendant was not qualified for probation. (§ 667.61, subd. (c)(4) & (7); see § 1203.066, subd. (a)(5).)

The issue before us solely concerns whether defen-

dant committed those qualifying present offenses under circumstances specified in the One Strike law, triggering a sentence of 25 years to life in prison.

Section 667.61, subdivision (d)(1), of the One Strike law mandates a sentence of 25 years to life when a defendant commits a qualifying offense after he or she "has been *previously convicted of an offense specified in subdivision (c)*, including an offense committed in another jurisdiction that includes all the elements of an offense specified in subdivision (c)." (Italics added.)

The specific question before us is whether, in light of defendant's 1988 prior conviction for violating section 288, subdivision (a), as to which he qualified for probation, "defendant has been previously convicted of an offense specified" in section 667.61, subdivision (c).

Section 667.61, subdivision (c), which as noted above is specifically referred to and incorporated in section 667.61, subdivision (d)(1), provides in relevant part: "This section shall apply to any of the following offenses: [¶] ... [¶] (7) *A violation of subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066.*" (Italics added.)

B

(2) As we recently observed in People v. Acosta (2002) 29 Cal.4th 105 [124 Cal.Rptr.2d 435, 52 P.3d 624] (Acosta), in which we construed other aspects of the One Strike law: "[O]ur fundamental task ... is to determine the Legislature's intent so as to effectuate the law's purpose. [Citation.] We begin by examining the statute's words, giving them a plain and common-sense meaning. [Citation.] We do not, however, consider the statutory language "in isolation." [Citation.] Rather, we look to "the entire substance of the statute ... in order to determine the scope and purpose of the *763 provision [Citation.]" [Citation.] That is, we construe the words in question "in context, keeping in mind the nature and obvious purpose of the statute ... [Citation.]" [Citation.] We must harmonize "the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole." [Citations.]" (Acosta, supra, 29 Cal.4th 105, 112, quoting People v. Murphy (2001) 25 Cal.4th 136, 142 [105 Cal.Rptr.2d

387, 19 P.3d 1129] (Murphy).) As in Acosta, "[t]hese familiar principles guide our interpretation of the sentencing provisions at issue here." (Acosta, supra, 29 Cal.4th 105, 112.)

(1b) Defendant, stressing what he terms the "plain meaning" of the "literal language" of section 667.61, subdivisions (c)(7) and (d)(1), asserts that "[o]rdinarily a violation of subdivision (a) of section 288 would be included in [the One Strike] list—however, the Legislature carved out an exception. If the defendant *was eligible* for probation, then a violation of subdivision (a) of section 288 does not fall under the harsh provisions of section 677.61." (Italics added.) Concluding that "the language is clear on its face," defendant asserts that pursuant to the exception set out in section 667.61, subdivision (c)(7), his 1988 prior conviction for violating section 288, subdivision (a), does not constitute a qualifying offense under the One Strike law, because he was eligible for (and indeed was granted) probation in that prior case.

The People, citing as well the statutory language, and also claiming adherence to the literal words of the provision, argue the opposite conclusion. The People assert that, as required by section 667.61, subdivision (d)(1), defendant was indeed "previously convicted of an offense specified in" section 667.61, subdivision (c)—namely, a violation of section 288, subdivision (a)—and they argue that defendant's eligibility for probation for that conviction does not change or diminish the circumstance that defendant was in fact convicted of that offense in 1988. In other words, the People suggest that the limitation found in section 677.61, subdivision (c)(7)—"unless the defendant qualifies for probation under subdivision (c) of section 1203.066"—*applies only to the current offense* and simply has no application when determining the existence of a qualifying *prior* conviction under section 667.61, subdivision (d)(1).

This reading of the statute, the People assert, is confirmed by the Legislature's use of the present tense phrase, "*qualifies* for probation," in section 667.61, subdivision (c)(7). The People argue that if the Legislature intended to exempt from sentencing under the One Strike law *prior* violations of section 288, subdivision (a), for which the defendant "qualified" for probation, it would have clearly said so. That it did not, the People argue, *764 substantiates the Legislature's intent to count, as predicate felonies under the

One Strike law, *prior section 288*, subdivision (a) convictions for which the defendant formerly *qualified* for probation.

As we shall explain in part II.C, in our view the language of the statute read as a whole—although perhaps not providing a conclusive or definitive answer to the issue before us—strongly supports the People's proposed interpretation. Moreover, even if we assume that the statutory language is ambiguous, as we shall further explain in part II.D.3, we conclude that the legislative history and purpose of the One Strike law overwhelmingly supports the interpretation urged by the People and adopted by the lower courts.

C

We begin by examining the language of the statute.

Section 667.61, subdivision (c), defines the *present* "offenses" to which the One Strike law applies. Subdivision (c)(7) includes in that group of offenses a violation of section 288, subdivision (a), but makes a violation of section 288, subdivision (a), subject to One Strike treatment only if the defendant does not qualify for probation after being convicted of that offense. In short, the exception serves to remove some violations of section 288, subdivision (a), from the category of present offenses to which the One Strike law applies.

The purpose of section 667.61, subdivision (d), is to define some of the additional circumstances that will subject a defendant who is convicted of one of the present qualifying offenses to a 25-year-to-life sentence under the One Strike law. Section 667.61, subdivision (d)(1), sets out the following as a triggering circumstance: "The defendant has been previously convicted of an *offense* specified in subdivision (c), including an *offense* committed in another jurisdiction that includes all the *elements of an offense* specified in subdivision (c)." (Italics added.) The italicized terms suggest that the intended focus of the triggering circumstance described in section 667.61, subdivision (d)(1), is upon the existence of a prior conviction of a *particular offense*—and not upon events or circumstances extraneous to the offense itself. Probation eligibility following conviction of an offense is not a part or element of the offense itself.

The focus of section 667.61, subdivision (d)(1), upon

conviction of an "offense" set out in subdivision (c) is perhaps clearest with respect to the subsection's application to "an offense committed in another jurisdiction." By providing that such a conviction constitutes a triggering offense if it "includes *all of the elements of an offense specified in subdivision (c)*," the Legislature apparently intended to count a prior foreign conviction as a qualifying triggering offense without regard to whether the defendant was eligible for probation following conviction of the prior foreign offense. This understanding, in turn, informs the proper interpretation of the corresponding phrase in section 667.61, subdivision (d)(1), "previously convicted of an offense specified in subdivision (c)." There is no reason to believe that the Legislature intended to impose greater conditions upon the use of an otherwise qualifying prior conviction of a California offense, as compared with a corresponding qualifying prior conviction of a foreign offense.

This analysis would support the People's view that by referring in section 667.61, subdivision (d)(1), to a prior conviction of an "offense specified in subdivision (c)," the Legislature was focussing upon the substantive offenses listed—as defined in the relevant statutory provisions—and that section 667.61, subdivision (d)(1), includes any prior violation of section 288, subdivision (a), whether or not, at the time of the prior conviction, the defendant was eligible for probation.

D

1

We begin this part of our analysis by reviewing the statutory landscape of which the One Strike law, section 667.61, is part.

First, as noted above, section 288 has for decades criminalized lewd conduct committed on a minor who is under 14 years of age. (See *People v. Martinez* (1995) 11 Cal.4th 434, 442-445 [45 Cal.Rptr.2d 905, 903 P.2d 1037].) Subdivision (a) of that section addresses nonforcible lewd conduct; subdivision (b)(1) addresses forcible lewd conduct. Both subdivisions call for state prison sentences of three, six, or eight years.

Second, section 1203.066—enacted more than a dec-

ade before the Legislature adopted the One Strike law—generally requires prison sentences and bars probation for those who are convicted of violating section 288 and related offenses. (See § 1203.066, subd. (a).) As we recounted in *People v. Jeffers* (1987) 43 Cal.3d 984, 993-997 [239 Cal.Rptr. 886, 741 P.2d 1127](*Jeffers*), however, the Legislature was motivated by various policy considerations to enact a limited exception to the general bar on probation. Accordingly, subdivision (c) of section 1203.066 provides that if the defendant is the victim's "relative" or "member of the victim's household," and if *766 other conditions are met, a trial court may exercise discretion to grant probation to a defendant convicted of violating section 288, subdivision (a).

FN8

FN8 Section 1203.066, subdivision (c), provides that probation may be considered if the trial court "makes all of the following findings:

"(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the victim's household.

"(2) A grant of probation to the defendant is in the best interest of the child.

"(3) Rehabilitation of the defendant is feasible, the defendant is amenable to undergoing treatment, and the defendant is placed in a recognized treatment program designed to deal with child molestation immediately after the grant of probation or the suspension of execution or imposition of sentence.

"(4) The defendant is removed from the household of the victim until the court determines that the best interests of the victim would be served by returning the defendant to the household of the victim....

"(5) There is no threat of physical harm to the child victim if probation is granted. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to do so. The court shall state its reasons on the record for what-

ever sentence it imposes on the defendant."

The third provision within the relevant statutory landscape is the Habitual Sexual Offender law, section 667.71, which was enacted one year prior to adoption of the One Strike law. As its name suggests, the Habitual Sexual Offender law is designed to target repeat sexual offenders, by imposing a sentence of 25 years to life in prison on those who commit a specified offense (including a violation of section 288, subdivisions (a) or (b)(1)) after having previously been convicted of a specified offense. (See § 667.71, subs. (a), (b) & (c)(4).)

Finally, six months before the Legislature enacted the One Strike law, it adopted, as urgency legislation, the Three Strikes law, section 667, subdivisions (b)-(i).^{FN9} This statutory scheme provides for enhanced sentencing for recidivist felons, including those convicted of violating section 288, subdivision (a) or (b)(1). (See § 667, subs. (d)(1) & (e).)

FN9 See Statutes 1994, chapter 12, section 1, p. 71 (eff. Mar. 7, 1994). In November 1994, the voters adopted by initiative a substantially identical version of the Three Strikes law, codified as section 1170.12. Insofar as the issues before us are concerned, there is no substantive difference between the two laws. We hereafter refer to and cite only the legislative version of the Three Strikes law, section 667, subdivisions (b)-(i).

2

We turn now to the legislative history of the One Strike law, section 667.61. (5 Stats. 1994, 1st Ex. Sess., ch. 14X, § 1, p. 8570.) Our recent opinion in *People v. Wutzke* (2002) 28 Cal.4th 923 [123 Cal.Rptr.2d 447, 51 P.3d 310](*Wutzke*) recounted that the One Strike law, "[a]s first introduced in the Senate, ... would have amended section 288 to impose life imprisonment without the possibility of parole (LWOP) on persons convicted of *767 substantial sexual conduct with a child under age 14. The same version of the bill also proposed repealing section 1203.066, and otherwise prohibiting probation for anyone convicted of violating section 288. (Sen. Bill No. 26X (1993-1994 1st Ex. Sess.) as introduced Feb. 2, 1994, §§ 5, 11, 12.)" (*Wutzke, supra*, 28 Cal.4th at p. 941.)

We continued in *Wutzke*: "However, subsequent versions of the same bill abandoned the LWOP proposal in favor of indeterminate life terms of the sort ultimately included in section 667.61. Lawmakers also decided that section 1203.066 [including the exception set out in subdivision (c) for probation in some cases upon a proper showing] should be retained (Assem. Amend. to Sen. Bill No. 26X (1993-1994 1st Ex. Sess.) Aug. 22, 1994, §§ 1, 3.) The latter decision apparently stemmed from continuing concern that long mandatory prison terms would 'impede the prosecution' of intrafamilial molesters by making victims and loved ones reluctant to report the crimes and to cooperate with authorities. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 26X (1993-1994 1st Ex. Sess.) as amended May 4, 1994, p. 12.) The statutory analysis in *Jeffers, supra*, 43 Cal.3d 984, was summarized and approved in this regard." (*Wutzke, supra*, 28 Cal.4th at p. 941.)

Having read and considered the voluminous legislative reports and analyses concerning the drafting and enactment of the One Strike law, we agree with both parties that those documents do not address the precise question posed in the case before us, namely whether a previous conviction under section 288, subdivision (a), constitutes a qualifying offense triggering imposition of the One Strike sentencing scheme when the defendant *qualified* for probation as to the previous conviction. Nevertheless, as we suggested in *Wutzke, supra*, 28 Cal.4th 923, those background documents do disclose that the Legislature was keenly aware of the related laws-especially the Habitual Sexual Offender law, section 667.71, and the "probation limitation law," section 1203.066, both of which the Legislature amended in the same bill in which it enacted the One Strike law^{FN10} -and viewed the One Strike law as fitting into the landscape of those existing laws, as amended.

FN10 See 5 Statutes 1994, First Extraordinary Session, chapter 14X, sections 1-3, page 8570 et seq.

3

With this overview in mind, we return to defendant's contention that we should construe section 667.61, subdivisions (c)(7) and (d)(1), as disallowing not only a *present* conviction of section 288, subdivision

(a), as to which a defendant "qualifies" for probation under section 1203.066, subdivision *768 (c), but also as disallowing a *prior* conviction of section 288, subdivision (a), as to which a defendant *qualified* for probation under section 1203.066, subdivision (c).

In support, defendant argues that the Legislature determined that "certain violations of ... section 288, subdivision (a)"-that is, those as to which a defendant qualified for probation under section 1203.066, subdivision (c)-are "not sufficiently egregious as to justify their inclusion as prior offenses for purposes of section 667.61." In other words, defendant argues, the Legislature decided that if a particular offender who has a prior violation of section 288, subdivision (a), *qualified* for probation under section 1203.066, subdivision (c), as to that conviction, that prior conviction should never, in the future, merit treatment as a prior conviction under the One Strike law. Defendant does not point to any specific support for this view, and he fails to advance any persuasive response to the People's contrary reading of the statutory scheme and its history.

The People assert that the Habitual Sexual Offender law (§ 667.71)-which, as noted, is designed to address *solely* recidivism-informs our interpretation of those aspects of the One Strike law that also address the problem of recidivism. The People reason as follows: "[T]he Habitual Sexual Offender law ... includes within its sentencing scheme elevated punishment for both current *and* prior convictions for violations of section 288, subdivision (a), *absent* the limiting language found in section 667.61[, subdivision (c)(7)] In other words, when the Legislature enacted a law targeting only recidivist sexual offenders (i.e., the Habitual Sexual Offender law), it did not exclude from enhanced sentencing treatment any conviction for a violation of section 288, subdivision (a), while in enacting a statute targeting recidivist sexual offenders *and* first time offenders who commit certain sexual crimes under aggravated circumstances (i.e., the One-Strike law), the Legislature included language which excepts from harsh punishment a specified minority of offenders."

The People assert that "[t]he ... omission in the Habitual Sexual Offender law" of an exception such as that articulated in section 667.61, subdivision (c)(7), "leads to only one rational interpretation of the assertedly ambiguous language of the One Strike law:

that the Legislature intended to provide the possibility of sentencing latitude for a probation-qualifying [intra]family sexual offender whose *first* violation of section 288, subdivision (a), was committed under certain egregious circumstances, but intended no such similar sentencing distinction to apply to a defendant who was *previously* convicted of a violation of section 288, subdivision (a)." (Italics added.) *769

The People's analogy would be stronger if the recidivist aspects of the two schemes (the Habitual Sexual Offender law and the One Strike law) were identical, or essentially so. (3)(See fn. 11) But they are not. ^{FN11} Accordingly, the People's analogy to the Habitual Sexual Offender law does not materially advance their position.

FN11 In addition to differing with respect to section 288, subdivision (a) violations, these laws differ in two other significant respects. First, they are dissimilar in terms of general coverage. Although in some respects the qualifying offenses listed in the two laws are the same, in other respects the One Strike law's listing of the same general offenses is broader than that of the Habitual Sexual Offender law. The One Strike law, section 667.61, subdivision (c)(6), broadly lists as a qualifying offense "[s]odomy or oral copulation in violation of Section 286 or 288a by force, violence duress," etc. The Habitual Sexual Offender law, by contrast, lists as qualifying offenses only specific subparts of those two statutes. (§ 667.71, subd. (c)(7) ["[a] violation of subdivision (c) of Section 286 by force, violence, duress"] & subd. (c)(9) ["[a] violation of subdivision (c) or (d) of Section 288a by force, violence, duress".]) In many other respects the coverage of the Habitual Sexual Offender law is much broader than that of the One Strike law, including within its scope coverage of violations not listed in the One Strike law. The following violations trigger the Habitual Sexual Offender law, but not the One Strike law: violations of section 288.5 (continuous sexual abuse of a child), section 207, subdivision (b) (kidnapping by enticing minor under the age of 14 years for the purpose of committing lewd acts upon that minor), section 208, former subdivision (d) (kidnapping

to commit specified sex offenses), section 209 (kidnapping with intent to commit crimes such as rape, sodomy or oral copulation in violation of section 289), and section 269 (aggravated sexual assault of a child). (See § 667.71, subdivision (c)(6), (10)-(13).)

Second, the two laws differ substantially in effect. Under the Habitual Sexual Offender law (and the Three Strikes law for that matter), a trial court retains authority to "strike" any punishment-enhancing circumstance (including a prior strike conviction) in the interests of justice. (See, e.g., People v. Superior Court (Romero) (1996) 13 Cal.4th 497 [53 Cal.Rptr.2d 789, 917 P.2d 628].) Under the One Strike law, by contrast, courts have no such discretion; sentencing under the full and severe terms of the law is mandatory. (§ 667.61, subd. (f).)

(1c) The People's arguments concerning section 1203.066, subdivision (c), however, are persuasive. The People assert that in light of the purpose underlying that provision, the Legislature could not have intended the result envisioned by defendant. (4) The People aptly summarize the policy considerations that led the Legislature to adopt the exception set out in section 1203.066, subdivision (c), and, by incorporation, section 667.61, subdivision (c)(7): "The exception to mandatory imprisonment for qualifying [intra]family sexual offenders is premised on the rationale that (1) in contrast to pedophiles who have an exclusive lifelong attraction to children, some adults with age-appropriate mates 'regress' by molesting young family or household members for situational or opportunistic reasons, (2) such molesters can successfully reform if they receive both punishment and treatment, and (3) mandatory prison sentences, as opposed to jail time and probation, could do more harm than good in some [intra]family molestation cases, as the victim could feel a sense of guilt for bringing shame on the family or causing the household to dissolve, and loved ones who are *770 emotionally and/or financially dependent on the molester could blame or even abandon the victim, which in turn could deter victims and their families from reporting the crime, from cooperating with law enforcement officials, and from participating in counseling to repair the damaged relationship." (See Jeffers, supra, 43 Cal.3d 984, 993-997; Wutzke, su-

(Cite as: 30 Cal.4th 756)

pra. 28 Cal.4th 923, 935 et seq.)

(1d) As the People observe, these goals underlying the exception recognized in section 1203.066, subdivision (c), "cease to be attainable when the defendant stands before the court as a repeat [intra]family molester: he/she has proven to be impervious to treatment, the threat to family harmony created by long-term incarceration pales in comparison to the threat of almost certain continued sexual abuse, and the pressures that might otherwise cause the victim to shun disclosure and/or feel guilt are diminished, if not alleviated, by the fact that the molester's punishment can no longer be directly attributable to a report of the current abuse."

Defendant concedes that there "may be all kinds of policy reasons why any prior conviction under subdivision (a) of section 288 should always qualify as a prior conviction for purposes of subdivision (d)(1), of section 667.61, regardless of whether the defendant was eligible [for] or was granted probation in the prior case." But, defendant argues, "[c]ourts do not set policy in criminal law That is the function of the Legislature. The Legislature has spoken; this Court has its marching orders. Section 667.61 does not apply by the plain language of the statute."

Defendant's entreaty to follow his understanding of the language of the law does not respond to the People's point. As observed above, the "plain language" of the statute does not favor defendant, and we do not read the statute as providing the "marching orders" that defendant discerns. Defendant offers no rebuttal to the People's argument that the reasons that motivated the Legislature to adopt the exception recognized in section 1203.066, subdivision (c) (recognized in *Jeffers* and *Wutzke*), simply do not apply in the context of determining whether to count, under the One Strike law, a prior section 288, subdivision (a) conviction for which the defendant qualified for probation.^{FN12}

FN12 Indeed, as the People observe, under defendant's construction, so long as a defendant were eligible for probation on the prior conviction, that conviction would not qualify as a triggering circumstance even if the defendant were ultimately denied probation or received it and later violated it. We doubt that the Legislature intended this result.

(5) (See fn. 13.) We agree with the People that in light of the language of section 667.61, subdivisions (c)(7) and (d)(1), and the rationale underlying a *771 grant of probation for certain first-time intrafamily sexual offenders, it is most reasonable to conclude that the Legislature intended that a defendant's prior conviction for violating section 288, subdivision (a), should count as a qualifying prior conviction under the One Strike law even if, as here, the defendant qualified for probation as to that prior offense.^{FN13}

FN13 Defendant's reliance upon the "rule of lenity" is misplaced. As we have held, "[w]hen language which is susceptible of two constructions is used in a penal law, the policy of this state is to construe the statute as favorably to the defendant as its language and the circumstance of its application reasonably permit." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 312 [58 Cal.Rptr.2d 855, 926 P.2d 1042].) But this rule applies only when statutory language is ambiguous and the defendant's proposed interpretation is at least as plausible as that of the People. (*People v. Avery* (2002) 27 Cal.4th 49, 58 [115 Cal.Rptr.2d 403, 38 P.3d 1]; *People v. Douglas* (2000) 79 Cal.App.4th 810, 815 [94 Cal.Rptr.2d 500].) Here, we conclude, the People's interpretation clearly is the more plausible of the two, and, we believe, is the one that the Legislature intended.

(1e) It follows that the judgment imposing two 25-year-to-life sentences upon defendant under the One Strike law must be affirmed.

III.

When the matter was before the Court of Appeal for review, the appellate court, on its own motion, solicited briefing addressing whether defendant additionally should have been sentenced under the Three Strikes law, section 667, subdivisions (b)-(i). Ultimately the Court of Appeal determined that the trial court should have considered whether to sentence defendant under the Three Strikes law as well as the One Strike law and the Habitual Sexual Offender law, and remanded the case for a new sentencing hearing "at which the sentencing court shall exercise

its informed discretion as to whether to dismiss the prior conviction for Three Strikes sentencing purposes, or utilize that conviction."

As defendant concedes, the Court of Appeal's conclusion that he was subject to sentencing under the Three Strikes law, as well as under other applicable sentencing provisions, is consistent with Murphy, supra, 25 Cal.4th 136, 157, and Acosta, supra, 29 Cal.4th 105, 128-134, in which we recently held that the same prior conviction may be used for sentencing under both the One Strike law and the Three Strikes law.

Accordingly, as the Court of Appeal determined, the matter must be remanded to the trial court for consideration of sentencing under the Three Strikes law—specifically to allow the trial court to exercise its discretion under People v. Superior Court (Romero), supra, 13 Cal.4th 497, to "strike" the prior section 288, subdivision (a) conviction for Three Strikes purposes, or instead impose the sentence-doubling provisions of the Three Strikes law (§ 667, subd. (e)(1)) upon defendant, a "second strike" offender. *772

IV

We affirm the judgment of the Court of Appeal and hold that defendant's 1988 prior section 288, subdivision (a), conviction, for which he was eligible for probation, subjects him to a sentence of 25 years to life under the One Strike law, section 667.61, subdivisions (a), (c)(7), and (d)(1). The matter is remanded for a new sentencing hearing at which the trial court may exercise its discretion under the Three Strikes law, section 667, subdivisions (b)-(i).^{FN14}

FN14 As defendant observes, it is unclear from the record whether the trial court realized that it had discretion to strike the prior 1988 conviction for purposes of sentencing under the Habitual Sexual Offender law. Accordingly, upon remand, the trial court additionally should determine whether it would exercise its discretion to strike the prior 1988 conviction for purposes of sentencing under the Habitual Sexual Offender law. Of course, in light of the mandatory One Strike law, defendant still will be subject to the sentence of 55 years to life in prison previously imposed by the trial court,

even if that court elects to exercise its discretion to strike the 1988 prior conviction for purposes of the Three Strikes law and the Habitual Sexual Offender law.

Kennard, J., Baxter, J., Werdegar, J., Chin, J., Brown, J., and Moreno, J., concurred. *773 053 cent-Y cent-R found without first cent-Y.

Cal. 2003.
People v. Hammer
30 Cal.4th 756, 69 P.3d 436, 134 Cal.Rptr.2d 590, 03 Cal. Daily Op. Serv. 4490, 2003 Daily Journal D.A.R. 5689

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P

Supreme Court of California,
In Bank.

The PEOPLE, Plaintiff and Respondent,

v.

Derrick Leon THOMAS, Defendant and Appellant.
No. S025251.

Dec. 14, 1992.

Rehearing Denied Jan. 28, 1993.

Defendant pleaded guilty in the Superior Court, Santa Clara County, No. 136555, Jeremy D. Fogel, J., to robbery and was sentenced to five years' imprisonment, two years for robbery plus three-year enhancement for use of firearm. Defendant appealed. The Court of Appeal affirmed. Appeal was taken. The Supreme Court, Lucas, C.J., held that deletion of sentencing court's power to strike firearm use enhancement, if there are mitigating circumstances, divested court of statutory discretion to strike enhancement in furtherance of justice.

Affirmed.

West Headnotes

[1] Sentencing and Punishment 350H 207

350H Sentencing and Punishment

350HII Sentencing Proceedings in General

350HII(A) In General

350Hk203 Constitutional, Statutory and Other Regulatory Provisions

350Hk207 k. Amendment. Most Cited Cases

(Formerly 110k1208.6(5))

Deletion of sentencing court's statutory power to strike firearm use enhancement, if there are mitigating circumstances, divested court of statutory discretion to strike enhancement in furtherance of justice, even though amending statute did not expressly refer to statute on dismissal in furtherance of justice; "mitigating circumstances" standard was essentially identical to standard on "furtherance of justice," and amending statute was in package of provisions aimed

at enhancing criminal liability for unlawful firearm use. West's Ann.Cal.Penal Code §§ 1170.1(h), 1385, 12022.5.

[2] Criminal Law 110 303.20

110 Criminal Law

110XVI Nolle Prosequi or Discontinuance

110k303.5 Dismissal, Nolle Prosequi, or Discontinuance

110k303.20 k. Stage of Proceeding. Most Cited Cases

Sentencing and Punishment 350H 249

350H Sentencing and Punishment

350HII Sentencing Proceedings in General

350HII(C) Preliminary Proceedings in General

350Hk249 k. Objections and Disposition Thereof. Most Cited Cases

(Formerly 110k1208.6(5))

Statutory power to dismiss action in furtherance of justice includes power to dismiss or strike sentencing enhancement. West's Ann.Cal.Penal Code § 1385.

[3] Statutes 361 223.1

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to Other Statutes

361k223.1 k. In General. Most Cited Cases

Statutes 361 230

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k230 k. Amendatory and Amended Acts. Most Cited Cases

In determining legislative intent underlying new provision or amendment, Supreme Court must consider entire scheme of law of which it is part.

[4] Statutes 361 194

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k194 k. General and Specific Words and Provisions. Most Cited Cases

Any inconsistency between provisions of statute is resolved by applying more specific provision and any amendments thereto.

[5] Statutes 361 189

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k189 k. Literal and Grammatical

Interpretation. Most Cited Cases

Statute should not be given literal meaning if doing so would result in absurd consequences which legislature could not have intended.

*207 ***174 George L. Schraer, San Diego, under appointment by the Supreme Court, and Winifred T. Gross, Campbell, under appointment by the Court of Appeal, for defendant and appellant.

Daniel E. Lungren, Atty. Gen., George Williamson, Chief Asst. Atty. Gen., Ronald A. Bass and John H. Sugiyama, Asst. Attys. Gen., Martin S. Kave, Laurence K. Sullivan, Herbert F. Wilkinson *208 and Ronald S. Matthias, Deputy Attys. Gen., for plaintiff and respondent.

Michael R. Capizzi, Dist. Atty. (Orange) and E. Thomas Dunn, Jr., Deputy Dist. Atty., as amici curiae on behalf of plaintiff and respondent.

LUCAS, Chief Justice.

In 1989, the Legislature amended Penal Code section 1170.1, subdivision (h) (all further statutory references are to this code), by deleting section 12022.5 (firearm use enhancements) from the list of statutory enhancements that a trial court might, in its discretion, strike if sufficient "circumstances in mitigation" exist. The question arises whether trial courts nonetheless may continue to strike such firearm use en-

hancements "in furtherance of justice" under***175 **160 section 1385. Because we find clear legislative intent to withhold such authority, we conclude the Court of Appeal in the present case correctly ruled the trial court herein lacked such authority.

On January 7, 1990, defendant Derrick Leon Thomas (age 18) and his companion (age 17) robbed a store in Palo Alto. Defendant was holding a loaded .22-caliber gun borrowed from his companion, who had taken it from his mother without her knowledge. The robbers took and divided \$160 in cash, fled on bicycles, and were arrested a few minutes later.

A complaint charged defendant with robbery (§ 211), and alleged a firearm use (§ 12022.5, subd. (a)) and probation ineligibility (§ 1203.06). Defendant negotiated a plea bargain, the precise term of imprisonment conditioned on the result of his motion to strike the firearm use enhancement. In support of his motion to strike, defendant submitted an evaluation of the interviewing counselor, who concluded that the robbery was an isolated and impulsive act not likely to be repeated by defendant. The People argued the trial court lacked authority to entertain the motion to strike. The court denied defendant's motion, without indicating whether or not it was exercising discretion under section 1385. Pursuant to the terms of defendant's plea bargain, he was then sentenced to a five-year term of imprisonment. Defendant appealed.

The Court of Appeal affirmed, concluding the trial court lacked authority to entertain a motion under section 1385 to strike a firearm use enhancement provided for by section 12022.5. As will appear, we agree.

*209 1. *The applicable statutes*

Section 12022.5, subdivision (a), in pertinent part provides for an enhanced punishment of three, four or five years' imprisonment for "any person who personally uses a firearm in the commission or attempted commission of a felony...."

Section 1170.1, subdivision (d), provides that when the court imposes a prison sentence for a felony (see generally § 1170), "the court shall also impose the additional terms provided" in 16 specified sections of the Penal Code and the Health and Safety Code, including section 12022.5, "unless the additional pun-

ishment therefor is stricken pursuant to subdivision (h)."

Section 1170.1, subdivision (h), provides that "Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided" in 13 of the 16 enhancement sections set forth in subdivision (d), "if it determines that there are circumstances in mitigation of the additional punishment...."

Until 1989, section 12022.5 was one of the sections listed in section 1170.1, subdivision (h). The Legislative Counsel's Digest comment concerning the proposal to delete reference to section 12022.5 explained the amendment as follows: "Existing law relating to sentencing authorizes a court to strike the additional enhancement involving the personal use of a firearm in the commission ... of a felony.... [¶] *This bill would delete that authorization.*" (Italics added, Legis. Counsel's Digest, Assem. Bill No. 566, subd. (1), Stats.1989, ch. 1044.)

Finally, section 1385, subdivision (a), permits the sentencing authority "in furtherance of justice [to] order an action to be dismissed." In its 1989 amendment to section 1170.1, subdivision (h), the Legislature deleted reference to section 12022.5, but did not alter or refer to the language of section 1385.

2. Discussion

[1][2] Defendant contends the trial court erred in denying his motion to strike the firearm use enhancement without exercising the court's "furtherance of justice" discretion under section 1385. As defendant observes, the power to dismiss an "action" under section 1385 includes the power to dismiss or strike an enhancement. (See People v. Fritz (1985) 40 Cal.3d 227, 229-230, 219 Cal.Rptr. 460, 707 P.2d 833; *210People v. Williams (1981) 30 Cal.3d 470, 482-483, 179 Cal.Rptr. 443, 637 P.2d 1029; People v. Burke (1956) 47 Cal.2d 45, 50-51, 301 P.2d 241; ***176**161People v. Dorsey (1972) 28 Cal.App.3d 15, 18-20, 104 Cal.Rptr. 326; cf. § 1385, subd. (b) [abrogating Fritz's holding that section 1385 may be used to strike "prior serious felony" enhancements under § 667].)

The People, on the other hand, contend that by amending section 1170.1, subdivision (h), to delete

the reference to section 12022.5, the Legislature expressed a clear intent to divest the courts of discretion to strike firearm use enhancements. The People suggest further that the Legislature's failure to likewise amend or refer to section 1385 was, at most, a drafting "oversight" of a kind to which we have previously referred. (See, e.g., People v. Pieters (1991) 52 Cal.3d 894, 900-901, 276 Cal.Rptr. 918, 802 P.2d 420; People v. Jackson (1985) 37 Cal.3d 826, 837-838, and fn. 15, 210 Cal.Rptr. 623, 694 P.2d 736.)

As we observed in People v. Pieters, supra, 52 Cal.3d at pages 898-899, 276 Cal.Rptr. 918, 802 P.2d 420, "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But '[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.] Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]"

Defendant cites cases holding that, absent a clear legislative direction to the contrary, a trial court retains its authority under section 1385 to strike an enhancement. (See People v. Fritz, supra, 40 Cal.3d at pp. 229-230, 219 Cal.Rptr. 460, 707 P.2d 833; People v. Williams, supra, 30 Cal.3d at pp. 482-483, 179 Cal.Rptr. 443, 637 P.2d 1029; People v. Tanner (1979) 24 Cal.3d 514, 518, 156 Cal.Rptr. 450, 596 P.2d 328; see also People v. Sutton (1985) 163 Cal.App.3d 438, 445-446, 209 Cal.Rptr. 536 [recognizing authority under § 1385 to strike deadly weapon use enhancement under section 12022.3, despite failure of Legislature to include such enhancements in § 1170.1, subd. (h)]; People v. Price (1984) 151 Cal.App.3d 803, 818-820, 199 Cal.Rptr. 99 [same].)

*211 But it is not necessary that the Legislature expressly refer to section 1385 in order to preclude its operation. (See People v. Rodriguez (1986) 42 Cal.3d 1005, 1019, 232 Cal.Rptr. 132, 728 P.2d 202 [§ 1385

may be held inapplicable "in the face of [a] more specific proscription on the court's power"; *People v. Tanner*, supra, 24 Cal.3d at pp. 519-521, 156 Cal.Rptr. 450, 596 P.2d 328 [specific language of § 1203.06 barring probation contained sufficient indicia of legislative intent to preclude judicial exercise of discretion under § 1385]; see also *People v. Dillon* (1983) 34 Cal.3d 441, 467, 194 Cal.Rptr. 390, 668 P.2d 697 [deletion of provision indicates legislative intent to change law].) As we stated in *People v. Williams*, supra, 30 Cal.3d at page 482, 179 Cal.Rptr. 443, 637 P.2d 1029, "Section 1385 permits dismissals in the interest of justice in any situation where the Legislature has not clearly evidenced a contrary intent."

What was the intent of the Legislature in deleting from section 1170.1, subdivision (h), the former reference to section 12022.5? As previously noted, the Legislative Counsel's comment indicated the amendment was intended to "delete" the trial courts' authorization to strike the additional enhancement involving the personal use of a firearm in the commission of a felony. Could the Legislature, in deleting reference to section 12022.5, nonetheless have intended to preserve a power to strike that enhancement under section 1385? We conclude otherwise, and a comparison of the respective standards for striking or dismissing enhancements under section 1170.1, subdivision (h), and section 1385, reinforces that conclusion.

***177 **162 Section 1170.1, subdivision (h), permits a court to strike the punishment for an enhancement "if it determines that there are circumstances in mitigation of the additional punishment...." Section 1385, on the other hand, permits dismissal of actions (or enhancements) "in furtherance of justice." Are there significant differences between these standards which might have induced the Legislature to leave section 1385 in place as a vehicle for striking firearm use enhancements? It is quite difficult to conceive of any such differences.

The Judicial Council adopted extensive guidelines to assist in determining whether "circumstances in mitigation" exist to justify striking enhancements or reducing sentences to a lower term. (See Cal.Rules of Court, rule 423, and Advisory Com.Comment.) Rule 423 lists a variety of such "circumstances in mitigation," including facts relating to the crime (such as

defendant's minor role or laudable motive in the offense, the small likelihood of its recurrence, the presence of duress or coercion by others, or a mistaken claim of right by the defendant), and facts relating to the defendant (including his *212 insignificant prior record, mental or physical condition reducing his culpability, restitution or satisfactory performance on probation or parole). Rule 423's list of mitigating circumstances mirrors many of the considerations we have stated are appropriate in determining whether to dismiss an action under section 1385 in furtherance of justice. (See *People v. Superior Court (Howard)* (1968) 69 Cal.2d 491, 505, 72 Cal.Rptr. 330, 446 P.2d 138.)

Defendant suggests that the "furtherance of justice" standard is broader than the "circumstances in mitigation" standard, and would include consideration of matters extrinsic to the offense and the offender, such as protection of the public interest. (See *People v. Orin* (1975) 13 Cal.3d 937, 944, 120 Cal.Rptr. 65, 533 P.2d 193.) Although the public interest may well favor *enhancing* a defendant's sentence by reason of his firearm use, it would be quite rare when the public interest, but not "circumstances in mitigation," would justify *striking* such an enhancement. (Such cases seemingly would be limited to situations wherein the *People* seek to strike an enhancement to enable them to rely on the defendant's gun use as an aggravating sentencing factor.) In most cases, if the public interest favors such relief, that fact readily could be deemed a "circumstance in mitigation of the additional punishment." (See, e.g., *People v. Marsh* (1984) 36 Cal.3d 134, 145, fn. 8, 202 Cal.Rptr. 92, 679 P.2d 1033 [noting for purposes of remand that striking enhancements may be justified under § 1385 by number of "mitigating circumstances" in case].)

In short, we believe that, at least in the context of striking firearm use enhancements, the two standards are essentially identical. This conclusion supports the People's position that the Legislature's deletion of section 12022.5 was intended to divest the courts of their statutory authority to strike firearm use enhancements, whether such power be exercised under section 1170.1, subdivision (h), or under section 1385.

[3] As previously stated, in determining the legislative intent underlying a new provision or amendment, we must consider the entire scheme of law of which

it is a part. The 1989 amendment to section 1170.1, subdivision (h), was included in a bill (Assem.Bill No. 466, The "McClintock Firearms" bill) that contained a variety of measures *expanding or enhancing* criminal liability for unlawful firearm use or possession. These new measures included provisions (1) restricting plea bargaining when a defendant personally used a firearm, (2) elevating certain firearm use or possession offenses from misdemeanor/felony ("wobbler") status to felonies, and (3) increasing the term of imprisonment for personal use of a firearm during a felony, as well as (4) the subject provision deleting section 12022.5 *213 from section 1170.1, subdivision (h). (See Legis. Counsel's Dig., Stats.1989, ch. 1044.)

In light of the fact that the subject provision is included in a "package" of provisions aimed at enhancing criminal liability for unlawful firearm use, we think it highly ***178 **163 unlikely the Legislature intended nonetheless to preserve broad judicial authority under section 1385 to strike a firearm use enhancement "in furtherance of justice."

Defendant observes that prior to the adoption of the foregoing amendment, the Attorney General's Office had urged the Legislature to modify section 1385 to preclude a court from striking a firearm use enhancement in furtherance of justice. Evidently, the Legislature did not deem an amendment to section 1385 necessary in light of its deletion of the specific reference to section 12022.5 in section 1170.1, subdivision (h). This conclusion is supported by a synopsis of Assembly Bill No. 466 prepared by the Senate Committee on the Judiciary, which synopsis referred to the prior ability of courts to strike firearm use enhancements "in the interest of justice," and commented "This bill would provide that the enhancements shall never be stricken."

[4][5] Finally, the People observe that although section 1385 provides a broad, general power to dismiss "actions" in furtherance of justice, section 1170.1, subdivision (h), provides a *specific* power to strike specified enhancements. Under well-established rules of construction, any inconsistency between the two provisions would be resolved by applying the more specific provision (and any amendments thereto). (E.g., People v. Tanner, supra, 24 Cal.3d at p. 521, 156 Cal.Rptr. 450, 596 P.2d 328.) Moreover, to accept defendant's argument and

hold that section 1385 continues to afford a broad ("furtherance of justice") basis for striking an enhancement under section 12022.5 could effectively negate the 1989 amendment to section 1170.1, subdivision (h). The "furtherance of justice" standard of section 1385 seems broad enough to permit striking an enhancement where mitigating circumstances exist, yet the Legislature in passing the 1989 amendment clearly intended to preclude the exercise of such power. As we previously indicated, a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature could not have intended. (See People v. Tanner, supra, 24 Cal.3d at pp. 518-520, 156 Cal.Rptr. 450, 596 P.2d 328 [construing mandatory language of section 1203.06 as precluding power to strike firearm use finding and grant probation].)

For all the foregoing reasons, we conclude the trial court had no discretion to strike the firearm use enhancement under section 12022.5, and properly *214 denied defendant's motion for such relief. The Court of Appeal's judgment is affirmed.

MOSK, PANELLI, KENNARD, ARABIAN, BAXTER and GEORGE, JJ., concur.
Cal., 1992.

People v. Thomas
4 Cal.4th 206, 841 P.2d 159, 14 Cal.Rptr.2d 174

END OF DOCUMENT

PRIDEOUT HOSPITAL FOUNDATION, INC.,
 Plaintiff and Respondent,
 v.
 COUNTY OF YUBA et al., Defendants and Appel-
 lants.
 No. C011614.

Court of Appeal, Third District, California.
 Jul 20, 1992.

SUMMARY

A nonprofit hospital brought an action against a county to recover property taxes it had paid under protest after the county denied the hospital's application for the welfare exemption (Rev. & Tax. Code, § 214) on the ground that the hospital had net operating revenues in excess of 10 percent for the two tax years in question. The trial court granted summary judgment in favor of the hospital, finding that a nonprofit hospital that earns surplus revenues in excess of 10 percent for a given tax year can still qualify for the welfare exemption. (Superior Court of Yuba County, No. 45090, Robert C. Lenhard, Judge.)

The Court of Appeal affirmed. The court held that Rev. & Tax. Code, § 214, subd. (a)(1), which provides that a hospital will not be deemed to be operated for profit if its operating revenue does not exceed 10 percent, does not automatically preclude a hospital that does have revenue in excess of 10 percent from invoking the welfare exemption. The legislative history of the provision, the court held, indicates that it was not intended to deny exemption to a nonprofit organization earning excess revenues for debt retirement, facility expansion, or operating cost contingencies, but merely to require a hospital earning such excess revenue to affirmatively show that, in fact, it is not operated for profit and that it meets the other statutory conditions for invoking the exemption. (Opinion by Davis, J., with Sparks, Acting P. J., and Nicholson, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Property Taxes § 24--Exemptions--Property Used for Religious, Hospital, or Charitable Purposes--Hospital Earning in Excess of 10 Percent Revenue.

In a nonprofit hospital's action against a county to recover property taxes paid under protest, the trial court properly found that the hospital, which had net operating revenues in excess of 10 percent for the tax years in question, was not automatically ineligible for the "welfare exemption" of Rev. & Tax. Code, § 214. Rev. & Tax. Code, § 214, subd. (a)(1), provides that a hospital will not be deemed to be operated for profit if its operating revenue does not exceed 10 percent, but does not state the effect of earnings in excess of that amount. The legislative history of the provision indicates that it was not intended to deny exemption to a nonprofit organization earning excess revenues if those revenues were to be used for debt retirement, facility expansion, or operating cost contingencies. Thus, while a hospital earning such excess revenue does not receive the benefit of being deemed nonprofit, it can still invoke the exemption if it can show that, in fact, it is not operated for profit and meets the other statutory conditions for invoking the exemption.

[See Cal.Jur.3d, Property Taxes, §§ 18, 20; 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, §§ 153, 155.]

(2) Taxpayers' Remedies § 14--Proceedings and Actions to Recover Taxes Paid--Review--Questions of Law--Interpretation of Welfare Exemption Statute.

In a nonprofit hospital's action against a county to recover taxes paid under protest, the question of whether the hospital qualified for the "welfare exemption" of Rev. & Tax. Code, § 214, even though it had earned surplus revenue in excess of 10 percent for the tax years in question, was a question of law for the Court of Appeal's independent consideration on review.

(3) Statutes § 29--Construction--Language--Legislative Intent.

In interpreting a statute, the court's function is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. To ascertain such intent, courts turn first to the words of the statute itself, and seek to give those words their usual and ordinary meaning. When a court interprets statutory language,

it may neither insert language that has been omitted nor ignore language that has been inserted. The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute. If possible, the language should be read so as to conform to the spirit of the enactment. If the statute is ambiguous or uncertain, a court employs various rules of construction to assist in its interpretation.

(4) Property Taxes § 24--Exemptions--Property Used for Religious, Hospital, or Charitable Purposes--Strict Construction of Welfare Exemption Statute.

The "welfare exemption" of Rev. & Tax. Code, § 214, like all tax exemption statutes, is to be strictly construed to the end that the exemption allowed is not extended beyond the plain meaning of the language employed. The rule of strict construction, however, does not mean that the narrowest possible interpretation must be given to the statute, since strict construction must still be reasonable.

(5) Statutes § 46--Construction--Presumptions--Legislative Intent.

A fundamental rule of statutory construction is that the court must assume that the Legislature knew what it was saying and meant what it said. A related principle is that a court will not presume an intent to legislate by implication. Moreover, when the Legislature has expressly declared its intent, the courts must accept that declaration.

(6) Statutes § 42--Construction--Aids--Opinions of Attorney General.

Opinions of the Attorney General, while not binding, are entitled to great weight, and the Legislature is presumed to know of the Attorney General's formal interpretation of a statute.

COUNSEL

Daniel G. Montgomery, County Counsel, and James W. Calkins, Chief Deputy County Counsel, for Defendants and Appellants.

McCutchen, Doyle, Brown & Enersen, John R. Reese and Gerald R. Peters for Plaintiff and Respondent.

DAVIS, J.

In this action to recover property taxes paid under protest, County of Yuba (County) appeals from a decision in favor of the taxpayer, Rideout Memorial Hospital (Rideout). There is but one issue on appeal: can a nonprofit hospital that earned surplus revenue in excess of 10 percent (for a given year) still qualify for the "welfare exemption" from property taxation in light of Revenue and Taxation Code section 214, subdivision (a)(1)? We hold that it can.

Background

Revenue and Taxation Code section 214 (section 214) sets forth the "welfare exemption" from property taxation. For the tax years in question *217 here, the section provided in pertinent part: "(a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

"(1) The owner is not organized or operated for profit; provided, that in the case of hospitals, such organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses shall not have exceeded a sum equivalent to 10 percent of such operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

"(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

"(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

"(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

"(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

"(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes. ...

"The exemption provided for herein shall be known as the 'welfare exemption.'" *218

Our concern centers on section 214, subdivision (a)(1) (hereafter, section 214(a)(1)).^{FNI}

FNI Section 214(a)(1) was amended non-substantively in 1989 and now provides: "(a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if: [¶] (1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses has not exceeded a sum equivalent to 10 percent of those operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness." (Stats. 1989, ch. 1292, § 1.)

In 1985, the previously undesignated introductory paragraph of section 214 was lettered "(a)." (Stats. 1985, ch. 542, § 2, p. 2026.) This change redesignated section 214(1) as 214(a)(1), section 214(2) as 214(a)(2), and so on. For the sake of simplicity we will use the terms "section

214(a)(1)" "section 214(a)(2)" and the like when referring to the pre- or the post-1985 section 214.

County denied Rideout's applications for the welfare exemption for the tax years 1986-1987 and 1987-1988. Rideout paid the taxes under protest and applied for a refund. After County denied the refund, Rideout sued County.

County contends that Rideout had excess revenues, under section 214, of 24 and 21 percent for the two years in question. Rideout concedes that its net operating revenues under section 214 exceeded 10 percent in each of those two years.

In summary judgment proceedings, the parties narrowed the issues to the single issue stated above and the trial court ruled in favor of Rideout. (1a) County argues that Rideout is *automatically* ineligible for the welfare exemption for the years in question because its net revenues exceeded the 10 percent limitation of section 214(a)(1). Rideout counters that the 10 percent provision constitutes a "safe harbor" for non-profit hospitals by which the hospital can be deemed to satisfy section 214(a)(1), but that a nonprofit hospital with revenues over 10 percent can still meet the condition of section 214(a)(1) by showing, pursuant to the general rule, that it is not organized or operated for profit. We conclude that Rideout's position is essentially correct.

Discussion

(2) The issue in this case presents a question of law that we consider independently. (See *219 Rudd v. California Casualty Gen. Ins. Co. (1990) 219 Cal.App.3d 948, 951-952 [268 Cal.Rptr. 624]; Burke Concrete Accessories, Inc. v. Superior Court (1970) 8 Cal.App.3d 773, 774-775 [87 Cal.Rptr. 619].)

All property in California is subject to taxation unless exempted under federal or California law. (Cal. Const., art. XIII, § 1; Rev. & Tax. Code, § 201; all further references to undesignated sections are to the Revenue and Taxation Code unless otherwise specified.) The constitutional basis for the "welfare exemption" was added to the California Constitution in 1944; as revised nonsubstantively in 1974, it now provides: "The Legislature may exempt from property taxation in whole or in part: [¶] ... Property used

exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual." (Cal. Const. art. XIII, § 4, subd. (b); formerly art. XIII, § 1c.) The rationale for the welfare exemption is that the exempt property is being used either to provide a government-like service or to accomplish some desired social objective. (Ehrman & Flavin, *Taxing Cal. Property* (3d ed. 1989) Exempt Property, § 6.05, p. 9.)

Pursuant to this constitutional authorization, the Legislature in 1945 enacted section 214 and labeled that exemption the "welfare exemption." In this appeal, we are asked to interpret subdivision (a)(1) of section 214.

Certain general principles guide our interpretation. (3) "Our function is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698 [170 Cal.Rptr. 817, 621 P.2d 856].) To ascertain such intent, courts turn first to the words of the statute itself (*ibid.*), and seek to give the words employed by the Legislature their usual and ordinary meaning. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299].) When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted. (*Code Civ. Proc.*, § 1858.) The language must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute (*West Pico Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal.3d 594, 608 [86 Cal.Rptr. 793, 469 P.2d 665]), and where possible the language should be read so as to conform to the spirit of the enactment. (*Lungren v. Deukmejian, supra*, 45 Cal.3d at p. 735.)" (*Rudd v. California Casualty Gen. Ins. Co., supra*, 219 Cal.App.3d at p. 952.) If the statute is ambiguous or uncertain, courts employ various rules of construction to assist in the interpretation. (See 58 Cal.Jur.3d, *Statutes*, §§ 82-118, *220 pp. 430-508.) (4) Finally, "[t]he welfare exemption, like all tax exemption statutes, is to be strictly construed to the end that the exemption allowed is not extended beyond the plain meaning of the language employed. However, the rule of strict construction does not mean that the narrowest possi-

ble interpretation be given; "strict construction must still be a reasonable construction." (*Cedars of Lebanon Hosp. v. County of L.A.* (1950) 35 Cal.2d 729, 734-735 [221 P.2d 31, 15 A.L.R.2d 1045]; *English v. County of Alameda* (1977) 70 Cal.App.3d 226, 234 [138 Cal.Rptr. 634].)" (*Peninsula Covenant Church v. County of San Mateo* (1979) 94 Cal.App.3d 382, 392 [156 Cal.Rptr. 431].)

(1b) We therefore first consider the language of section 214(a)(1), which stated at the relevant times herein: "(a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if: [¶] (1) The owner is not organized or operated for profit; provided, that in the case of hospitals, such organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses shall not have exceeded a sum equivalent to 10 percent of such operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness." (See fn. 1, *ante.*)

As we immediately see, the proviso presents somewhat of a "knotty" problem, being cast as a double negative-if revenues did *not* exceed 10 percent, the hospital shall *not* be deemed to be organized or operated for profit. ^{FN2}Under the language of section 214(a)(1), the Legislature did not *automatically* exclude nonprofit hospitals earning *more* than 10 percent surplus revenues from the welfare exemption. The proviso does not address this situation on its face; it concerns only the hospital earning 10 percent or *under*. In fact, the automatic exclusion would have been a simple matter to accomplish—a mere untying of the two "knots" from the proviso would have done it. We note that in other sections of the Revenue and Taxation Code, when the Legislature wishes to exclude certain entities from a taxation exemption it can do so in clear terms. (See, e.g., § 201.2, subd. (c): "(c) This section shall not be construed to exempt any profit-making organization or concessionaire from any property tax, ...") *221

FN2 Of course, if a hospital satisfies this

proviso it must still actually be nonprofit because the welfare exemption does not apply to profitmaking hospitals regardless of their earnings (Cal. Const., art. XIII, § 4, subd. (b)); moreover, to claim the exemption, the nonprofit hospital must satisfy all of the other conditions set forth in section 214(a) (i.e., subds. (2) through (6)).

Nevertheless, there is that double negative. Does that double negative make a positive? In other words, is the converse of the proviso to be implied-as County argues-so that a hospital which exceeded the 10 percent figure is deemed unable to satisfy section 214(a)(1)? These questions raise ambiguities that call for the employment of certain rules of construction.

(5) A fundamental rule of construction is that we must assume the Legislature knew what it was saying and meant what it said. (Blew v. Horner (1986) 187 Cal.App.3d 1380, 1388 [232 Cal.Rptr. 660]; Tracy v. Municipal Court (1978) 22 Cal.3d 760, 764 [150 Cal.Rptr. 785, 587 P.2d 227]; Rich v. State Board of Optometry (1965) 235 Cal.App.2d 591, 604 [45 Cal.Rptr. 512].) In related fashion, courts will not presume an intent to legislate by implication. (People v. Welch (1971) 20 Cal.App.3d 997, 1002 [98 Cal.Rptr. 113]; First M. E. Church v. Los Angeles Co. (1928) 204 Cal. 201, 204 [267 P. 703].) County has constructed section 214 on a foundation of implication which does not fare well under the weight of these rules.

Another important rule is that when the Legislature has expressly declared its intent, the courts must accept that declaration. (Tyrone v. Kelley (1973) 9 Cal.3d 1, 11 [106 Cal.Rptr. 761, 507 P.2d 65]; see California Assn. of Psychology Providers v. Rank (1990) 51 Cal.3d 1, 15 [270 Cal.Rptr. 796, 793 P.2d 21].) (1c) Here, the application of this rule requires us to consider section 214's legislative history. (See 51 Cal.3d at pp. 14-16.)

As originally enacted in 1945, section 214 did not contain the proviso found in subdivision (a)(1), and the condition stated by subdivision (a)(3) was different. The section originally read in pertinent part as follows: "[a] Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious,

hospital, scientific, or charitable purposes is exempt from taxation if:

"(1) The owner is not organized or operated for profit;

"(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual;

"(3) The property is not used or operated by the owner or by any other person for profit regardless of the purposes to which the profit is devoted; ..." (Stats. 1945, ch. 241, § 1, p. 706.)

In Sutter Hospital v. City of Sacramento (1952) 39 Cal.2d 33 [244 P.2d 390], the California Supreme Court was asked whether a nonprofit hospital *222 which had deliberately earned an 8 percent surplus of income over expenses to be used for debt retirement and facility expansion could qualify for the welfare exemption of section 214. Relying on subdivision (a)(3) as stated above, the court said no. (39 Cal.2d at pp. 39-41.) The court acknowledged that its holding made it difficult for modern hospitals to operate in a financially sound manner to reduce indebtedness and expand their facilities, but said that matter should be addressed to the Legislature rather than the courts because subdivision (a)(3) compelled the court's holding. (39 Cal.2d at pp. 40-41.)

Responding to the challenge raised by the Sutter decision, the Legislature in 1953 amended section 214. (Stats. 1953, ch. 730, § 1-4, pp. 1994-1996; Christ The Good Shepherd Lutheran Church v. Mathiesen (1978) 81 Cal.App.3d 355, 365 [146 Cal.Rptr. 321].) This amendment was proposed in Assembly Bill No. 1023 (A.B. 1023). As originally introduced, A.B. 1023 rewrote subdivision (a)(3) to require simply that the property be "used for the actual operation of the exempt activity," and contained an urgency clause setting forth the Legislature's intent as follows: "This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution, and shall go into immediate effect. The facts constituting such necessity are: Continuously since the adoption of the 'welfare exemption' it has been understood by the administrators of the law, as well as by the public generally, that it was the purpose and the intent of Legislature in the adoption of subdivision [a)(3) of Section 214 of the Revenue and Taxation

Code to disqualify for tax exemption any property of a tax exempt organization which was not used for the actual operation of the exempt activity, but that such organization could rightfully use the income from the property devoted to the exempt activity for the purposes of debt retirement, expansion of plant and facilities or reserve for operating contingencies without losing the tax exempt status of its property.

"Recently, doubt has been cast upon the foregoing interpretation by a decision of the State Supreme Court involving the tax exemption of a hospital. This decision was broad in its application and has caused the postponement or actual abandonment of plans for urgently needed hospital construction and expansion at a time when there are insufficient hospital facilities in this State to properly care for the health needs of its citizens, and virtually no surplus facilities for use in case of serious epidemic or disaster. This Legislature has recognized that in addition to gifts and bequests the traditional method for the financing of the expansion and construction of voluntary religious and community nonprofit hospital facilities is through the use of receipts from the actual operating facilities. In its decision the Supreme Court indicated that this was a matter for legislative clarification. *223

"It has never been the intention of the Legislature that the property of nonprofit religious, hospital or charitable organizations otherwise qualifying for the welfare exemption should be denied exemption if the income from the actual operation of the property for the exempt activity be devoted to the purposes of debt retirement, expansion of plant and facilities or reserve for operating contingencies, it having been the intent of the Legislature in adopting subsection [a](3) of Section 214 to deny exemption to property not used for exempt purposes even though the income from the property was used to support an exempt activity.

"Therefore, in order to clarify the legislative intent and to remove any doubt with respect to the status of property actually used for exempt purposes, it is necessary to amend subdivision [a](3) of Section 214 of the Revenue and Taxation Code. It is essential that this be done at the earliest possible moment to avoid further delays in the construction and expansion of needed hospital facilities." (Stats. 1953, ch. 730, § 4, pp. 1995-1996.)

About three months after this urgency clause and amendment to subdivision (a)(3) were proposed in A.B. 1023, A.B. 1023 was amended to include the proviso in subdivision (a)(1) at issue here. (Stats. 1953, ch. 730, § 1, p. 1994.) Thereafter, A.B. 1023 with the urgency clause and the noted changes to subdivisions (a)(1) and (a)(3) was enacted into law. (Stats. 1953, ch. 730, § 1, pp. 1994-1996.)

In the urgency clause, the Legislature expressly stated its intent that a section 214 organization "could rightfully use the income from the property devoted to the exempt activity for the purposes of debt retirement, expansion of plant and facilities or reserve for operating contingencies without losing the tax exempt status of its property," and that "[i]t has never been the intention of the Legislature that the property of nonprofit ... hospital ... organizations otherwise qualifying for the welfare exemption should be denied exemption if the income from the actual operation of the property for the exempt activity be devoted to the purposes of debt retirement, expansion of plant and facilities or reserve for operating contingencies, ..." (Stats. 1953, ch. 730, § 4, pp. 1995-1996.)

Where the Legislature has expressly declared its intent, we must accept that declaration. (*Tyrone v. Kelly*, supra, 9 Cal.3d at p. 11; see *California Assn. of Psychology Providers v. Rank*, supra, 51 Cal.3d at p. 15.) Pursuant to the legislative expression here, there is no limitation on earned revenue that automatically disqualifies a nonprofit hospital from obtaining the welfare exemption; the concern is whether that revenue is devoted to furthering the *224 exempt purpose by retiring debt, expanding facilities or saving for contingencies.^{FN3}

FN3 This is not to say that a nonprofit hospital can earn any amount above 10 percent and still qualify for the welfare exemption. The hospital must show that indeed it is not organized or operated for profit and that it meets all of the other conditions in section 214. One of these other conditions, section 214 (a)(3), now mandates in pertinent part that the "property [be] used for the actual operation of the exempt activity, and ... not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose." (Italics added.)

It is true that the urgency clause containing the Legislature's expressed intent was made a part of A.B. 1023 before the proviso in section 214(a)(1) was added to that bill, and that the clause refers to section 214(a)(3). Regardless of timing, however, both the section 214(a)(1) proviso and the urgency clause were enacted into law as part of A.B. 1023. (Stats. 1953, ch. 730, §§ 1, 4, pp. 1995-1996.) More importantly, the urgency clause focuses on the issues of tax exemptions for *hospitals*, the urgent need for *hospital* construction and expansion, and the ways of financing that construction and expansion for nonprofit *hospitals*. It is in this context—a context fundamentally implicated by a hospital earning above the 10 percent figure in section 214(a)(1)—that the Legislature declares “[i]t has never been the intention of the Legislature that the property of nonprofit ... hospital ... organizations otherwise qualifying for the welfare exemption should be denied exemption if the income from the actual operation of the property for the exempt activity be devoted to the purposes of debt retirement, expansion of plant and facilities or reserve for operating contingencies, ...” (Stats. 1953, ch. 730, § 4, p. 1996.) In a related vein, the reference in the urgency clause to section 214(a)(3) concerns the issue of how the use of income from exempted property affects welfare exemption eligibility; this issue is also fundamentally implicated in the context of a nonprofit hospital earning a surplus revenue greater than 10 percent.

County contends the section 214 (a)(1) proviso is rendered meaningless if interpreted to allow a nonprofit hospital that earns more than 10 percent the welfare exemption; under such an interpretation, County maintains, it makes no difference whether a nonprofit hospital earns below or above the 10 percent figure—the exemption can be claimed in either instance.

We think the 10 percent figure in section 214(a)(1) is meaningful even if nonprofit hospitals that earn over that figure can still qualify for the welfare exemption. The 10 percent figure provides a clear guideline by which nonprofit hospitals can engage in sound financial practices to further the exempt activity without jeopardizing their tax exempt status, assuming they otherwise qualify for the welfare exemption. The proviso in *225section 214(a)(1) recognizes the complex financial and functional realities of the

modern hospital operation, an operation that often requires deliberately designed surplus revenues to ensure adequate levels of service and resources. (See Sutter Hospital v. City of Sacramento, supra, 39 Cal.2d at pp. 36, 39-40; see also St. Francis Hosp. v. City & County of S. F. (1955) 137 Cal.App.2d 321, 323-326 [290 P.2d 275]; Cedars of Lebanon Hosp. v. County of L. A. (1950) 35 Cal.2d 729, 735-736 [221 P.2d 31, 15 A.L.R.2d 1045].)

The modern hospital is an extremely complex entity—essentially, it is a minicity. (See Cedars of Lebanon Hosp. v. County of L. A., supra, 35 Cal.2d at pp. 735-745.) A modern hospital generates significant revenue but spends considerable amounts for labor, equipment, facilities and capital outlay; large and complex annual budgets are commonplace in this setting. (See St. Francis Hosp. v. City & County of S. F., supra, 137 Cal.App.2d at p. 325.) And in this setting, a surplus might be accidental rather than designed; or a particular surplus might be designed but the fate of fortuity intervenes and the budget forecasters have sleepless nights. (*Ibid.*)

Recall, section 214 was amended in light of the Sutter Hospital court's request for legislative intervention after the court acknowledged that its holding made it difficult for modern hospitals to operate in a financially sound manner to reduce indebtedness and expand their facilities. In that case, the nonprofit hospital purposefully earned surplus revenue to retire its debt and expand its facilities. (39 Cal.2d at pp. 36, 40.) Accordingly, § 214(a)(1) provides a clear guideline by which nonprofit hospitals can deliberately design surplus revenues and not risk losing their tax exempt status (provided the other conditions of section 214 are satisfied and the revenues are used for proper purposes).

The very complexity just described and recognized in the cited cases runs counter to an interpretation that an earned surplus revenue above 10 percent *automatically* disqualifies a nonprofit hospital from the welfare exemption. To say, as County does with its interpretation of *automatic* ineligibility, that a nonprofit hospital which earned 10 percent is eligible for the exemption while the nonprofit hospital which earned 10.01 percent is *automatically* excluded from it, is to say that these complex realities are irrelevant.

Rather, the nonprofit hospital earning over 10 percent

is outside the clear guideline offered by section 214(a)(1) and thereby subject to an increased scrutiny by tax authorities and an increased burden in showing it is not organized or operated for profit. Such a nonprofit hospital is no longer "deemed" to meet the condition of section 214(a)(1). In short, the proviso of *226 section 214(a)(1) provides no protection for the nonprofit hospital earning over 10 percent; that hospital must prove it is not organized or operated for profit under the general rule of section 214(a)(1). Contrary to County's argument, therefore, the section 214(a)(1) 10 percent proviso is meaningful even if not construed as a point of automatic disqualification.

County also relies on a 1954 opinion of the Attorney General and a 1967 opinion from the First District. The Attorney General's opinion considered whether the 1953 amendments to subdivisions (a)(1) and (a)(3) of section 214 were valid and effective in a general sense. (*Welfare Exemptions*, 23 Ops.Cal.Atty.Gen. 136 (1954).) In passing, the Attorney General noted that "[t]he Legislature might well determine that hospitals as distinguished from other organizations entitled to the welfare exemption usually operate on a schedule of rates more comparable to a schedule of rates by a commercial organization and therefore their net earnings should be restricted in order for them to have the benefit of the welfare exemption (see *Sutter Hospital* case pp. 39-40)." (*Id.* at p. 139.) The First District opinion—*San Francisco Boys' Club, Inc. v. County of Mendocino* (1967) 254 Cal.App.2d 548 [62 Cal.Rptr. 294]—involved profitmaking logging operations on land owned by and used for a nonprofit, charitable club for boys. Referring to the section 214(a)(1) proviso at issue here, the court noted that "the Legislature amended section 214 to permit nonprofit hospitals to have excess operating revenues in a sum equivalent to 10 percent of operating expenses." (254 Cal.App.2d at p. 557.)

Against the Attorney General's passing reference of 1954 and the First District's dicta of 1967 stands an Attorney General opinion from 1988 on the identical issue in this case. (*Welfare Exemption Qualification*, 71 Ops.Cal.Atty.Gen. 106 (1988).) In fact, it was County that requested this 1988 opinion. In that opinion, the Attorney General concluded that "[a] nonprofit hospital which had earned surplus revenue in excess of ten percent during the preceding fiscal year might still qualify for the 'welfare exemption' from

taxation under section 214 of the Revenue and Taxation Code." (*Id.* at p. 107.) Although it was not used as pivotal support, the 1954 Attorney General opinion was cited twice in the 1988 opinion. (*Id.* at p. 112.)^{FN4}

FN4 County also relies on cryptic passages in certain letters written in 1953 to then Governor Earl Warren. These letters were from the attorney for the California Hospital Association, which sponsored A.B. 1023, and from the Attorney General. In deciding whether to sign A.B. 1023 amending subdivisions (a)(1) and (a)(3), Governor Warren requested the views of these two entities. These unpublished and informal expressions to the Governor—especially the letter from the hospital association attorney—are not the type of extrinsic aids that courts can meaningfully use in discerning legislative intent. (See 58 Cal.Jur.3d, *Statutes*, §§ 160-172, pp. 558-582.)

The First District's opinion in *San Francisco Boys' Club* concerned an issue relating to a charitable social organization rather than a hospital. For *227 that reason, the analysis there is not germane to the hospital-specific provision before us. (6, *Id.*) Although opinions of the Attorney General, while not binding, are entitled to great weight (*Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243, 251 [239 Cal.Rptr. 395]; *Henderson v. Board of Education* (1978) 78 Cal.App.3d 875, 883 [144 Cal.Rptr. 568]), it is unclear how to apply this principle to the two published Attorney General opinions noted above. This principle applies because the Legislature is presumed to know of the Attorney General's formal interpretation of the statute. (*Ibid.*) But the two Attorney General opinions seem to be at odds. And while the 1954 opinion is a contemporaneous construction of long duration, the 1988 opinion involves the identical issue in this case and the Legislature amended section 214(a)(1) nonsubstantively about one and one-half years after the 1988 opinion was published. (*Welfare Exemption Qualification*, *supra*, 71 Ops.Cal.Atty.Gen. 106; Stats. 1989, ch. 1292, § 1.) So we return, as we must, to the words used by the Legislature in the statute and in the urgency clause's declaration of intent.

That return also provides the answer to County's final argument. County argues that its interpretation of the 10 percent figure in section 214 as a point of automatic ineligibility is supported by the language in section 214(a)(1) that qualifies the terms "operating revenues" and "operating expenses." Under section 214(a)(1), gifts, endowments and grants-in-aid are excluded from "operating revenues" while depreciation based on cost of replacement and amortization of, and interest on, indebtedness are included in "operating expenses." Basically, County argues that the Legislature has provided certain financial advantages for facility improvement, debt retirement and nonoperating revenues in section 214(a)(1), thereby intending to place a cap on what nonprofit hospitals can earn for welfare exemption eligibility.

The problem with this argument is that it is difficult to define automatic ineligibility in a more roundabout way than that suggested by County's interpretation. If the section 214(a)(1) proviso accounts favorably to nonprofit hospitals for all of the uses of net earnings that do not defeat welfare exemption eligibility, why did the Legislature include that double negative? In such a situation, the proviso would be tailor-made for dispensing with the double negative because the statute has the sound financial management practices and the allowed uses for net earnings built into it. But the section 214(a)(1) proviso, by its terms, applies only to the nonprofit hospital whose operating revenues have *not* exceeded 10 percent of operating expenses; in that situation, the proviso *deems* the nonprofit hospital in compliance with section 214(a)(1). The proviso, by its terms, does not cover the nonprofit *228 hospital which has earned over 10 percent; in that situation, the nonprofit hospital must *show* it is not organized or operated for profit. And the Legislature stated in the urgency clause that it has never been the Legislature's intent "that the property of nonprofit ... hospital ... organizations otherwise qualifying for the welfare exemption should be denied exemption if the income from the actual operation of the property for the exempt activity be devoted to the purposes of debt retirement, expansion of plant and facilities or reserve for operating contingencies"

Nor does our construction of section 214(a)(1) violate the rule of strict construction by extending the tax exemption allowed beyond the plain meaning of the language employed. (*Peninsula Covenant Church v. County of San Mateo, supra*, 94 Cal.App.3d at p.

392.) If we have attempted to do anything in this opinion, we have attempted to adhere to the plain meaning of the language employed in section 214(a)(1).

For all of these reasons, we conclude that a nonprofit hospital that earned surplus revenue in excess of 10 percent during the relevant fiscal year can still qualify for the "welfare exemption" from taxation under section 214.^{FN5}

FN5 Our opinion and conclusion are limited to this single question of law. Accordingly, we express no views on whether Rideout actually was or was not organized or operated for profit or whether Rideout can obtain the welfare exemption for the specific years in question, aside from concluding that earnings in excess of 10 percent do not *automatically* disqualify Rideout from the exemption.

Disposition

The judgment is affirmed. Each party to bear its own costs on appeal.

Sparks, Acting P. J., and Nicholson, J., concurred.
A petition for a rehearing was denied August 17, 1992. *229

Cal.App.3.Dist.
Rideout Hospital Foundation, Inc. v. County of Yuba
8 Cal.App.4th 214, 10 Cal.Rptr.2d 141

END OF DOCUMENT

STANLEY M. SEIDLER, Plaintiff and Appellant,
 v.

THE MUNICIPAL COURT FOR THE BEVERLY
 HILLS JUDICIAL DISTRICT OF LOS ANGELES
 COUNTY et al., Defendants and Respondents.
 No. B065085.

Court of Appeal, Second District, Division 1, Cali-
 fornia.
 Jan. 27, 1993.

SUMMARY

In an action against the Beverly Hills Municipal Court by its former court administrator, in which plaintiff alleged he was terminated without being afforded adequate due process protections, the trial court sustained, without leave to amend, defendant's demurrer to the complaint, on the ground that plaintiff had not been a permanent employee who could be discharged only upon good cause and after being afforded due process protections. The trial court ordered dismissal of plaintiff's complaint. (Superior Court of Los Angeles County, No. SC008656, Irving A. Shimer, Judge.)

The Court of Appeal affirmed. The court held that under Gov. Code, § 72764 (appointment of Beverly Hills Municipal Court District officers and attaches), plaintiff held office at the pleasure of the judges of the court, and that statute, while enacted after plaintiff's employment began, governed his employment, which was a matter of statute rather than contract. The court held that while Gov. Code, § 72002.1, mandates application of civil service rules to municipal court attaches, plaintiff had been an officer, not an attache. Although Gov. Code, § 72608, enumerates certain rights of municipal court officers and attaches, none of the enumerated rights suggested the existence of due process or permanent employment rights related to discharge from employment. Moreover, the court held, Gov. Code, § 71260, which states that a court clerk may be discharged only for good cause and after being given due process protections, was inapplicable, since a municipal court administrator functions not only as a clerk, but also as an executive officer whose functions extend well beyond those of a clerk. (Opinion by Spencer, P. J.,

with Aranda, J., ^{FN*} concurring. Vogel (Miriam A.), J., concurred in the result only.)

FN* Judge of the Municipal Court for the South Bay Judicial District sitting under assignment by the Chairperson of the Judicial Council.

HEADNOTES

Classified to California Digest of Official Reports

(1) Pleading § 30--Demurrer to Complaint--Hearing and Determination-- Amendment After General Demurrer Sustained--Propriety of Granting Leave to Amend.

A demurrer tests the sufficiency of the plaintiff's complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be granted. The demurrer may be sustained only when the insufficiency of the complaint is revealed on its face. A demurrer should not be sustained without leave to amend if the complaint states a cause of action under any theory or if there is a reasonable possibility that the defect can be cured by amendment. It may be sustained without leave to amend, however, where the facts are not in dispute, and the nature of the plaintiff's claim is clear, but, under the substantive law, no liability exists. Obviously, under such circumstances, no amendment would change the result.

(2) Public Officers and Employees § 27--Duration and Termination of Tenure--Right to Continued Employment.

Public employment is held by statute rather than by contract, and no public employee has a right to continue that employment contrary to the terms and conditions fixed by law.

(3a, 3b, 3c, 3d) Public Officers and Employees § 30--Duration and Termination of Tenure--Removal From Office--Municipal Court Administrator's Right to Due Process Prior to Termination.

In an action against the Beverly Hills Municipal Court by its former court administrator, who alleged he was dismissed without being afforded due process,

the trial court properly found that plaintiff was not a permanent employee who could be discharged only for good cause and after being afforded due process. Under Gov. Code, § 72764 (appointment of Beverly Hills Municipal Court District officers and attaches), plaintiff held office at the pleasure of the judges of the court, and that statute governed plaintiff's employment, even though it was enacted after that employment began. While Gov. Code, § 72002.1, mandates application of civil service rules to municipal court attaches, plaintiff had been an officer, not an attache, and even though Gov. Code, § 72608, enumerates certain rights of municipal court officers and attaches, none of the enumerated rights suggested the existence of due process or permanent employment rights related to discharge from employment. Finally, Gov. Code, § 71260, which states that a court clerk may be discharged only for good cause and after being given due process protections, was not applicable, since a municipal court administrator functions not only as a clerk, but also as an executive officer whose functions extend well beyond those of a clerk.

[See 2 Witkin, Summary of Cal. Law (9th ed. 1987) Agency and Employment, § 192.]

(4) Statutes § 38--Construction--Giving Effect to Statute--Construing Every Word.

A court must interpret a statute so as to give effect to the intent of the Legislature. Toward that end, words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. Where possible, significance should be given to every word and phrase, and constructions that render some words surplusage are to be avoided.

(5) Statutes § 34--Construction--Language--Words and Phrases--Ejusdem Generis (General Limited by Specific).

The application of a general term in a statute is limited to things similar to those specifically enumerated after the general term.

(6) Statutes § 24--Construction--Implications and Inferences--Enumeration of Persons to Whom Statute Applies.

When a statute enumerates those persons to whom it applies, it should be construed as excluding from its effect all those not mentioned expressly.

COUNSEL

Lemaire & Faunce and Mark Ellis Singer for Plaintiff and Appellant.

Goldstein & Kennedy, Charles H. Goldstein, Gregory G. Kennedy and Caroline McIntyre for Defendants and Respondents.

SPENCER, P. J.

Introduction

Plaintiff Stanley M. Seidler appeals from an order of dismissal entered after the trial court sustained without leave to amend a demurrer to plaintiff's first amended complaint. *1232

Statement of Facts

The facts as alleged in plaintiff's first amended complaint, which are deemed to be true (Thompson v. County of Alameda (1980) 27 Cal.3d 741, 746 [167 Cal.Rptr. 70, 614 P.2d 728, 12 A.L.R.4th 701]) are as follows: In 1984, the Beverly Hills Municipal Court employed plaintiff as court administrator from a civil service list. While the municipal court was plaintiff's employer, he was paid through the County of Los Angeles. Plaintiff believed he enjoyed certain due process guarantees and protections, pursuant to statute, should he be removed from his position. In 1988, the statutes governing his employment were amended, recategorizing his employment as being at the pleasure of the judges of the municipal court. Plaintiff was not informed that any rights, guarantees or protections previously afforded him were being removed. He did not receive any comparable benefit in exchange for the relinquishment of said rights and protections.

On June 7, 1990, Judge Judith O. Stern, who was presiding over the court for that calendar year and thus acted as plaintiff's supervisor, provided plaintiff with a letter which informed him that he had not fulfilled his duties as court administrator. Accordingly, the judges of the court were terminating his employment effective July 31, 1990. At approximately 4:10 p.m. on June 19, 1990, plaintiff received a letter memorandum delivered by the Los Angeles County Marshall. This document demanded that he turn over his keys and vacate both his office and the courthouse by 5 p.m. on that date. He was escorted from the

building by deputy marshals.

Before June 7, 1990, plaintiff had received no written notice he was performing his duties unsatisfactorily and could be subject to disciplinary action including dismissal. After June 7, he received no statement in writing of the reasons for his termination.

On June 8, 1990, plaintiff submitted an appeal to the Los Angeles County Civil Service Commission, protesting the denial of the due process afforded all permanent civil service employees and guaranteed by the state and federal Constitutions and the county charter. He requested a hearing prior to July 31, 1990. On June 27, 1990, the Los Angeles County Civil Service Commission determined it did not have jurisdiction over the matter and removed it from its agenda. Plaintiff's employment was terminated on July 31, 1990.

Contentions

Plaintiff contends the trial court erred in sustaining without leave to amend the demurrer to his first amended complaint, in that it alleges facts *1233 sufficient to state a cause of action. For the reasons set forth below, we disagree.

Discussion

(1) A demurrer tests the sufficiency of the plaintiff's complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be granted. (Code Civ. Proc., § 430.10, subd. (e); 5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 894, p. 333.) The demurrer may be sustained only where the insufficiency of the complaint is revealed on its face. (*Id.*, § 895, at p. 334.) A demurrer should not be sustained without leave to amend if the complaint states a cause of action under any theory or if there is a reasonable possibility the defect can be cured by amendment. (*Minsky v. City of Los Angeles* (1974) 11 Cal.3d 113, 118 [113 Cal.Rptr. 102, 520 P.2d 726]; *Kite v. Campbell* (1983) 142 Cal.App.3d 793, 804 [191 Cal.Rptr. 363], overruled on other grounds in *Young v. Haines* (1986) 41 Cal.3d 883, 896 [226 Cal.Rptr. 547, 718 P.2d 909].) It may be sustained without leave to amend, however, where "the facts are not in dispute, and the nature of the plaintiff's claim is clear, but, under the substantive law, no liability exists. Obviously no amendment would

change the result." (5 Witkin, *op. cit. supra*, § 945, p. 379.)

In sustaining the demurrer without leave to amend, the trial court concluded plaintiff was not a permanent employee entitled to be discharged only for cause and to the due process protections of notice and an opportunity to be heard. As plaintiff sees it, that he is a permanent employee is not open to question at this point: he alleges this and, for purposes of demurrer, the allegation must be accepted as true. (*Thompson v. County of Alameda, supra*, 27 Cal.3d at p. 746.) (2) However, it is well established that public employment is held by statute rather than by contract, and no public employee has a right to continue that employment contrary to the terms and conditions fixed by law. (*Miller v. State of California* (1977) 18 Cal.3d 808, 813 [135 Cal.Rptr. 386, 557 P.2d 970].) (3a) Plaintiff alleges he was employed as the court administrator of the Beverly Hills Judicial District and, by virtue of that employment, was a permanent employee with certain fixed rights. If an examination of the pertinent statutes reveals as a matter of law that the court administrator of the Beverly Hills Judicial District is not a "permanent employee" with specific fixed rights, then plaintiff's allegation to the contrary cannot make it so. Accordingly, the sufficiency of the allegation can be ascertained only by statutory construction.

In construing statutes, the duty of the court "is simply to ascertain and declare what is in terms or in substance contained therein" (*1234Code Civ. Proc., § 1858.) (4) The court must interpret statutes so as to give effect to the intent of the Legislature. (*Landrum v. Superior Court* (1981) 30 Cal.3d 1, 12 [177 Cal.Rptr. 325, 634 P.2d 352].) Toward that end, "[w]ords must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. [Citations.]" (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836].) Where possible, significance should be given to every word and phrase; accordingly, "constructions which render some words surplusage ... are to be avoided." (*Ibid.*)

(3b) Government Code section 72002.1 is among the statutes on which plaintiff relies as establishing that he has the status of a permanent employee entitled to be discharged only for cause and after receiving notice of the charges and an opportunity to be heard.

Section 72002.1 provides in pertinent part: "In any chartered county in which a system of civil service is in effect, the civil service commission thereof shall administer any civil service provisions made applicable by this code to attaches of municipal courts. [¶] Subject to the express provisions of this section and of any other state law, the provisions of the county charter relating to civil service and the rules of the civil service commission adopted pursuant thereto shall be applicable to the said attaches of the municipal courts in the same manner and to the same extent as applicable generally to officers and employees of such county"

Whether Government Code section 72002.1 applies to the position plaintiff held, that of court administrator, depends on the meaning given the word "attaches." The word is not defined expressly in the code. However, the meaning given the word can be implied from its use in companion statutes. Article 4 of chapter 9 of title 8 of the Government Code specifies the officers and attaches which may be appointed in the municipal court districts of Los Angeles County. The statutes authorize the appointment by the judges of a court administrator "who shall be the clerk" and authorize the court administrator to appoint additional personnel. (Gov. Code, §§ 72750.4-72754.) In municipal court districts of a specified size, the judges may appoint a jury commissioner who shall "hold office at the pleasure of ... the judges." (*id.*, § 72757.)

The judges may appoint the marshal (Gov. Code, § 72643), who in turn may appoint specified subordinates (*id.*, §§ 72645, 72646); the administrative personnel to be appointed by the marshal are described as "attaches" (*id.*, § 72646). Government Code section 72150 permits the judges to authorize the clerk and marshal of the court to "appoint as many additional deputies as will enable them to promptly and faithfully discharge the duties *1235 of their respective offices." After describing the powers and duties of the clerk (*id.*, § 71280) and marshal (*id.*, § 71264), the code turns to those designated "other officers" in article 5 of chapter 8 of title 8 of the Government Code. These include commissioners (*id.*, § 72190), jury commissioners (*id.*, § 72191) and official court reporters (*id.*, § 72194).

Based on all of the foregoing provisions, the logical conclusion is that the clerk (court administrator),

marshal, commissioners, jury commissioner and court reporters are officers of the court, while subordinate employees which some of these officers are authorized to appoint are attaches. Since Government Code section 72002.1 applies only to "attaches of municipal courts," it does not apply to the position plaintiff held, which is that of an officer. Hence, this section provides no support for the conclusion plaintiff was a permanent employee with specified fixed rights.

Plaintiff also relies on Government Code section 72608, which in 1983 provided in pertinent part: "Officers and attaches of municipal courts in Los Angeles County shall be entitled to all employee rights, programs and benefits, including, but not limited to, paid medical plans, management incentive and early separation programs, parking and cafeteria privileges, longevity pay, shooting allowance, uniform and equipment allowance, and the same rights to meet with those entities which prescribe their compensation, that are provided for or made applicable to the equivalent Los Angeles County employee classification." (As amended by Stats. 1982, ch. 1636, § 2, pp. 6639-6644.) (5) The application of a general term in a statute (in this instance, "rights, programs, and benefits") is limited to things similar to those specifically enumerated after the general term. (*Martin v. Holiday Inns, Inc.* (1988) 199 Cal.App.3d 1434, 1437 [245 Cal.Rptr. 717].) (3c) Apart from the right of consultation regarding compensation, all of the specific items enumerated in section 72608 are salary benefits. Nothing among the enumerated examples suggests the rights extended include due process or permanent employment rights related to the process of discharge. Hence, Government Code section 72608 provides no support for plaintiff's position.

Finally, plaintiff relies on Government Code section 71260 which provides in part: "The clerk of the court, the marshal, and their deputies and attaches ... of the court who were appointed from civil service lists ... shall hold office during good behavior and may be discharged by the appointing authority only for the good of the service" Government Code sections 71261-71263 provide that the reasons for discharge shall be filed at least 10 days before the discharge becomes effective and the person to be discharged shall have a right to reply to the charges, after which the determination of the appointing authority to discharge is final. Sections *1236 71260-

71263 are statutes generally applicable to the municipal and justice courts, appearing in article 7 of chapter 6 of title 8.

The protections set forth in Government Code sections 71260- 71263 are afforded only to clerks of the court, marshals and their deputies and attaches. (6) Where a statute enumerates those persons to whom it applies, it should be construed as excluding from its effect all those not mentioned expressly. (*People v. Mancha* (1974) 39 Cal.App.3d 703, 713 [114 Cal.Rptr. 392].) (3d) Thus, the question is whether a court administrator who serves as clerk of the court is no more than a clerk and, accordingly, is one of the persons enumerated in Government Code section 71260.

A clerk of the municipal court performs the same functions as a clerk of the superior court. (Gov. Code, § 71280.) The superior court clerk attends court sessions "and upon the judge or judges of the court in chambers when required," maintains indexes, issues process and notices, keeps minutes and other court records, enters judgments and orders, maintains a register of actions, keeps papers and records, endorses filing dates and maintains records of naturalization. (*Id.*, §§ 69841-69847.) Prior to 1987, large counties employed a superior court executive officer who "exercise[d] such administrative powers and perform[ed] such other duties as may be required of him by the court." (*Id.*, former § 69892.1.)^{FN1}

FN1 Section 69892.1 was amended by Statutes 1986, chapter 1418, section 2, page 5071 to designate this individual "county clerk/executive officer/jury commissioner."

It is clear from the statutes that the functions of clerk and executive officer were combined in the municipal courts in the person of a court administrator who serves as the clerk. Government Code section 72702 provides that the judges may delegate to the court administrator "such administrative powers and duties as they deem necessary for the administration of the court." While section 72702 applies only to the Los Angeles Judicial District, the other statutes designating a court administrator/clerk of the court in other judicial districts demonstrate that the court administrator has functions extending well beyond those of a clerk. In large judicial districts, the court administrator, acting as clerk, may appoint assistant chief dep-

uty clerks and various other types of clerks; one assistant chief deputy clerk is to be designated assistant court administrator and compensated accordingly. (See Gov. Code, §§ 72750.4-72750.5.) In somewhat smaller judicial districts, the court administrator, acting as clerk, may appoint various deputy clerks and one assistant court administrator. (See *id.*, §§ 72751-72754.) There would be no need for the appointment of an assistant court administrator if the functions of the court administrator were no more than those of a clerk.

In short, a municipal court administrator is not merely a clerk of the court; he or she also performs administrative functions extending well beyond the *1237 duties of the clerk. Accordingly, the positions of court administrator and clerk of the court are not fully equivalent and Government Code sections 71260-71263 do not apply to court administrators simply because they happen to function as clerks. This view is supported by the legislative history underlying the enactment of Government Code sections 72764-72784. These statutes uniformly provide that the court administrators of specified judicial districts hold office at the pleasure of the judges of the court.

Senate Bill No. 2493 was introduced in 1988 to enact these provisions. The bill was proposed by the Los Angeles County Municipal Judges Association for the following reason: "[C]onfusion presently exists as to the status of court administrators: they are treated as civil service employees for some purposes but not for others and there is no clear expression of intent anywhere in the Government Code. [The Judges Association] states that 'such confusion is dangerous and promotive of misunderstanding at best, and litigation at worst.'" (Assem. Com. on Judiciary Rep. on Sen. Bill No. 2493 (June 22, 1988).) Among the arguments in support of the bill was the following: "[T]he position of court administrator bears an executive and quasi-judicial element that make[s] civil service exemption imperative. The court administrator as the chief nonjudicial authority in the courthouse has oversight and control over fiscal matters and record-keeping in the courts. Present experience in a few judicial districts in which court administrators were suspected of misconduct has convinced judges of the need to respond to emergency situations involving court administrators more rapidly than civil service rules allow." (Sen. Rules Com. Rep. on Sen. Bill No. 2493 (Aug. 22, 1988).)

The Senate Rules Committee Report of August 22, 1988 sets forth the background of the measure in full: "Under current practice, the court administrator is appointed by a majority of the district judges. Yet only in the Los Angeles Judicial District does the law specify that the administrator holds office at the pleasure of the judges [citation]. ... This bill would specify that the administrators of the [listed] municipal court districts serve at the pleasure of their judges The purpose of the measure is to clarify the employment status of municipal court administrators in 16 of the 24 judicial districts of Los Angeles County. Court administrators are technically employees of the counties in which they serve, but to function appropriately they must be answerable to the judges who rely on them. As a practical matter, this duality has led to two models in court administrator employment: regular civil service, and exempt status held at the pleasure of the judges.

"Exempt status is currently the trend in the larger counties, where 10 of the 13 with a population of 500,000 or more specify that all or most of their *1238 administration are employed independently of civil service. In some cases statute not only establishes service at the pleasure of the court, but also explicitly provides that the judges shall prescribe and regulate the duties and authority of the administrators. [¶] According to the Senate Judiciary Committee analysis, most of the judges sponsoring this bill were under the impression that court administrators already served at their pleasure by law. This bill represents no great departure from present methods of selecting and overseeing the performance of administrators. It does, however, create a certain delineation of authority between the courts and the court administrators." (Sen. Rules Com. Rep. on Sen. Bill No. 2493 (Aug. 22, 1988).)

In summary, there is no clear statutory language entitling municipal court administrators to discharge only upon good cause or to certain due process protections. A court administrator unquestionably is more than a mere clerk of the court and thus cannot be considered among those protected persons enumerated in Government Code section 71260. In the absence of clear legislative language affording court administrators protected rights, a court administrator has no such entitlement. (Miller v. State of California, supra, 18 Cal.3d at p. 813.)

Government Code section 72764, added by Statutes 1988, chapter 1120, section 1, page 3618, explicitly provides: "The court administrator of the Beverly Hills Judicial District shall hold office at the pleasure of the judges of that court." Even though this statute was not in existence at the time of plaintiff's employment, it sets the terms and conditions of that employment. (Miller v. State of California, supra, 18 Cal.3d at p. 813 Hinchliffe v. City of San Diego (1985) 165 Cal.App.3d 722, 725 [211 Cal.Rptr. 560].) Accordingly, it is unequivocally clear that plaintiff was not a "permanent" employee with specified due process rights. It necessarily follows that the trial court properly sustained the demurrer without leave to amend. (5 Witkin, *op. cit. supra*, § 945, p. 379.)

In view of the conclusion reached above, other contentions plaintiff raises need not be addressed. The order is affirmed.

Aranda, J., ^{FN*} concurred. Vogel (Miriam A.), J., concurred in the result only. *1239

FN* Judge of the Municipal Court for the South Bay Judicial District sitting under assignment by the Chairperson of the Judicial Council.

Cal.App.2.Dist.
Seidler v. Municipal Court
12 Cal.App.4th 1229, 16 Cal.Rptr.2d 90

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Court of Appeal, Third District, California.
 TERESA J. et al., Petitioners,
 v.
 The SUPERIOR COURT of Sacramento County,
 Respondent,
 D.J. et al., Real Parties in Interest.
 No. C039786.

Sept. 24, 2002.

After child was declared dependent, his birth mother relinquished him for adoption to private adoption agency. The Superior Court, Sacramento County, No. JD216765, Scott P. Harmon, Juvenile Court Referee, found relinquishment invalid. Birth mother and prospective adoptive parents petitioned for writs of mandate, prohibition, and habeas corpus. The Court of Appeal, Morrison, J., held that birth mother could relinquish child to a private adoption agency subject to juvenile court's power to limit parental control over child.

Writ of mandate issued.

West Headnotes

[1] Infants 211 ↪ 226

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(E) Judgment; Disposition of Child

211k226 k. Foster or Adoptive Homes,

Placement To. Most Cited Cases

Birth mother of a child who had been adjudged a dependent of the juvenile court could relinquish the child to a private adoption agency, subject to juvenile court's power to limit parent's control over the child. West's Ann.Cal.Welf. & Inst.Code § 361 (2001); West's Ann.Cal.Fam.Code § 8700.

[2] Statutes 361 ↪ 181(1)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(1) k. In General. Most

Cited Cases

In construing a statute, a court's objective is to ascertain and effectuate legislative intent.

[3] Statutes 361 ↪ 188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In General. Most Cited

Cases

To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable indicator of legislative intent.

[4] Statutes 361 ↪ 205

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k205 k. In General. Most Cited

Cases

Court does not consider statutory language in isolation; rather, court looks to the entire substance of the statute to determine the scope and purpose of the provision.

[5] Statutes 361 ↪ 184

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k184 k. Policy and Purpose of Act.

Most Cited Cases

Statutes 361 ↪ 208

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k208 k. Context and Related Clauses. Most Cited Cases

Court construes the words in question in context, keeping in mind the nature and obvious purpose of the statute.

16] Statutes 361 ↪ 208

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k208 k. Context and Related Clauses. Most Cited Cases

Court must harmonize the various parts of a statutory enactment by considering the particular clause or section in the context of the statutory framework as a whole.

17] Infants 211 ↪ 222

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(E) Judgment; Disposition of Child

211k222 k. Disposition of Child in General. Most Cited Cases

Generally, the court has power to limit the parent's control as necessary to protect the dependent child. West's Ann.Cal.Welf. & Inst.Code § 361(a) (2001).

18] Infants 211 ↪ 226

211 Infants

211VIII Dependent, Neglected, and Delinquent Children

211VIII(E) Judgment; Disposition of Child

211k226 k. Foster or Adoptive Homes, Placement To. Most Cited Cases

Proper standard for juvenile court to employ in determining whether birth mother's control over the minor should be limited to preclude relinquishing him to a private adoption agency is the best interests of the child at the time of the hearing. West's Ann.Cal.Welf. & Inst.Code § 361 (2001).

****506 *368 Eisen & Johnston, Law Corporation, Jay-**

Allen Eisen, Marian M. Johnston; and Thomas Volk, Sacramento, for Petitioners.

****507 No appearance for Respondent.**

Bill Lockyer, Attorney General, Charlton G. Holland, III, Senior Assistant Attorney General, Frank S. Furtek and Theodore Garelis, Deputy Attorneys General for Department of Social Services.

Robert A. Ryan, Jr., County Counsel (Sacramento), Diana Ruiz, Deputy County Counsel, for Department of Health and Human Services.

Elliot K. Sevier for V.F. and B.F.; and Michael B. Hansell for D.J., the minor, Real Parties in Interest.

MORRISON, J.

D.J., the minor, was adjudged a dependent child under Welfare and Institutions Code section 300 (all further statutory references are to this code unless otherwise specified). Thereafter, his mother, Teresa J. (Teresa), relinquished him for adoption to a private adoption agency (ICA), for adoption by D.C. and K.C. (D. and K.). At issue in this case is the validity of that relinquishment. Specifically, the question posed is whether the birth mother of a child who has been adjudged a dependent of the juvenile court may relinquish the child to a private adoption agency.

The respondent juvenile court held that a dependent child may be relinquished only to a public adoption agency and found the relinquishment of the minor by his birth mother, Teresa, to ICA was invalid. Petitioners, Teresa and the prospective adoptive parents, D. and K., petition for writs of mandate, prohibition and habeas corpus to overturn that court order, to vacate proceedings to terminate Teresa's parental rights, to direct real party in interest State Department of Social Services (DSS) to acknowledge relinquishments of dependent children to private adoption agencies, and to deliver the minor to ICA to be placed for adoption with D. and K.

***369** Construing the applicable statutes, section 361 and Family Code section 8700, we conclude that a birth parent may relinquish a dependent child to a private adoption agency, subject to the juvenile court's power to limit the parent's control over the

child. Since the juvenile court believed Teresa could not relinquish the minor to ICA, the court's order finding the relinquishment invalid must be reversed. We shall remand the matter to the juvenile court to exercise its discretion under section 361, subdivision (a), to determine whether Teresa's control over the minor should be limited to preclude a relinquishment to ICA.

FACTUAL AND PROCEDURAL BACKGROUND

When the minor was born, Teresa was serving a four-year sentence for burglary with prior convictions. The minor was placed in confidential foster care with D. and K. when he was two days old.

On that same day, the Sacramento Department of Health and Human Services (DHHS) filed a petition alleging the minor came within the provisions of section 300 because Teresa had a substance abuse problem from which she had failed or refused to rehabilitate and which rendered her incapable of providing adequate care and supervision for the minor.

The juvenile court held a contested jurisdictional and dispositional hearing two months later on July 11, 2001. The court found the allegations of the section 300 petition true, adjudged the minor a dependent child, denied reunification services, and committed the minor to the care, custody and control of DHHS. Before the hearing, the minor's foster parents, D. and K., told the social worker they wanted to adopt the minor. At the hearing, the social worker advised the court that D. and **508 K. were willing to adopt, but they did not have an approved home study.

Two days after the hearing, on a four-hour notice, DHHS removed the minor from D. and K.'s home and placed him with V.F. and B.F. (V. and B.) Almost immediately, D. and K. moved for an order determining they were de facto parents, which was granted. They also petitioned to modify the juvenile court's order at the jurisdictional and dispositional hearing. They claimed DHHS misinformed the court that they were not appropriate adopting parents, which led the court to approve a permanent plan of adoption with another adoptive family. They further claimed there was new evidence showing that the minor had bonded with them.

In September, V. and B., the couple with whom

DHHS had placed the minor, sought and obtained de facto parent status. The juvenile court set a review hearing under section 366.26.

*370 On September 23, 2001, Teresa executed a statement of understanding and a relinquishment, relinquishing the minor to ICA for adoption. The statement of understanding named D. and K. as adoptive parents. Two days later, DSS signed an acknowledgement and receipt of the relinquishment. D. and K. then moved to vacate the trial, for an order to transfer the minor to ICA, and to continue the matter for a six month review.

About two weeks later, the chief of the adoptions policy bureau of DSS wrote ICA that the acknowledgement of the relinquishment was void because it did not comply with section 361, subdivision (b). According to DSS, under that subdivision, a parent may relinquish a dependent child only to DSS or a licensed county adoption agency. A relinquishment to a private adoption agency, such as ICA, is not permitted. This letter was based on the advice of DSS counsel and the concurrence of the Attorney General's office.

On October 30, 2001, the juvenile court agreed with DSS's interpretation of section 361, subdivision (b), and ruled the relinquishment was invalid. The parties stipulated that D. and K.'s home was suitable for the minor. The parties agreed to continue the modification hearing and to join it with a section 366.26 hearing.

Teresa, D. and K. petitioned this court for a writ of mandate commanding the juvenile court to set aside its order of October 30, 2001, and to enter an order vacating the trial date, directing DHHS to deliver the minor to the custody of D. and K., and continuing the proceedings for six months. They also petitioned for a writ of prohibition prohibiting the juvenile court from conducting any proceedings to terminate Teresa's parental rights and from ordering the minor placed for adoption with anyone other than D. and K. They sought a writ of mandate directing DSS to refrain from refusing to acknowledge relinquishment of a dependent child to a private adoption agency and to take all necessary steps to validate its acknowledgement of Teresa's relinquishment of the minor to ICA. They petitioned for a writ of habeas corpus to DHHS and V. and B. commanding them to deliver the minor

to ICA to be placed for adoption with D. and K. Finally, they sought a stay of all dependency proceedings.

This court granted the stay and issued an alternative writ to the juvenile court to grant the relief requested or show cause why such relief should not be granted.

DISCUSSION

[1] Petitioners contend Teresa had the right to relinquish the minor to ICA under Family Code section 8700, which provides in part: "Either birth *371 parent may relinquish a child to the department or a licensed**509 adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency." (Fam.Code. § 8700, subd. (a).) A "licensed adoption agency" means both a licensed county adoption agency and a licensed private adoption agency. (Fam.Code. § 8530; see also Cal.Code Regs., tit. 22, § 35000((1)).) Since Family Code section 8700 makes no distinction between a public and private adoption agency, petitioners contend Teresa could relinquish her child to either.

A relinquishment has no effect until a certified copy is filed with DSS. (Fam.Code. § 8700, subd. (e).) A relinquishment is filed when DSS signs a receipt and acknowledgement of a certified copy of the relinquishment form. (Cal.Code Regs., tit. 22, § 35165(a)(A).) Petitioners note the paperwork for the relinquishment supports their position that a dependent child may be relinquished to a private adoption agency. The statement of understanding that Teresa completed is a DSS form and states it is for use by the mother or presumed father of a child who is detained, a juvenile court dependent in out-of-home care, or the ward of a legal guardian. Yet nothing on the document limits relinquishment to a public adoption agency. The form by which DSS acknowledges and confirms receipt of the relinquishment provides various reasons why an acknowledgement could not be issued; that the relinquishment is to a private adoption agency is not among the reasons listed.

The relinquishment is final upon filing with the DSS and may be rescinded only by the mutual consent of DSS or the adoption agency to which the child was relinquished and the birth parent relinquishing the

child. (Fam.Code. § 8700, subd. (e).) There is an exception to this rule of finality if the relinquishment names the person or persons with whom the child is to be placed and the child is not placed with such persons. (Fam.Code. § 8700, subd. (g).) In such circumstances, the relinquishing parent has 30 days to rescind the relinquishment. (Fam.Code. § 8700, subd. (h).) Petitioners contend the relinquishment was properly completed and filed, so it is final and must be recognized by DSS, DHHS, and the juvenile court.

Real parties in interest DSS and DHHS contend section 361, subdivision (b) (hereafter 361(b)) is a more specific statute than Family Code section 8700 and controls in this case. They contend section 361(b) limits the parent's ability to relinquish a dependent child; the dependent child may be relinquished only to DSS or a licensed county adoption agency. Section 361(b) provides: "Nothing in subdivision (a) shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State *372 Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court if the department or agency is willing to accept the relinquishment." DSS and DHHS contend the statute is clear and unambiguous; since it mentions only DSS and a licensed county adoption agency, those are the only entities to which a dependent child may be relinquished.

[2][3][4][5][6] "In construing a statute, a court's objective is to ascertain and effectuate legislative intent. [Citation.] To determine legislative intent, a court begins with the words of the statute, because they generally provide the most reliable indicator of legislative intent. [Citation.]" (Hsu v. Abbata (1995) 9 Cal.4th 863, 871, 39 Cal.Rptr.2d 824, 891 P.2d 804.) "We do not, however, consider the statutory language 'in isolation.' [Citation.] Rather, we look to 'the entire substance of the **510 statute ... in order to determine the scope and purpose of the provision ... [Citation.]' That is, we construe the words in question 'in context, keeping in mind the nature and obvious purpose of the statute....' We must harmonize 'the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole.'" (People v. Murphy (2001) 25 Cal.4th 136, 142, 105 Cal.Rptr.2d 387, 19 P.3d 1129.)

To construe the language of section 361(b) in con-

text, we consider it first in the context of section 361 as a whole, and second in the context of its enactment. Section 361(b) begins with a reference to subdivision (a) and so must be read together with that subdivision. "(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child. [¶] (b) Nothing in subdivision (a) shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services or to a licensed county adoption agency at any time while the child is a dependent child of the juvenile court if the department or agency is willing to accept the relinquishment." (§ 361, subds.(a) & (b).)

[7] The first two subdivisions of section 361 speak to the juvenile court's ability to limit the control of a parent of a dependent child. Generally, the court has power to limit the parent's control as necessary to protect the dependent child. Subdivision (b) limits the court's power. The court may not interfere with a parent's ability to relinquish a dependent child to DSS or a *373 licensed local adoption agency, if the agency is willing to accept the relinquishment. Section 361(b) says nothing about the parent's ability to relinquish a dependent child to a private adoption agency.

Section 361(b) was added as part of Assembly Bill No. 1544. (Stats.1997, ch. 793, § 15.) "This bill would declare the intent of the Legislature to, among other things, remove the barriers to adoption by relatives of children currently in, or at risk of entering, the dependency system. The bill would authorize a relative of a minor to file a petition for adoption, would authorize the relative, the birth relatives of a minor, including the parents of the minor, and the minor to enter into a kinship adoption agreement, as specified, and would establish procedures for the enforcement, modification, and termination of the agreements." (Legis. Counsel's Dig., Assem. Bill No. 1544 (1997 Reg. Sess.) Summary Dig., p. 1.)

In addition to providing for kinship adoption agreements (Fam.Code, §§ 8714.5, 8714.7), Assembly Bill No. 1544 made other changes to both the dependency provisions of the Welfare and Institutions Code and to the Family Code. One of these was the addition of section 361(b). There were other changes that recognized the ability of a parent of a dependent child to relinquish that child to a private adoption agency. In particular, Family Code section 8700 was amended by the addition of subdivision (i), which requires certain notices when a dependent child is relinquished. (Stats.1997, ch. 793, § 3.) Subdivision (i) of Family Code section 8700 provides: "If the parent has relinquished a child, who has been found to come within **511 Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following: [¶] (1) The juvenile court having jurisdiction of the child. [¶] (2) The child's attorney, if any. [¶] (3) The relinquishing parent's attorney, if any." The use of "licensed adoption agency" indicates the dependent child may be relinquished to both public and private adoption agencies. (Fam.Code, § 8530.)

Further, two additions to the Welfare and Institutions Code on dependent children also acknowledge that a parent can relinquish a dependent child to a private, as well as a public, adoption agency. In referring to a relinquishment, these statutes do not limit the agency receiving the relinquishment to a public adoption agency. Section 358.1, subdivision (e) requires a social study or evaluation made by a probation officer or child advocate include whether the parent was advised of the option to participate in adoption *374 planning and to voluntarily relinquish the child for adoption "if an adoption agency is willing to accept the relinquishment." (Stats.1997, ch. 793, § 14.) Section 366.23 was amended to provide no notice of a section 366.26 hearing to a mother or presumed father who has relinquished the child to DSS or "to a licensed adoption agency for adoption," if the relinquishment has been accepted and filed with notice, as required by Family Code section 8700. (§ 366.23, subd. (e)(1) as amended by Stats.1997, ch. 793, § 24.)

Read in context, section 361(b) does not limit the

parent's ability to relinquish a dependent child for adoption, but rather limits the juvenile court's ability to interfere with that decision when the relinquishment is to a public adoption agency.

DSS and DHHS argue that relinquishment of a dependent child must be limited to public agencies because only those agencies are involved in concurrent planning for the child. Additionally, DHHS asserts Teresa is properly deprived of her right to select the minor's adoptive parents because of her incarceration and drug abuse. While it might be a valid policy decision that once reunification services have been denied, to deprive a parent of a dependent child of the right to be involved in the adoption of the child, that is not the policy decision the Legislature made. Instead, the Legislature determined that in some cases, the birth parent may not only be involved in the adoption of the dependent child, but may remain involved with the child even after adoption.^{FNI} In enacting Assembly Bill No. 1544, "[t]he Legislature determined that in limited circumstances the goal of providing stable homes to children may be fostered by allowing relatives of the child who are the prospective adoptive parent or parents, the birth relatives (including the birth parent or parents), and the child to enter into agreements providing for visitation, future contact, and/or sharing of information. Such an agreement is known as a kinship adoption agreement." (*In re Kimberly S.* (1999) 71 Cal.App.4th 405, 409, 83 Cal.Rptr.2d 740.) Even where the prospective adoptive parents are not relatives of the child, the **512 Legislature took no action to preclude a voluntary relinquishment of a dependent child to a private adoption agency.

^{FNI} By subsequent amendment, these arrangements are now referred to as postadoption contract agreements and may be entered into by adoptive parents who are not relatives. (Stats.2000, chs. 910 & 930.) The terms of such agreements are limited to the sharing of information about the child unless the child has an existing relationship with the birth relatives. (Fam.Code, § 8714.7, subd. (b)(2).)

We recognize the legitimate concerns raised by DSS and DHHS that introducing a third party, the private adoption agency, into a dependency situation may cause problems and create delay in establishing a

permanent *375 home for the dependent child. We also acknowledge the vigorous and attractive argument of real parties in interest V. and B., echoed by the minor, that allowing the relinquishment to stand and moving the minor to a new home is not in his best interests as it impairs his stability and security and may impair his ability to form secure attachments. We disagree, however, that these concerns can be addressed only by construing section 361(b) to limit relinquishments of dependent children to public adoption agencies.

The juvenile court retains its jurisdiction over the minor and the ability to provide for his protection and safety. (§ 202, subd. (a).) A juvenile court retains jurisdiction over a dependent child who is subject to a permanent plan for adoption until the adoption is final. (§ 366.3.) "When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court." (§ 362, subd. (a).) The court may limit the control of the parent over the dependent child. (§ 361, subd. (a).) There is an exception to this power of the court where the parent relinquishes the dependent child to a public adoption agency (361(b)), but there is no exception where the relinquishment is to a private adoption agency. Thus, the juvenile court retains its broad power to limit the parent's control over the dependent child, which includes the parent's ability to relinquish the child to a private adoption agency. In exercising this power to limit the parent's control, the juvenile court may consider the concerns raised by the various real parties in interest and whether such concerns militate against allowing the relinquishment to a private adoption agency. In this decision, as in all others, the juvenile court must act in the best interests of the dependent child. (§ 202, subd. (e).)

Here, the juvenile court did not declare the relinquishment invalid as a result of the exercise of its power under section 361(a) and a finding that the relinquishment was not in the minor's best interests. Rather, the court erroneously believed Teresa could not relinquish the minor to ICA. Since the court misunderstood both the law and its discretion, its order finding the relinquishment invalid cannot stand. The matter must be remanded to the juvenile court to con-

sider whether it should, under section 361(a), limit Teresa's control over the minor as it relates to her relinquishing him to ICA.

[8] On remand, the juvenile court must determine whether Teresa's control over the minor should be limited to preclude relinquishing him to ICA for adoption. The proper standard for the court to employ in making this determination is the best interests of the child at the time of the hearing. In *376 Department of Social Services v. Superior Court (1997) 58 Cal.App.4th 721, 68 Cal.Rptr.2d 239, this court held the proper standard for reviewing the placement decision of an agency that has been given exclusive care and control of a dependent child is the abuse of discretion standard. The juvenile court determines whether the placement decision is patently absurd or unquestionably not in the child's best interests. (*Id.* at p. 734, 68 Cal.Rptr.2d 239.) The standard here is not so deferential. The parent of a dependent child no longer has exclusive care and **513 control of the child; the court has authority to make reasonable orders for the child's care, supervision, and custody. (§ 362, subd. (a).) Limiting the parent's ability to relinquish a dependent child to a private adoption agency is such an order when it is in the child's best interest.

Finally, petitioners suggest that this is an appropriate case in which the decision should be made final immediately. (Cal. Rules of Court, rule 24(d).) Only DSS opposes this suggestion, arguing that reducing the time available to DSS to appeal the decision will be highly prejudicial as DSS has "stringent requirements for review of important procedural decisions and documents." We adopt petitioners' suggestion. The importance to the minor in having this case decided expeditiously far outweighs the need to accommodate an adamant bureaucracy.

DISPOSITION

Let a peremptory writ of mandate issue directing the juvenile court to vacate its order of October 30, 2001, declaring the relinquishment to be invalid and to hold a new hearing to determine whether Teresa's parental control over the minor should be limited so as to make the relinquishment invalid. The stay issued by this court on December 7, 2001, is vacated. The alternative writ issued on March 25, 2002, is discharged. This opinion is final immediately as to this

court. (Cal. Rules of Court, rule 24(d).) The parties shall bear their own costs.

We concur: SCOTLAND, P.J., and CALLAHAN, J.
Cal.App. 3 Dist., 2002.
Teresa J. v. Superior Court
102 Cal.App.4th 366, 125 Cal.Rptr.2d 506, 02 Cal.
Daily Op. Serv. 9876

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▷ ALFRED K. WEISS et al., Appellants,
v.
STATE BOARD OF EQUALIZATION et al., Re-
spondents.
L. A. No. 22697.

Supreme Court of California
Apr. 28, 1953.

HEADNOTES

(1) Intoxicating Liquors § 9.4--Licenses--Discretion of Board.

In exercising power which State Board of Equalization has under Const., art. XX, § 22, to deny, in its discretion, "any specific liquor license if it shall determine for good cause that the granting ... of such license would be contrary to public welfare or morals," the board performs a quasi judicial function similar to local administrative agencies.

See Cal.Jur.2d, Alcoholic Beverages, § 25 et seq.; Am.Jur., Intoxicating Liquors, § 121.

(2) Licenses § 32--Application.

Under appropriate circumstances, the same rules apply to determination of an application for a license as those for its revocation.

(3) Intoxicating Liquors § 9.4--Licenses--Discretion of Board.

The discretion of the State Board of Equalization to deny or revoke a liquor license is not absolute but must be exercised in accordance with the law, and the provision that it may revoke or deny a license "for good cause" necessarily implies that its decision should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals.

(4) Intoxicating Liquors § 9.4--Licenses--Discretion of Board.

While the State Board of Equalization may refuse an on-sale liquor license if the premises are in the immediate vicinity of a school (Alcoholic Beverage Control Act, § 13), the absence of such a provision or regulation by the board as to off-sale licenses does not preclude it from making proximity of the premises to a school an adequate basis for denying an off-

sale license as being inimical to public morals and welfare.

(5) Intoxicating Liquors § 9.4--Licenses--Discretion of Board.

It is not unreasonable for the State Board of Equalization to decide that public welfare and morals would be jeopardized by the granting of an off-sale liquor license within 80 feet of some of the buildings on a school ground.

(6) Intoxicating Liquors § 9.4--Licenses--Discretion of Board.

Denial of an application for an off-sale license to sell beer and wine at a store conducting a grocery and delicatessen business across the street from high school grounds is not arbitrary because there are other liquor licenses operating in the vicinity of the school, where all of them, except a drugstore, are at such a distance from the school that it cannot be said the board acted arbitrarily, and where, in any event, the mere fact that the board may have erroneously granted licenses to be used near the school in the past does not make it mandatory for the board to continue its error and grant any subsequent application.

(7) Intoxicating Liquors § 9.4--Licenses--Discretion of Board.

Denial of an application for an off-sale license to sell beer and wine at a store across the street from high school grounds is not arbitrary because the neighborhood is predominantly Jewish and applicants intend to sell wine to customers of the Jewish faith for sacramental purposes, especially where there is no showing that wine for this purpose could not be conveniently obtained elsewhere.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Frank G. Swain, Judge. Affirmed.

Proceeding in mandamus to compel State Board of Equalization to issue an off-sale liquor license. Judgment denying writ affirmed.

COUNSEL

Riedman & Silverberg and Milton H. Silverberg for Appellants.

Edmund G. Brown, Attorney General, and Howard S. Goldin, Deputy Attorney General, for Respondents.

CARTER, J.

Plaintiffs brought mandamus proceedings in the superior court to review the refusal of defendant, State Board of Equalization, to issue them an off-sale beer and wine license at their premises and to compel the issuance of such a license. The court gave judgment for the board and plaintiffs appeal. *774

Plaintiffs filed their application with the board for an off-sale beer and wine license (a license to sell those beverages to be consumed elsewhere than on the premises) at their premises where they conducted a grocery and delicatessen business. After a hearing the board denied the application on the grounds that the issuance of the license would be contrary to the "public welfare and morals" because of the proximity of the premises to a school.

According to the evidence before the board, the area concerned is in Los Angeles. The school is located in the block bordered on the south by Rosewood Avenue, on the west by Fairfax Avenue, and on the north by Melrose Avenue—an 80-foot street running east and west parallel to Rosewood and a block north therefrom. The school grounds are enclosed by a fence, the gates of which are kept locked most of the time. Plaintiffs' premises for which the license is sought are west across Fairfax, an 80-foot street, and on the corner of Fairfax and Rosewood. The area on the west side of Fairfax, both north and south from Rosewood, and on the east side of Fairfax south from Rosewood, is a business district. The balance of the area in the vicinity is residential. The school is a high school. The portion along Rosewood is an athletic field with the exception of buildings on the corner of Fairfax and Rosewood across Fairfax from plaintiffs' premises. Those buildings are used for R.O.T.C. The main buildings of the school are on Fairfax south of Melrose. There are gates along the Fairfax and Rosewood sides of the school but they are kept locked most of the time. There are other premises in the vicinity having liquor licenses. There are five on

the west side of Fairfax in the block south of Rosewood and one on the east side of Fairfax about three-fourths of a block south of Rosewood. North across Melrose and at the corner of Melrose and Fairfax is a drugstore which has an off-sale license. That place is 80 feet from the northwest corner of the school property as Melrose is 80 feet wide and plaintiffs' premises are 80 feet from the southwest corner of the school property. It does not appear when any of the licenses were issued, with reference to the existence of the school or otherwise. Nor does it appear what the distance is between the licensed drugstore and any school buildings as distinguished from school grounds. The licenses on Fairfax Avenue are all farther away from the school than plaintiffs' premises.

Plaintiffs contend that the action of the board in denying them a license is arbitrary and unreasonable and they particularly *775 point to the other licenses now outstanding on premises as near as or not much farther from the school.

The board has the power "in its discretion, to deny ... any specific liquor license if it shall determine for good cause that the granting ... of such license would be contrary to public welfare or morals." (Cal. Const., art. XX, § 22.) (1) In exercising that power it performs a quasi judicial function similar to local administrative agencies. (*Covert v. State Board of Equalization*, 29 Cal.2d 125 [173 P.2d 545]; *Reynolds v. State Board of Equalization*, 29 Cal.2d 137 [173 P.2d 551, 174 P.2d 4]; *Stoumen v. Reilly*, 37 Cal.2d 713 [234 P.2d 969].) (2) Under appropriate circumstances, such as we have here, the same rules apply to the determination of an application for a license as those for the revocation of a license. (*Fascination, Inc. v. Hoover*, 39 Cal.2d 260 [246 P.2d 656]; Alcoholic Beverage Control Act, § 39; Stats. 1935, p. 1123, as amended.) (3) In making its decision "The board's discretion ... however, is not absolute but must be exercised in accordance with the law, and the provision that it may revoke [or deny] a license 'for good cause' necessarily implies that its decisions should be based on sufficient evidence and that it should not act arbitrarily in determining what is contrary to public welfare or morals." (*Stoumen v. Reilly, supra*, 37 Cal.2d 713, 717.)

(4) Applying those rules to this case, it is pertinent to observe that while the board may refuse an on-sale license if the premises are in the immediate vicinity

of a school (Alcoholic Beverage Control Act, *supra*, § 13) there is no such provision or regulation by the board as to off-sale licenses. Nevertheless, proximity of the licensed premises to a school may supply an adequate basis for denial of a license as being inimical to public morals and welfare. (See *Altadena Community Church v. State Board of Equalization*, 109 Cal.App.2d 99 [240 P.2d 322]; *State v. City of Racine*, 220 Wis. 490 [264 N.W. 490]; *Ex parte Velasco*, (Tex.Civ.App.) 225 S.W. 2d 92; *Harrison v. People*, 222 Ill. 150 [78 N.E. 52].)

The question is, therefore, whether the board acted arbitrarily in denying the application for the license on the ground of the proximity of the premises to the school. No question is raised as to the personal qualifications of the applicants. (5) We cannot say, however, that it was unreasonable for the board to decide that public welfare and morals would be jeopardized by the granting of an off-sale license at premises *776 within 80 feet of some of the buildings on a school ground. As has been seen, a liquor license may be refused when the premises, where it is to be used, are in the vicinity of a school. While there may not be as much probability that an off-sale license in such a place would be as detrimental as an on-sale license, yet we believe a reasonable person could conclude that the sale of any liquor on such premises would adversely affect the public welfare and morals.

(6) Plaintiffs argue, however, that assuming the foregoing is true, the action of the board was arbitrary because there are other liquor licensees operating in the vicinity of the school. All of them, except the drugstore at the northeast corner of Fairfax and Melrose, are at such a distance from the school that we cannot say the board acted arbitrarily. It should be noted also that as to the drugstore, while it is within 80 feet of a corner of the school grounds, it does not appear whether there were any buildings near that corner, and as to all of the licensees, it does not appear when those licenses were granted with reference to the establishment of the school.

Aside from these factors, plaintiffs' argument comes down to the contention that because the board may have erroneously granted licenses to be used near the school in the past it must continue its error and grant plaintiffs' application. That problem has been discussed: "Not only does due process permit omission of reasoned administrative opinions but it probably

also permits substantial deviation from the principle of stare decisis. Like courts, agencies may overrule prior decisions or practices and may initiate new policy or law through adjudication. Perhaps the best authority for this observation is *FCC v. WOKO* [329 U.S. 223 (67 S.Ct. 213, 91 L.Ed. 204)]. The Commission denied renewal of a broadcasting license because of misrepresentations made by the licensee concerning ownership of its capital stock. Before the reviewing courts one of the principal arguments was that comparable deceptions by other licensees had not been dealt with so severely. A unanimous Supreme Court easily rejected this argument: 'The mild measures to others and the apparently unannounced change of policy are considerations appropriate for the Commission in determining whether its action in this case is too drastic, but we cannot say that the Commission is bound by anything that appears before us to deal with all cases at all times as it has dealt with some that seem comparable.' *777 In rejecting a similar argument that the SEC without warning had changed its policy so as to treat the complainant differently from others in similar circumstances, Judge Wyzanski said: 'Flexibility was not the least of the objectives sought by Congress in selecting administrative rather than judicial determination of the problems of security regulation. ... The administrator is expected to treat experience not as a jailer but as a teacher.' Chief Justice Vinson, speaking for a Court of Appeals, once declared: 'In the instant case, it seems to us there has been a departure from the policy of the Commission expressed in the decided cases, but this is not a controlling factor upon the Commission.' Other similar authority is rather abundant. Possibly the outstanding decision the other way, unless the dissenting opinion in the second *Chenery* case is regarded as authority, is *NLRB v. Mall Tool Co.* [119 F.2d 700.] The Board in ordering back pay for employees wrongfully discharged had in the court's opinion departed from its usual rule of ordering back pay only from time of filing charges, when filing of charges is unreasonably delayed and no mitigating circumstances are shown. The Court, assuming unto itself the Board's power to find facts, said: 'We find in the record no mitigating circumstances justifying the delay.' Then it modified the order on the ground that 'Consistency in administrative rulings is essential, for to adopt different standards for similar situations is to act arbitrarily.' From the standpoint of an ideal system, one can hardly disagree with the court's remark. But from the standpoint of a workable system, perhaps the courts should

not impose upon the agencies standards of consistency of action which the courts themselves customarily violate. Probably deliberate change in or deviation from established administrative policy should be permitted so long as the action is not arbitrary or unreasonable. This is the view of most courts." (Davis, Administrative Law, § 168; see also Parker, Administrative Law, pp. 250-253; 73 C.J.S., Public Administrative Bodies and Procedure, § 148; California Emp. Com. v. Black-Foxe M. Inst., 43 Cal.App.2d Supp. 868 [110 P.2d 729].) Here the board was not acting arbitrarily if it did change its position because it may have concluded that another license would be too many in the vicinity of the school.

(7) The contention is also advanced that the neighborhood is predominantly Jewish and plaintiffs intend to sell wine to customers of the Jewish faith for sacramental purposes. We fail to see how that has any bearing on the issue. The wine *778 to be sold is an intoxicating beverage, the sale of which requires a license under the law. Furthermore, it cannot be said that wine for this purpose could not be conveniently obtained elsewhere.

The judgment is affirmed.

Gibson, C. J., Shenk, J., Edmonds, J., Traynor, J., Schauer, J., and Spence, J., concurred.
Appellants' petition for a rehearing was denied May 21, 1953.

Cal.
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40 Cal.2d 772, 256 P.2d 1

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v

Effective: January 1, 2003

West's Annotated California Codes CurrentnessGovernment Code (Refs & Annos)

Title 2. Government of the State of California

Division 3. Executive Department (Refs & Annos)Part 1. State Departments and Agencies (Refs & Annos)Chapter 3.5. Administrative Regulations and Rulemaking (Refs & Annos)Article 5. Public Participation: Procedure for Adoption of Regulations (Refs & Annos)

→ § 11346.2. Notification of proposed agency action; public information

Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3)(A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business

and the agency's reasons for rejecting those alternatives.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives, describe unreasonable alternatives, or justify why it has not described alternatives.

(4) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(5) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

CREDIT(S)

(Added by Stats.1994, c. 1039 (A.B.2531), § 23. Amended by Stats.1995, c. 938 (S.B.523), § 15.3, operative Jan. 1, 1996; Stats.2000, c. 1059 (A.B.505), § 9; Stats.2000, c. 1060 (A.B.1822), § 22.5; Stats.2002, c. 389 (A.B.1857), § 4.)

LAW REVISION COMMISSION COMMENTS

2000 Amendment

Subdivision (a)(1) of Section 11346.2 is a specific application of Section 6215(a) (state agency "shall write each document which it produces in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style"). The requirement that a regulation be written in plain English has been expanded to include all regulations and not just those that affect small business. Plain English means language that satisfies the clarity standard expressed in Section 11349. See Section 11342.580 ("plain English" defined). Note that the former provision requiring the preparation of a plain English summary of a proposed regulation affecting small businesses, where the regulation cannot be drafted in plain English, has been broadened to apply to all regulations and continued in Section 11346.5(a)(3)(B). See Sections 11342.580 ("plain English" defined), 11349(c) (clarity standard).

Former subdivision (b)(1) (description of problem addressed) is deleted as unnecessary; the same information is required by former subdivision (b)(2) (statement of purpose for proposed action).

Former subdivision (b)(5) is revised to eliminate the implication that a final finding is required before the agency has received comment on a proposed action.

This section also contains language from 2000 Cal. Stat. ch. 1059, §9, which was chaptered out by the bill amending this section. See 2000 Cal. Stat. ch. 1060, §§22.5 & 44. [30 Cal.L.Rev.Comm.Reports 725 (2000)].

2002 Amendment

Subdivision (b)(3) of Section 11346.2 is amended to make clear that the former second sentence of subdivision (b)(3)(B) applies to subdivision (b)(3)(A) and (B). This is a technical, nonsubstantive change. Subdivision (b)(3)(B) is amended to more closely conform to subdivision (b)(3)(A). This is a nonsubstantive change except that an agency is now required to give reasons for rejecting reasonable alternatives that would lessen any adverse impact on small business. [31 Cal.L.Rev.Comm. Reports 271 (2002)].

HISTORICAL AND STATUTORY NOTES

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Legislative findings and declarations relating to Stats.1994, c. 1039 (A.B.2531), see Historical and Statutory Notes under Government Code § 11340.

The 1995 amendment, in subd. (c), substituted "subdivision (b)" for "this section".

Legislative findings, declarations and short title relating to Stats.2000, c. 1059 (A.B.505), see Historical and Statutory Notes under Government Code § 11340.8.

Stats.2000, c. 1060 (A.B.1822), rewrote this section, which read:

"Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

"(a) A copy of the express terms of the proposed regulation.

"(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation.

"(2) The agency shall include a notation following the express terms of each regulation listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by the regulation.

"(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

"(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

"(1) A description of the public problem, administrative requirement, or other condition or circumstance that each adoption, amendment, or repeal is intended to address.

"(2) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

"(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

"(4)(A) A description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

"(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

"(5) Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

"(6) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

"(A) The differing state regulations are authorized by law.

"(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

"(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation."

An amendment of this section by § 9.5 of Stats.2000, c. 1059 (A.B.505), failed to become operative under the provisions of § 23 of that Act.

Under the provisions of § 44 of Stats.2000, c. 1060 (A.B.1822), the 2000 amendments of this section by c. 1059

(A.B.505) and c. 1060 (A.B.1822) were given effect and incorporated in the form set forth in § 22.5 of c. 1060 (A.B.1822).

An amendment of this section by § 22 of Stats.2000, c. 1060 (A.B.1822), failed to become operative under the provisions of § 44 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

For letter of intent from Assembly Member Wright regarding A.B. 505 (Stats.2000, c. 1059), see Historical and Statutory Notes following Government Code § 11340.8.

Stats.2002, c. 389 (A.B.1857), rewrote subd. (b)(3)(B); and redesignated a portion of former subd. (b)(3)(B) as subd. (b)(3)(C). Prior to amendment, subd. (b)(3)(B) had read:

"(B) A description of any reasonable alternatives the agency has identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives."

Former § 11346.2, added by Stats.1979, c. 567, § 1, operative July 1, 1980, amended by Stats.1979, c. 152, § 12.6; Stats.1980, c. 204, § 3, eff. June 20, 1980; Stats.1981, c. 274, § 8, eff. Aug. 27, 1981; Stats.1981, c. 865, § 23; Stats.1984, c. 287, § 46, eff. July 6, 1984; Stats.1985, c. 956, § 11, eff. Sept. 26, 1985; Stats.1987, c. 1375, § 8, relating to effective date or regulation or repeal was repealed by Stats.1994, c. 1039 (A.B.2531), § 22. See Government Code § 11343.4.

Derivation: Former § 11346.7, added by Stats.1979, c. 567, § 1, amended by Stats.1980, c. 204, § 3; Stats.1981, c. 865, § 27; Stats.1982, c. 327, § 34; Stats.1982, c. 1083, § 5; Stats.1982, c. 1573, § 3.5; Stats.1984, c. 1444, § 4; Stats. 1985, c. 1044, § 2; Stats.1986, c. 205, § 2; Stats.1986, c. 205, § 2; Stats.1987, 1375, § 14.

CROSS REFERENCES

"Agency" defined for purposes of this chapter, see Government Code § 11342.520.

Effective date of regulations of fish and game commission, see Fish and Game Code § 215.

Fish and game regulations, not subject to time periods, see Fish and Game Code § 202.

Fish and game regulations regarding migratory birds, see Fish and Game Code § 355.

Migratory bird regulations, see Fish and Game Code § 355.

"Office" defined for purposes of this chapter, see Government Code § 11342.550.

"Prescriptive standard" defined for purposes of this chapter, see Government Code § 11342.590.

"Performance standard" defined for purposes of this chapter, see Government Code § 11342.570.

"Plain English" defined for purposes of this chapter, see Government Code § 11342.580.

"Proposed action" defined for purposes of this chapter, see Government Code § 11342.595.

"Regulation" defined for purposes of this chapter, see Government Code § 11342.600.

"Small business" defined for purposes of this chapter, see Government Code § 11342.610.

"State agency" defined for purposes of this division, see Government Code § 11000.

LAW REVIEW AND JOURNAL COMMENTARIES

California Occupational Safety and Health Act. Carol Hunter (1975) 50 Los Angeles B.Bull. 303.

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2005 Main Volume

Administrative Law and Procedure ~~392.1~~ to 402.
Westlaw Topic No. 15A.
C.J.S. Public Administrative Law and Procedure §§ 103 to 108.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Administrative Law § 271, in General; Regulation Drafting Requirements.

CA Jur. 3d Administrative Law § 275, Initial Statement of Reasons for Proposed Regulatory Change.

CA Jur. 3d Administrative Law § 276, Final Statement of Reasons for Regulatory Change and Informative Digest.

CA Jur. 3d Administrative Law § 280, Matters that Must be Made Public.

CA Jur. 3d Administrative Law § 285, Publication and Delivery of Notice.

Treatises and Practice Aids

9 Witkin Cal. Proc. 5th Administrative Proceedings § 44, (S 44) Notice Requirements.

West's Ann. Cal. Gov. Code § 11346.2, CA GOVT § 11346.2

Current with urgency legislation through Ch. 9, 11-17 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., and Ch. 26 of the 2009-2010 3rd Ex.Sess., Governor's Reorganization Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 7/1/2009

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Effective: January 1, 2001

West's Annotated California Codes Currentness

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 3. Executive Department (Refs & Annos)

Part 1. State Departments and Agencies (Refs & Annos)

Chapter 3.5. Administrative Regulations and Rulemaking (Refs & Annos)

Article 5. Public Participation: Procedure for Adoption of Regulations (Refs & Annos)

→ § 11346.9. Final statement of reasons; updated informative digest; adoption or amendment of federal regulations

Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.

(2) A determination as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts. If the determination is that adoption, amendment, or repeal of the regulation would impose a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action. The agency may aggregate and summarize repetitive or irrelevant comments as a group, and may respond to repetitive comments or summarily dismiss irrelevant comments as a group. For the purposes of this paragraph, a comment is "irrelevant" if it is not specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.

(4) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

(5) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

(b) Prepare and submit to the office with the adopted regulation an updated informative digest containing a clear and concise summary of the immediately preceding laws and regulations, if any, relating directly to the adopted, amended, or repealed regulation and the effect of the adopted, amended, or repealed regulation. The informative digest shall be drafted in a format similar to the Legislative Counsel's Digest on legislative bills.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation which the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) If an agency determines that a requirement of this section can be satisfied by reference to an agency statement made pursuant to Sections 11346.2 to 11346.5, inclusive, the agency may satisfy the requirement by incorporating the relevant statement by reference.

CREDIT(S)

(Added by Stats.1994, c. 1039 (A.B.2531), § 33, Amended by Stats.2000, c. 1060 (A.B.1822), § 27.)

LAW REVISION COMMISSION COMMENTS

2000 Amendment

Subdivision (a)(1) of Section 11346.9 is amended to refer to Section 11347.1, which codifies the existing procedure for providing an additional opportunity for public comment in response to material added to the rulemaking file. See 1 Cal. Code Regs. §45, Subdivision (a) requires additional public comment on certain material that is added to the rulemaking file after publication of the notice of proposed action. This is a broader requirement than that provided in Section 11346.8(d), which only requires an opportunity for additional comment regarding material that is added to the rulemaking file after the close of the public hearing or comment period. The broader requirement is consistent with existing practice.

Subdivision (a)(1)-(2) is also amended to make clear that those provisions apply to the repeal of a regulation as well as the adoption or amendment of a regulation.

Subdivision (a)(3) is amended to codify the existing practice of grouping repetitive comments and summarily dismissing irrelevant comments for purposes of this section. The Office of Administrative Law may disapprove a proposed regulation if an agency improperly aggregates dissimilar comments or summarily dismisses a relevant comment. See Section 11349.3 (office may disapprove regulation for failure to comply with this chapter).

Subdivision (d) is added to authorize incorporation of a prior statement by reference. This reflects the fact that no purpose is served by requiring an agency to reiterate a statement that was made earlier in the rulemaking process. For example, where an agency determines pursuant to Section 11346.5(a)(6) that a proposed rule would not impose a cost on a local agency or school district and, at the time of preparing the final statement of reasons, determines that its prior determination is correct and complete, the agency may incorporate the statement made pursuant to Section 11346.5(a)(6) in complying with Section 11346.9(a)(2). [30 Cal. L.Rev.Comm. Reports 725 (2000)].

HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Legislative findings and declarations relating to Stats.1994, c. 1039 (A.B.2531), see Historical and Statutory Notes under Government Code § 11340.

Stats.2000, c. 1060 (A.B.1822), added subd. (d) relating to incorporation of statements by reference; and rewrote subs. (a)(1), (a)(2), and (a)(3), which read:

“(a)(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption or amendment of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with subdivision (d) of Section 11346.8.

“(2) A determination as to whether the regulation imposes a mandate on local agencies or school districts. If the determination is that the regulation does contain a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

“(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.”

Former § 11346.9, added by Stats.1983, c. 1080, § 2; Stats.1983, c. 1212, § 1, relating to preparation of economic impact statements by agencies proposing to adopt or amend regulations, was repealed by Stats.1983, c. 1212, § 1.

Derivation: Former § 11346.7, added by Stats.1979, c. 567, § 1, amended by Stats.1980, c. 204, § 3; Stats.1981, c. 865, § 27; Stats.1982, c. 327, § 34; Stats.1982, c. 1083, § 5; Stats.1982, c. 1573, § 3.5; Stats.1984, c. 1444, § 4; Stats. 1985, c. 1044, § 2; Stats.1986, c. 205, § 2; Stats.1986, c. 205, § 2; Stats.1987, 1375, § 14.

CROSS REFERENCES

“Agency” defined for purposes of this chapter, see Government Code § 11342.520.

Emergency regulations adopted in accordance with this chapter for implementation of services related to prevention of hereditary disorders and congenital defects, compliance with this section, see Health and Safety Code § 124977.

Legislative counsel, generally, see Government Code § 10200 et seq.

“Office” defined for purposes of this chapter, see Government Code § 11342.550.

“Proposed action” defined for purposes of this chapter, see Government Code § 11342.595.

“Reference” defined for purposes of this chapter, see Government Code § 11349.

“Regulation” defined for purposes of this chapter, see Government Code § 11342.600.

“Small business” defined for purposes of this chapter, see Government Code § 11342.610.

“State agency” defined for purposes of this division, see Government Code § 11000.

LIBRARY REFERENCES

2005 Main Volume

Administrative Law and Procedure ↪ 403, 410.
Westlaw Topic No. 15A.
C.J.S. Public Administrative Law and Procedure §§ 103, 114.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Administrative Law § 276, Final Statement of Reasons for Regulatory Change and Informative Digest.

Treatises and Practice Aids

9 Witkin Cal. Proc. 5th Administrative Proceedings § 44, (S 44) Notice Requirements.

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72 Ops. Cal. Atty. Gen. 173, 1989 WL 408272 (Cal.A.G.)

Office of the Attorney General
State of California

Opinion No. 88-702

September 13, 1989

THE COMMISSION ON STATE MANDATES

THE COMMISSION ON STATE MANDATES has requested an opinion on the following question:

Does the Commission on State Mandates have the authority to reconsider a prior final decision relating to the existence or nonexistence of state mandated costs?

CONCLUSION

The Commission on State Mandates does have the authority to reconsider a prior final decision relating to the existence or nonexistence of state mandated costs, where the prior decision was contrary to law.

ANALYSIS

Section 6 of article XIII B of the California Constitution, an initiative constitutional amendment which became effective on July 1, 1980, provides:

"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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

In order to implement the provisions of section 6, supra, the Commission on State Mandates ("commission," post) was established on January 1, 1985. (Gov. Code, 17525.) [FN1] Its basic purpose is to adjudicate claims filed by local agencies for costs incurred as a result of certain state mandated programs. (See 68 Ops. Cal. Atty. Gen. 245 (1985).) Specifically, section 17551, subdivision (a), provides:

"The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution."

The present inquiry is whether the commission is authorized to reconsider, pursuant to its own motion, its determination in a prior case respecting the entitlement of a claimant (local agency or school district) to reimbursement for state mandated costs. It is understood for purposes of this discussion that the prior decision was duly rendered and has become final. Our attention has been directed, for illustrative purposes, upon the interpretive clarification by the

California Supreme Court in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56-57, providing a limited definition of the phrase "new program or higher level of service" within the context of section 6 of article XIII B of the California Constitution, supra. Specifically, it was decided that that phrase does not include any incidental increase in local costs arising upon the enactment of a law of general application. Consequently, there was no mandatory subvention for increased costs to local agencies resulting from the legislative authorization for higher workers' compensation benefits. As a result of this clarification, the commission may have reached different determinations with respect to certain prior claims which it now wishes to reopen for consideration.

*2 In the absence of any specific statutory authority, an administrative agency has, as a general rule, no power to grant a rehearing or otherwise to reconsider a previous final decision. In 37 Ops. Cal. Atty. Gen. 133 (1961), we considered whether the California Unemployment Insurance Appeals Board was authorized to set aside its decision and reopen a matter for the purpose of receiving written argument or reevaluating the evidence and issuing a different decision. We explained in part (id., at 134-135):

"In 2 Ops. Cal. Atty. Gen. 442, 443, the specific question of the board's jurisdiction to review, rehear or reconsider formal decisions was discussed as follows:

"±In cases such as this one, the jurisdiction of boards and agencies such as the California Employment Commission and its successor the California Unemployment Insurance Appeals Board, is special and limited. (Heap v. City of Los Angeles, 6 Cal. (2d) 405; Peterson v. Civil Service Board, 67 Cal. App. 70; Krohn v. Board of Water and Power Com., 95 Cal. App. 289.) It would seem that if such an agency did not have the express power to grant a rehearing, it could not grant such a rehearing.

"±The reason for this rule of law is well expressed in the case of Heap v. City of Los Angeles, supra, where the Court said:

" " ... But the rule stated above, that a civil service commission has no such power in the absence of express authorization, is sound and practical. If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure..."

" 'The rule and reason therefor is well supported by California authority. (Pacheco v. Clark, 44 Cal. App. (2d) 147; Olive Proration etc. Com. v. Agricultural etc. Com., 17 Cal. (2d) 204; Proud v. McGregor, 9 Cal. (2d) 178.) This office has adhered to the rule just set out in Opinions (NS 2192, NS 2192a and NS 2192b) addressed to the State Board of Equalization.'

"It was concluded therein that the Unemployment Insurance Appeals Board has no jurisdiction to review, rehear or reconsider its formal decisions for the reasons stated above.

"Again in 16 Ops. Cal. Atty. Gen. 214 at 215, this office stated:

" 'It appears to be the general rule that if the jurisdiction of an administrative board is purely statutory, it must look to its statute to ascertain whether its determinations may be reopened. (People v. Wemple (1895) 144 N.Y. 478, 39 N.E. 397; State v. Brown (1923) 126 Wash. 175, 218 P. 9; Note (1941) 29 Geo. L. J. 878; Comment (1941) 29 Cal. L. Rev. 741). That this is the California rule is illustrated by the decision in Olive Proration Committee v. Agricultural Prorate Commission, (1941) 17 Cal.2d 204, 109 P.2d 918, wherein the court said, at page 209:

*3 " "... since all administrative actions must be grounded in statutory authority, in the absence of a provision allowing a commission to change its determination, courts have usually denied the right so to do." ' (See also Cook v. Civil Service Commission (1911) 160 Cal. 589, 117 P. 662; Heap v. Los Angeles (1936) 6 Cal.2d 405, 57 P.2d 1323; 1 Ops. Cal. Atty. Gen. 412, 417; 2 Ops. Cal. Atty. Gen. 442; 3 Ops. Cal. Atty. Gen. 143, 144; 4 Ops. Cal. Atty. Gen. 34, 36; 9 Ops. Cal. Atty. Gen. 294, 295.)" "

In 59 Ops. Cal. Atty. Gen. 123 (1976) we pointed to certain "narrow exceptions" to the general rule. (Id. at 126-127.) For example, the rule would not apply where the Legislature intended that the agency should exercise a continuing

jurisdiction with power to reconsider its orders. As stated by the court in *Olive Proration etc. Com. v. Agric. etc. Com.* (1941) 17 Cal.2d 204, 209:

"Where orders which relate to what may be rather broadly defined as individual rights are concerned, the question whether the administrative agency may reverse a particular determination depends upon the kind of power exercised in making the order and the terms of the statute under which the power was exercised. As to the first factor, almost without exception, courts have held that the determination of an administrative agency as to the existence of a fact or status which is based upon a present or past group of facts, may not thereafter be altered or modified. (*Muncy v. Hughes*, 265 Ky. 588 [97 S. W. (2d) 546]; *Little v. Board of Adjustment*, 195 N. C. 793 [143 S. E. 827]; *Lilienthal v. Wyandotte*, 286 Mich. 604 [282 N.W. 837].) As concisely stated by the New York Court of Appeals, 'officers of special and limited jurisdiction cannot sit in review of their own orders or vacate or annul them'. (*People ex rel. Chase v. Wemple*, 144 N. Y. 478 [39 N. E. 397].) But if it is clear that the legislature intended that the agency should exercise a continuing jurisdiction with power to modify or alter its orders to conform to changing conditions, the doctrine of *res judicata* is not applicable. The determination depends upon the provisions of the particular statute.

"... And since all administrative action must be grounded in statutory authority, in the absence of a provision allowing a commission to change its determination, courts have usually denied the right so to do." (Emphasis added.)

(*Accord, Hollywood Circle, Inc. v. Dept. of Alc. Bev. Cont.* (1961) 55 Cal.2d 728, 732.) We find no such provision in the statute in question. (See 17551 (a) supra.)

Further, the rule would not apply where the agency's decision exceeded its authority or was made without sufficient evidence. In *Aylward v. State Bd. etc. Examiners* (1948) 31 Cal.2d 833, the Board of Chiropractic Examiners adopted, without notice, and based upon the board's own records, a resolution canceling forty licenses, previously issued by the board, to practice chiropractic on the ground that such licenses had been issued contrary to numerous prerequisites of the Chiropractic Act. This action purported to reverse the action of the board during the previous year, in which it was concluded, upon a noticed and contested hearing, that "none of the matters presented were grounds under the Chiropractic Act for revocation of any licenses." The Supreme Court held that the board improperly canceled the licenses in the absence of a statutorily required noticed hearing (*id.* at 838), but that the board should not be precluded from taking adverse action based on any proper legal ground (*id.* at 842). The court explained as follows (*id.* at 839):

*4 "The agency however, may be bound by its prior action where it has made a determination of a question of fact within its powers, and it lacks authority to rehear or reopen the question. (*Olive Proration etc. Com. v. Agricultural etc. Com.*, 17 Cal.2d 204, 209; *Heap v. City of Los Angeles*, 6 Cal.2d 405; *Proud v. McGregor*, 9 Cal.2d 178, 179; *Pacheco v. Clark*, 44 Cal.App.2d 147, 153; *Hoertkorn v. Sullivan*, 67 Cal.App.2d 151, 154; *Matson Terminals, Inc. v. California Emp. Com.*, 24 Cal.2d 695, 702.)

"Implicit in the cases denying a board's power to review or reexamine a question, however, is the qualification that the board must have acted within its jurisdiction and within the powers conferred on it. Where a board's order is not based upon a determination of fact, but upon an erroneous conclusion of law, and is without the board's authority, the order is clearly void and hence subject to collateral attack, and there is no good reason for holding the order binding on the board. Not only will a court refuse to grant mandate to enforce a void order of such a board (*Proud v. McGregor*, 9 Cal.2d 178; *Pacheco v. Clark*, 44 Cal.App.2d 147), but mandate will lie to compel the board to nullify or rescind its void acts. (*Board of Trustees v. State Bd. of Equalization*, 1 Cal.2d 784. While a board may have exhausted its power to act when it has proceeded within its powers, it cannot be said to have exhausted its power by doing an act which it had no power to do or by making a determination without sufficient evidence. In such a case, the power to act legally has not been exercised, the doing of the void act is a nullity, and the board still has unexercised power to proceed within its jurisdiction." (Emphasis added.)

In *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, the board had approved the appointment of an applicant to a state civil service position. More than seven months later, the board, after a hearing, adopted its order revoking the appointment due to the erroneous grant of veterans' preference points. (*Id.* at 100.) Responding to the contention that the initial order approving the appointment having become final, the board was, in the absence of statutory authority,

without jurisdiction to reconsider it, the court observed (*id.* at 105-106):

"What we examine here is the jurisdiction of the Board to take corrective action with respect to an appointment which it lacked authority to make. It defies logic to say that the mere enumeration in the Act of the methods of separating an employee from state civil service in a situation where an appointment has been validly made, compels the conclusion that no jurisdiction exists to rectify the action of the Board in a situation where an appointment has been made without authority.

"We conclude, therefore, that when the matter was brought to its attention, the Board had jurisdiction to inquire into and review the certification as to veterans' preference credits made by the Department of Veterans Affairs and having determined that appellant was not entitled to such credits, to take the corrective action which it did by revoking appellant's appointment. While this jurisdiction does not appear to have been conferred upon the Board in so many words by the express or precise language of constitutional or statutory provision, there can be no question in that it is implicit in the constitutional and statutory scheme which empowers the Board to administer and enforce the civil service laws."

*5 Determinations by the commission as to entitlement of local agencies to reimbursement for state mandated costs are questions of law. (*Carmel Valley Fire Protection Dist. v. State of California*, supra, 190 Cal.App.3d at 536.) An administrative agency is not authorized to act contrary to law. (*Ferdig v. State Personnel Board*, supra, 71 Cal.2d at 103-104.) Consequently, where the decision in a prior case was based upon an erroneous legal premise, and is contrary to law (e.g., licenses issued or veterans preference points granted contrary to law), the administrative agency, having exceeded its authority, may reconsider its decision notwithstanding the absence of express statutory sanction. In the case presented for illustrative purposes, the commission's prior determination, based upon an erroneous interpretation of law, to provide a subvention for an incidental increase in local costs arising upon an increase in workers' compensation benefits, was contrary to law. Under the principles set forth above, the commission would be authorized to reconsider its prior decision.

The question remains, however, whether the Legislature in this instance has authorized a different result, precluding the commission from reconsidering a prior final decision. [FN2] The commission is authorized to adopt procedures for hearing claims and for the taking of evidence. (17553.) [FN3] Pursuant to its authority to adopt and amend rules and regulations (17527, subd. (g)), the commission has promulgated rules for the conduct of hearings. (Tit. 2, C.C.R., 1187-1188.3, hereafter referred to as "rules.") Upon receipt of a claim, the commission is required to conduct a hearing within a reasonable time. (17555; rule 1187.1, subd. (a).) The hearing shall be conducted in accordance with specified rules of evidence and procedure. (Rules 1187.5, 1187.6.) Prior to the adoption of its written decision the commission may, on its own motion or upon a showing of good cause, order a further hearing. (Rule 1187.9, subd. (a).) Within a reasonable time following the hearing, a proposed decision of the commission panel, commission staff, or hearing officer, as the case may be, shall be prepared and served upon the parties. (Rule 1188.1.) The decision of the commission itself must be written, based on the record, and contain a statement of reasons for the decisions, findings and conclusion. (Rule 1188.2, subd. (a).) After the decision has been served, it shall not be changed except to correct clerical errors. (Rule 1188.2, subd. (b).) Either party may commence a proceeding for judicial review of a decision of the commission. (17559.) The period of limitations applicable to such review is three years. (*Carmel Valley Fire Protection Dist. v. State of California*, supra, 190 Cal.App.3d at 534.)

If the commission determines that costs are mandated by the state, it must determine the amount to be subvented to local agencies and adopt "parameters and guidelines" for reimbursement of claims. (17557; rule 1183.1.) Thereafter, the commission shall adopt an estimate of statewide costs resulting from the mandate. (Rule 1183.3, subd. (a).) At least twice each calendar year, the commission is required to identify and report to the Legislature the statewide costs estimated for each mandate and the reasons for recommending reimbursement. (17600; rule 1183.3, subd. (b).) The amounts awarded are included in the local government claims bill and thereafter, in the case of continuing costs, in the budget bill for subsequent fiscal years. (17561, subd. (b)(2).)

*6 The Supreme Court has applied a uniform set of rules when reviewing the validity of administrative regulations.

"Where a statute empowers an administrative agency to adopt regulations, such regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose." (Ontario Community Foundation, Inc. v. State Bd. of Equalization (1984) 35 Cal.3d 811, 816.) "[T]here is no agency discretion to promulgate a regulation which is inconsistent with the governing statute." (Woods v. Superior Court (1981) 28 Cal.3d 668, 679.) "Administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." (Morris v. Williams (1967) 67 Cal.2d 733, 737.) "Administrative regulations that alter or amend that statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations." (Ontario Community Foundation, Inc. v. State Bd. of Equalization, supra, 35 Cal.3d 811, 816-817; emphasis added.) "It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are." (Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392, 419.)

There is no indication in the statutory scheme that the jurisdiction of the commission is limited to rectify its action where a determination of entitlement had been adopted without authority. As observed in Ferdig v. State Personnel Board, supra, 106, "[w]hile this jurisdiction does not appear to have been conferred upon the [commission] in so many words by the express or precise language of constitutional or statutory provision, there can be no question that it is implicit in the constitutional and statutory scheme which empowers that [commission] to provide an effective means of resolving disputes over the existence of state-mandated local programs' (sec. 17500).]"

To the extent that rule 1188.2, subdivision (b), may be interpreted to foreclose the commission from rectifying a decision made or action taken contrary to law, it impairs the scope of the statute, and to that extent is void. (Cf. Ontario Community Foundation, Inc. v. State Bd. of Equal., supra, 35 Cal.3d at 816-817; 64 Ops. Cal. Atty. Gen. 425, 430 (1981).) In our view, an administrative agency has no more power to promulgate a rule preserving or perpetuating its decisions made or actions taken without authority, than it has to undertake such decisions or actions in the first instance.

It is concluded that the commission is authorized to reconsider a prior final decision relating to entitlement for reimbursement for state mandated costs, where the prior decision was contrary to law.

JOHN K. VAN DE KAMP
Attorney General

Anthony S. DaVigo
Deputy

[FN1]. Hereinafter, all unidentified section references are to the Government Code.

[FN2]. To be clear, this opinion concerns the reconsideration of a prior decision, i.e., which has become final, for the purpose of determining whether the decision in that case should be modified or reversed. We do not question the power of an administrative agency to reconsider a prior decision for the purpose of determining whether that decision should be overruled in a subsequent case. It is long settled that due process permits substantial deviation by administrative agencies from the principle of stare decisis. (Weiss v. State Bd. of Equal. (1953) 40 Cal.2d 772, 776.) An agency may disregard its earlier decision, provided that its action is neither arbitrary nor unreasonable (Id., at 777.)

[FN3]. The commission is not subject to the provisions of the California Administrative Procedure Act pertaining to administrative adjudication. (§§ 11500, 11501.)

72 Ops. Cal. Atty. Gen. 173, 1989 WL 408272 (Cal.A.G.)
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FINAL STATEMENT OF REASONS
(AMENDED)

Background

In 1975, Extended Opportunity Programs and Services in the California Community Colleges was created to extend the opportunity for community college education to all who may profit therefrom regardless of economic, social and educational status. Local community college districts were encouraged to identify and establish programs for students affected by language, social and economic handicaps. Education Code Section 69640, et seq., Chapter 1178 of the statutes of 1984 substantially amended the earlier legislation to require greater specificity and accountability in the Board of Governors' implementing regulations. Substantially, the Board of Governors was directed to adopt regulations.

Chapter 1178 of the Statutes of 1974 requires the Board of Governors to adopt rules and regulations which establish the following:

1. establishing the goals of the Extended Opportunity Program and Services (Education Code Section 69640).
2. requiring that the program supplement the regular educational programs of community colleges to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives; (ECS 69641);
3. establishing minimum standards for Extended Opportunity Programs and Services (ECS 69648);
4. establishing procedures for the review and evaluation of the district's Extended Opportunity Programs and Services program;
5. requiring that in order to be eligible for state funding, each district would meet the standards, unless waived by the Chancellor;
6. prohibiting the district from using state EOPS funds for the operation and administration of the program to supplant district resources, programs, or services provided under its EOPS (ECS 69651);

The Board of Governors' proposed regulations to comply with this statute on May 23, 1986, after extensive consultation with those in the community colleges who would be affected by the regulations. The statutory Advisory Committee on Extended Opportunity Programs and Services held informal hearings throughout the state, and state staff received comments from many persons and organizations from the community colleges prior to noticing the proposed regulations. Thus, the proposed regulations, while still controversial, reflected the consideration of much public comment.

The Regulations

Section 56200

This section is necessary to define the scope of this chapter. The provisions of Education Code Sections 69640-69657 and Title 5 of the California Administrative Code Sections 56200-56298 regulate the EOPS program only. These provisions do not apply to other college programs or services. The statement is needed to insure that these regulations are not applied in confusion or error to other programs.

Section 56201

This section is necessary to authorize the Chancellor to waive particular requirements of the EOPS program in conformance with Education Code section 69649 where those requirements would be detrimental to a college or program. Commentors asked that automatic waivers be granted for all small colleges. This request was denied as waivers should only be granted in unusual circumstances, and thus a case by case analysis is required to protect the viability of the EOPS program.

Section 56202

This section is necessary to define a term used in the regulations. This definition adopted is consistently followed throughout community colleges and community college programs for a student to be considered full time. It is used as a criteria for eligibility for this program as it is for other state and federal programs which require full time enrollment. The regulation allows a student enrolled in equivalent instructional programs to be considered to be full time even though the student does not carry 12 credit units in those cases where the college recognizes the course work to be equivalent to 12 credit units. This is necessary for students enrolled in non-credit courses or certain vocational programs which do not enroll a student in 12 units at a given time although the student is full time. For a student enrolled in a summer program, the Chancellor's Office will accept the college's definition of full time enrollment for the purposes of program eligibility. This is necessary as summer sessions are of varying lengths and offer varying units as a full load.

Section 56204

The purpose of this section is to define for the colleges the required services and documentation necessary to count a student as being served. The numbers of students served by EOPS is a consideration in evaluating the program. The Extended Opportunity Program and Services Statutory Advisory Committee requested that a definition of this element be included in regulation to avoid problems associated with allocating funds to

colleges that provide services to students when the services have not been defined. An EOPS application on file is necessary to demonstrate that the student meets the requirements for EOPS aid. An Education Plan is necessary to identify the academic goals and objectives of each EOPS student and it can be used for program evaluation. The Mutual Responsibility Contract identifies the responsibilities of the EOPS program and is necessary to inform the student of what is required of him/her to remain in the EOPS program. No effective assessment of the EOPS program can occur without an evaluation of these contracts.

Section 56206

This section is necessary to insure that the Chancellor receives data necessary to evaluate the EOPS program and to make program allocations.

In its decision of disapproval, dated May 1, 1987, the Office of Administrative Law (OAL) determined that this section was vague because the nature of the information required was not identified. The regulation has been amended to clearly set forth the information required. The information required is the identity of the students served as well as the level and type of programs and services the students received.

Section 56208

This provision is necessary in order to insure that colleges receive input about the conduct of the EOPS program on each campus. Education Code Section 69643 requires an advisory committee for the purpose of recommending policy to the Board of Governors. The purpose of a campus advisory committee is to give advice on program direction and to demonstrate the need for services from a broad based group which has community support. Members of the EOPS advisory committees should have a two-year term because many of the recommendations suggested by the committee take time to implement and a two-year term lends continuity to the program and to the committee. The size of the committee is necessary to insure that adequate representation be afforded all affected parties and to parallel the size of the local board of trustees. This is necessary to insure that all elements of the community have the opportunity to give input on the EOPS program. Members will be asked to serve without compensation, because all EOPS funds are needed to aid qualified students. However, to insure that all members of the community have an opportunity to serve on advisory committees, reimbursement of necessary expenses incurred in the performance of their duties will be made to advisory committee members. This is necessary to insure that members of the community are not discouraged from serving because service would place a financial burden on them. The makeup of the advisory committee is designed to assure representation from all groups that have

contact with the EOPS program. This is necessary because the program's success is based on broad based support within the community and the inclusion of the listed groups assures a variety of participants. The advisory committee must meet at least once a year to evaluate the EOPS program and to make recommendations for any needed changes. If the group were to meet less frequently than once a year, the members would become disaffected due to lack of involvement.

In its decision of disapproval, OAL stated that this section was unclear, because although the terms of the committee members are to be for two years, the dates identifying the beginning and the end of the two-year term are only one year apart. The regulation has been amended to be free of any confusion.

Section 56210

Education Code Section 69651 establishes a restriction on the use of funds appropriated for Extended Opportunity Programs and Services and states that these funds cannot supplant district resources. This Section was adopted to implement Education Code Section 69651, and to identify the base year for purposes of establishing the level of district resources which would be required by this statute.

This method was derived as a result of testimony from Chief Executive Officers, (Presidents and Superintendents of Colleges). A waiver provision was included for districts that experience financial difficulties. This section is necessary because the colleges stated that using a percentage would give them more flexibility in the use of their general funds. This provision would allow colleges to maintain funds which could be applied to any expenditures as long as the amount fell within a percentage of the allocation. Jack Randell, President of the Chief Executive Officers Association, testified that it would be advantageous to colleges to be able to move funds to those areas of the program which had the greatest need. The Board of Governors accepted this rationale. The number of EOPS qualified students is growing each year, and it is essential that any new EOPS funding be used to provide aid for additional students and not to support the existing program. To insure this result, it is necessary that colleges be required to maintain a funding level for services supported with non-EOPS monies. An average taken from the final report of the previous three years will insure that one abnormal year will not distort the non-EOPS monies made available to EOPS programs through services provided by colleges. Fifteen percent of the average EOPS allocation is the minimum contribution that a college should make to its EOPS program. It is necessary that EOPS programs receive a minimum contribution figure in order for those programs to budget for the upcoming year. If the contribution were not available, the EOPS funds would have to supplant General Fund expenditures and this is contrary to the intent of this legislation. If an EOPS

program has experienced a decline in enrollment, then the corresponding obligation of the college should be reduced.

Section 56220

The purpose of this section is to set the eligibility requirements for students who participate in the EOPS program. EOPS is intended to serve a population identified in Education Code Section 69640 . Part (a) of that section states that the first goal of the program is, "To increase the number and percentage of students enrolled in community colleges who are affected by language, social and economic disadvantages, consistent with state and local matriculation policies." The eligibility criteria is consistent with the goals stated above.

56220 (a)

The Requirement for California residency is consistent with other state categorical programs which require residency for the receipt of programs and services. The Board determined that first consideration for state funds should go to state residence. Because the amount of funding is not sufficient to serve all of the students who are eligible, it was necessary for the Board to restrict the program to California residents.

56220 (b)

The requirement to attend college full-time is carried over from prior regulations. The Board determined that full time status for EOPS students would serve the program best because less than full time status would not allow for the intensive contact between student and program staff necessary to fulfill the goals statements of Education Code Section 69640 (a) - (f). This interpretation does not allow for circumstances beyond a student's control and some students simply cannot enroll full time. For this reason the Board found it necessary to allow a small percentage of students (10%) to attend less than full time and still be eligible.

56220 (c)

Students who had completed 70 units of degree applicable credit course work should no longer need the services of the EOPS program, because they should be transferring to a four-year college or working. Under current program regulations, there are no restrictions on the number of units a student may have and still be eligible for the program. Because of limited funding, the Board decided that the program could not afford to support, with grants and service, students who were eligible to transfer. Students who remained in the program longer than necessary prevent newly recruited students from receiving the

programs and services offered by EOPS. The program has a history of having more eligible students than it can serve.

56220 (d)

This section is designed to insure that students receiving these services be financially needy and for consistence between programs which serve similar populations. Education Code Section 69648 (a) calls for the the program to prescribe the procedures by which a district shall identify a student's eligibility based on the student's language, social, or economic disadvantages. This section addresses this requirement for the economically disadvantaged. All the criteria listed above are intended to control the size of the eligibility pool which has to be limited because of funding constraints.

56220 (e)

EOPS provides more than mere financial aid. It provides special assistance and counseling. To qualify for these services, a student should be "affected by social and language handicaps" as well as economic handicaps. The criteria for determining which students are so handicapped are set forth in this section.

Any further attempt to define this or any other factors would be set forth in the program plan and approved by the Chancellor's Office.

Number (1), Would indicate that a student may have had difficulty reading or understanding a textbook. Math and English were chosen because they are the two most common test areas for students entering college. Further, skills in these areas are needed for success across the curriculum.

Number (2), The fact that a student had not graduated from high school or obtained the General Education Diploma (G.E.D.) is an indication of language and social disadvantage.

Number (3), The Board recognized that a low high school grade point average may be an indicator of under-achievement because of language and social disadvantage.

Number (4), Could indicate problems in the three areas mentioned above. The implications of a student enrolled in remedial education are many, and the Board determined that language and social handicap are frequently the cause of a student being enrolled in remedial education classes.

In its decision of disapproval, OAL stated that this regulation was not clear as it did not clearly indicate whether the director is free to ignore these considerations in favor of other factors, or whether the determination must actually be

based upon the applicant's qualifying under one or more of the four enumerated factors. The regulation has been amended to clearly state that the director may use other factors but requires that those other factors be identified in the district's plan.

Section 56222

This section conforms with ECS 69648 (a) and is necessary to establish in regulation the responsibilities of students who qualify for and accept the services of the EOPS program. This will eliminate the possibility of individual college EOPS programs developing their own criteria that may be inconsistent with the Legislature's stated purposes regarding EOPS students.

(a) This section requires students to apply for financial aid. Student need for financial aid is one of the measurements used to determine whether or not a student is disadvantaged, and the use of the state and/or federal aid application will eliminate a duplication of effort.

(b) This section adds an academic progress standard which is necessary in order to insure that students do not remain in the program for an unreasonable amount of time. Prior to these regulations, there were no regulations governing the length of time a student could remain in the program. Under Title 5 regulations, there are no requirements for students to adhere to program rules and regulations other than to make academic progress and academic progress is not defined. This section would give colleges the authority to define academic progress in relation to the completion of the community college program. This is necessary to insure that EOPS funds are expended for students who benefit from those funds by making progress toward an educational goal. Without this provision, newly qualified candidates would suffer. (c) This section outlines the minimum documentation that a student must have in order to participate in the program. This section would satisfy the need for student information and data collection, and it would insure that students adhere to an educational plan. The EOPS Mutual Responsibility Contract specifies the rights and obligations of all participating parties. Student Educational Plans insure that contact will be made between students and EOPS staff, and this contact will encourage students to fulfill the goals and objectives established in the plan. The EOPS Mutual Responsibility Contract establishes the services offered to the EOPS student and insures that the student will be aware both of what the EOPS program offers the student and expects of him. The Student Educational Plan and the Mutual Responsibility Contract are necessary to insure that both the student and the EOPS staff are accountable for the student's progress. (d) This section allows students ample time to submit necessary documentation for the receipt of services. This is necessary because many financial aid offices require students to submit

income verification in the form of income tax returns, social services statements, welfare statements, food stamp or other material which takes time to gather and which could inhibit the timely rendering of service to EOPS students. The documentation required is necessary to insure that only qualified students are receiving the program's benefits.

Section 56224

This section is necessary to establish the criteria for EOPS students to be eligible for EOPS financial aid. The EOPS program will provide some students with services and some with financial aid also. The eligibility criteria for those also receiving aid must be defined.

Section 56226

Under current regulations, anyone who meets the income and unit requirement is eligible for the EOPS program regardless of the number of units they have completed or whether they follow the rules and regulations established by the program. This section establishes limitations on the length of time a student can continue to receive the services of the EOPS program. The need for the limitation is based on audit findings which show that some students with Bachelor of Arts degrees are in the program and that students with more than enough units to graduate or transfer remain on the program. Because the EOPS allocation does not increase automatically year after year, the number of students in the program has continued to decrease at a time when more and more students have become eligible. There are not sufficient resources to continually fund students who could be taking advantage of opportunities available to them at the state college or university systems. Students can transfer after receiving as few as 60 transferable units, and they should be encouraged to do so.

Section 56228

This section is necessary to allow students who are receiving services to remain eligible for services even though they may no longer qualify for the program under the new regulations. EOPS programs recruit and serve students continuously, and they cannot stop using the current regulations until the new regulations are in place. This will also allow programs to continue to operate prior to the effective date of this section and will maintain a continuity of services provided to students newly qualified under current regulations.

Section 56230

This section is necessary to establish that there shall exist a base level of funding in all programs in the form of the EOPS Director's salary. Further, it is the intent and in the best interest of the state and the students in the program to have a full-time district paid director to provide the basis for a strong program. This salary would be viewed as a district contribution and evidences commitment to the program by the community college district.

Section 56232

This section is necessary in order to conform to ECS 69648 (b) (4).

The purpose of this section is to establish the existence of an outreach service component, an orientation component and a registration service. (a) The outreach and recruitment component is necessary to implement the broad goals for the program stated in Education Code Section 69640 (a) the first of which is, "to increase the percentage of students enrolled in community colleges who are affected by language, social, and economic disadvantages, consistent with this article, etc.". (b) Orientation is necessary in order to familiarize students with procedures and regulations, services available and other important information prior to enrollment. Many EOPS students need orientation that goes beyond that which is normally offered to community college students. The Board believes that students need to be aware of topics listed in this section in order to give them every opportunity to succeed in college. Without these services, EOPS students might be overwhelmed by the volume of information they are expected to digest prior to commencement of classes. Section (c) allows the EOPS program staff to recommend classes for EOPS students, schedule them into those classes, and then register them for the class. Many of these classes may be specifically designed for the EOPS program, and the college must provide a way to insure that EOPS students register for them. Title 5, Section 58108, allows two groups of students to receive priority registration: handicapped students and disadvantaged (ie. EOPS) students. This section is necessary to insure that EOPS students will benefit from this provision.

Section 56234

This section is necessary in order to conform to ECS 69648 (b) (5). The purpose of this section is to establish an assessment service for EOPS students. Many colleges now assess students after they apply for admission or prior to registering for certain classes. This assessment is used to determine a student's abilities and in some cases the probability of successfully completing the class. The assessment of EOPS students must be an activity which is over and above, or in

addition to, any assessment conducted by the college. It is the Board's intent to include those types of assessments which have the greatest potential for predicting a student's success in college. The first requirement is to explain to EOPS students the results of the assessments and what they are going to be used for. Without this requirement, students may not benefit from the assessment or may even decline assessment that could be beneficial to them. The use of assessments is necessary to insure that EOPS students are placed in appropriate classes.

(a). These types of assessments are standard for determining ability, skill level, and understanding of the types of material studied in college. The results are necessary to allow counselors to effectively set up realistic academic goals and objectives based on these results. They are also necessary to allow the counselor to identify problems within subject matter and focus on the individual needs of particular students. This type of standardized test can indicate that more discriminating testing may be required.

(b) This type of assessment goes beyond the general test administered by the college or the program and is a more thorough analysis of the student's ability. A diagnostic test is necessary to identify analytical, perceptual, critical thinking, or other academic or physical deficiencies.

(c). This type of assessment is necessary to determine the ability of the student to use study techniques, library materials, etc. and also point out deficiencies in areas such as reading and writing. The primary purpose behind this type of assessment is to identify the student's ability to understand simple instruction. Students would normally be given this type of assessment in an orientation session and a counselor would make a determination, based on the counseling session, whether the student was having problems in any of the areas listed in this section. This type of assessment is necessary, because without it a student who had deficiencies in these areas could be placed in classes where he would be unable to succeed. If deficiencies are discovered, then the counselor can place the student in classes where he/she can learn the fundamentals necessary to succeed in a community college.

(d) Because the program is for low-income, disadvantaged and non-traditional students, outside pressures and influences can and do hamper their progress. An assessment of their other needs, e.g., child care, financial aid, employment, living arrangements, transportation, etc., can demonstrate that those other needs can be overwhelming, resulting in a student's inability to function optimally in college. The program staff will then be able to identify problem areas and assist students in resolving them. This assessment is necessary to insure that EOPS students are able to focus their attention on their educational needs and not on outside factors.

(e) Assessment instruments can be a vehicle of discrimination. IQ tests have been used to keep minority children out of college preparatory classes and even segregated in classes for the mentally retarded. Care must be taken to insure that assessment instruments are free from bias if they are to be effective and not violate the rights of students assessed.

Section 56236

This section is necessary in order to conform to ECS 69648 (b) (8), and ECS 69641.5 (a). The purpose of this section is to establish a counseling and advisement service for EOPS eligible students. The Board of Governors has determined that extensive counseling and advisement is necessary for the type of student served by the program. It is necessary to closely monitor a student's progress to insure that he/she is committed to the EOPS program. Academic and/ or personal problems have to be identified immediately, prior to their becoming an obstacle to the student's academic progress. The best way to achieve this goal is to see the student as often as possible through visitations with both professional counselors and peer advisors. (a) The Board determined that a minimum of three counseling/advisement sessions per term was necessary to insure the effectiveness of the counseling/advisement program. The number was arrived at because it assures that EOPS students will see a counselor or have an advisement session at least once every six weeks and this will help the students to not fall behind and get discouraged. (b) An in-term contact session will provide EOPS counselors with information needed to determine student progress. If EOPS students fall behind, it may be impossible for them to function successfully. (c) Regular review and assessment of EOPS student's progress is necessary to insure that the program is meeting its objectives. An exit contact session will provide a review of individual EOPS students and will help prepare the students for the upcoming term.

Section 56238

This section is necessary in order to conform to ECS 69648 (b) (7). This section insures that there shall exist a basic skills instruction and tutoring service for EOPS students. The need for these types of services is basic to the EOPS program. Many of the students recruited by the EOPS program are high school drop outs, single parents, older, low-income and academically unprepared students who need to develop the skills necessary to succeed in college. These students cannot succeed without basic skills instruction and tutorial services. ECS 69741.5 (c), states that, "the EOPS Director at each community college will work with other community college staff to encourage all interested EOPS students to enroll in existing community college classes designed to develop skills necessary for successful

study at a university, including but not limited to,..." Most colleges currently offer some type of basic skills instruction, but the Board determined that basic skills instruction should be supplemented with a strong commitment to tutoring and this could be accomplished by requiring EOPS programs to offer both in order to receive funding.

Section 56240

This section is necessary in order to conform to ECS 69648 (b) (9 and (11) and ECS 69640 (b), (c) and (d). This section requires a transfer and career employment service for EOPS students. Students receiving the services of the EOPS program are not transferring to four-year colleges in numbers reflective of their representation in the general college population, and there are not enough job placement services available on campuses to help them find employment. The Board has stated that when a student is about to achieve his/her educational objective, either transfer to a four year college or employment, the EOPS program has an obligation to provide the services necessary to facilitate the transition. This section is necessary to remediate this problem and to insure that services are available to EOPS students to enable them to transfer to four year institutions or to help them find employment.

Section 56252

It is the intent of EOPS financial aid to be used to meet a student's unmet need after receiving all other available aid or to be used to lower a student's indebtedness by reducing a student's loans. In the past, financial aid and EOPS programs have not considered the impact of the types or amounts of awards received by some of its lowest income students. Since the purpose of the EOPS program is to provide over and above services to its eligible students, that concept should be applied to financial aid as well. The Board determined that this could be accomplished in two ways. (1) Award EOPS grants where practical to alleviate a loan burden, realizing that the students with the lowest incomes would have the most difficulty paying it back, and (2) require that EOPS funds be awarded only after other state and federal financial aid had been awarded. This section is necessary to insure that EOPS students meet the requirement of taking advantage of other financial resources and that they will not leave the EOPS program with an overwhelming indebtedness. This is necessary because it will increase the number of students who can be served, and it will remove a major concern that students have about not being able to repay their debts.

Section 56254

This section is necessary in order to establish limits on the amount of grants and work-study monies awarded to students in the EOPS program. This provision is an augmented version of the current regulations. Limits on EOPS grants and work-study awards are necessary because the amount of money allocated for the program is insufficient to offer larger amounts, (even though students may have need for more), without cutting back on other services. The limits established in this regulation do not prevent the student from receiving additional grant or work-study funds from other sources, either in addition to the EOPS work-study amount, or in conjunction with it.

Section (a). The grant amount (\$900) is higher for the year by \$50.00 over current regulations. Grants have always been an integral service provided by the EOPS program because the program serves low-income students. The fact that students must file for financial aid and meet income criteria does not insure that there will be enough financial aid available to meet their needs while attending college. For this reason, EOPS needs to insure that its students are fully awarded prior to the receipt of EOPS financial assistance. EOPS awards in excess of \$900 would limit the number of qualified students who could be served.

Section (b). This section places a limit on the amount of work-study aid an EOPS student can earn through EOPS and establishes that EOPS students can earn up to \$1800 in EOPS funds per academic year. Work-study awards in excess of \$1800 would limit the number of EOPS qualified students who could be served. In order to achieve its stated goal of increasing the number and percentage of EOPS students who are successfully placed into career employment, the regulations allow colleges to develop contracts with private industry for EOPS students.

In its decision of disapproval, OAL stated that this section was unclear as it did not sufficiently identify the requirements which it would impose upon EOPS workstudy programs. To alleviate this concern, reference to federal and state workstudy program requirements was omitted.

Section (c). Because EOPS funds are limited, it is necessary to place a cap on the funds awarded individual students. By limiting awards to \$1800 per academic year, EOPS will be able to serve a larger population of qualified students than would be possible if no limits on awards to individuals were established.

Section (d). The purpose of this section is to insure that a student who is eligible for, and receives, an EOPS grant does not receive the entire amount at one time. The need for this regulation is based on past experiences with students who have received most or all of their EOPS awards and then left college. This regulation is necessary to insure that funds are only awarded to EOPS students who stay in college.

Section 56256

This section is necessary in order to establish procedures to be used by financial aid offices for the awarding of EOPS funds.

Section (a) This section identifies the EOPS office as responsible for awarding EOPS funds. These regulations require students to fulfill agreements and follow certain procedures before they can receive EOPS financial aid. In the past, EOPS students had to apply for financial aid first in order to have their eligibility determined. If financial aid determined that they were eligible for EOPS, they may have automatically received the award without having a commitment to the EOPS program or any of its associated services or rules and regulations. This section is necessary to give EOPS programs control over the procedures used to award EOPS funds.

Section (b) (1). This section is necessary to insure that EOPS awards are based on need and eligibility and not on dependent or independent status. It is necessary to insure that the needs of dependent students are given equal weight in relation to the needs of independent students.

Section (b) (2). The rationale for this regulation is essentially the same as above except additional criteria is added. Using lowest family or personal income in that order, gives dependent students an advantage in the awarding of EOPS financial aid. Under current financial aid procedures, a student's need is calculated based on the resources he/she can provide toward the cost of his/her education. The independent student would receive first consideration for aid, because it is easier for him/her to establish need. This section would insure that dependent and independent students are treated equally.

Section (c). This regulation would allow the EOPS office to authorize additional grant funding, not to exceed the grant limit, in lieu of work-study, on a case by case basis. Many EOPS students need additional tutoring, counseling, or instruction in basic skills, and this regulation would give EOPS offices the flexibility to help students with multiple needs. This process would be beneficial to counselors and advisors who discover that a student has an academic or personal problem that needs attention and who cannot participate in work study until their problems are resolved. This section is necessary to insure that all EOPS students have an opportunity to succeed in college.

Section 56258

This section is necessary in order to regulate the use of existing and future emergency loan services operated by EOPS programs. The Board decided to put into regulation the attached

legal opinion (OPR 79-58 Tom Nussbaum) of our staff counsel regarding the district treatment of loan funds. The Board determined that the best use of a loan fund would be for emergency purposes only. This would mean immediate pay back, small amounts, easier accountability, and less cost overall.

Section (a). This section is necessary to keep loan amounts small and manageable. This type of provision is particularly helpful to low-income students who may need cash for emergency situations. The loan can be paid back either directly by the student or through the receipt of other student aid. This section is necessary because it gives the EOPS programs the ability to help students in an emergency situation. Without these emergency funds, a student's financial situation might degenerate to the point where he was forced to withdraw from college. Three hundred dollars is normally enough money to enable a student to overcome a financial emergency. The \$300 limitation is necessary to insure that the fund is not depleted and that there will be funds available to students in emergency situations. Because the loan must be repaid in the year it is received, the student does not carry a loan burden into the next academic year, and this will prevent the student from starting school with an additional financial burden.

Section (b). A separate account established by the district for a loan program is necessary to assure accountability. Because this program would allow the district loan fund account to be carried over, it is necessary to insure that any interest or collected loans remain part of the EOPS loan fund and not become part of the district's general revenue. This is necessary to insure it insures that carry-over funds will be made available to qualified students in the next school year.

Section (c). The Board felt that it was necessary to establish a limit on the amount of money accumulated in the loan fund. When a district reached the maximum funding allowable under the statute, it would be required to return all excess funds to the state. The Board also specified that any money remaining in the loan program at the termination of the program would return to the state. This section is necessary because EOPS funding is limited, and it should be spent in areas where the greatest need is demonstrated. Any excess funds could be used to serve qualified students in other community colleges.

Section 56260

This section states that EOPS must be provided by certificated personnel pursuant to Education Code Section 69648.7. This section is necessary to establish the line of command for personnel who work in or are funded by the EOPS program. Individual EOPS program plans submitted to the Chancellor's Office reflect a specific number of employees per program. On-site program reviews have indicated that EOPS Directors may not,

in fact, have direct control or authority over staff funded by the program. This section is necessary to insure that college employees funded by the EOPS program are accountable to the EOPS Directors. EOPS Directors need to have authority over employees funded by the EOPS program to insure that EOPS funds are properly spent and that required services are being provided.

In its decision of disapproval, dated May 1, 1987, the Office of Administrative Law (OAL) determined that this section was vague because the nature of the information required was not identified. The regulation has been amended to clearly set forth the information required. The information required is the identity of the students served as well as the level and type of programs and services the students received.

Section 56262

This section is necessary in order to adhere to intent language for Extended Opportunity Program and Services Directors. That language states that EOPS must be provided by certificated personnel who possess appropriate training requirements pursuant to ECS 69648.7. Because it was the stated intent of the Legislature to grandfather in EOPS Directors who had been employed in the EOPS program if they did not otherwise qualify for the appropriate credential, it was necessary to develop requirements for Directors hired after the effective date of the Education Code Section 69648.7.

The Board determined that credentials and training requirements should only apply to the professionals who directed the programs, and counselors who have direct responsibility for student educational plans, counseling, assessment and other responsibilities which require the judgment of a professional. In order to supervise the staff working in the EOPS program, it was necessary to require that the EOPS Director possess a Community College Supervisor credential. This is necessary to insure that the individual has the required training to be effective in that position. In adopting part (b) of this regulation, the Board wanted to make sure that individuals selected for the Director's position had recent experience in dealing with the needs and problems of students who meet the EOPS eligibility criteria. A wide variety of professions were included to allow the greatest exposure of talent to be available to colleges when selecting an EOPS Director; including EOPS instructors, counselors, and other employees of college with comparable experience. The criteria for selection of EOPS Directors was designed to insure that potential Directors were sensitive to the problems of the students in the program. (b) Current experience in the designated areas is necessary to insure that Directors are aware of the problems facing either minorities and/or persons handicapped by language, social, or economic disadvantages. (c) Is necessary to insure that Directors will have some formal classroom training in dealing with groups from which a large percentage of EOPS students are

drawn.

Section 56264

This section is necessary in order to insure that EOPS services are provided by certificated personnel who possess appropriate training pursuant to ECS 69648.7. The Board determined that credentials and training requirements should apply to those professional counselors who have direct responsibility for student educational plans, counseling, assessment and other responsibilities. In addition to possessing a Counseling Credential which authorizes providing general student counseling, the Board determined that Counselors who were hired to work in the EOPS program should be sensitive to the needs of the population being served. The Board believes that work-related experience and course work in areas dealing predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages would at least insure that Counselors working in EOPS have formal training to promote a better understanding of the needs of the individuals served by EOPS. These qualifications were necessary to insure that EOPS counselors would be prepared to effectively deal with the myriad of problems common to students who come from a disadvantaged background.

The Board understands that unless there is an attempt to hire individuals who are sensitive and understand the needs of EOPS students, the possibility of student failure is much greater. (b) (1-3) were determined to be the minimum qualifications for course work and experience. A combination of course work and experience is necessary to insure that EOPS counselors are equipped to meet the needs of EOPS students. The focus of the course work in areas dealing predominantly with ethnic minorities and persons handicapped by language, social or economic disadvantage is necessary because many EOPS students fall within these categories, and knowledge of their problems is essential in providing counseling.

Section 56270

This section is necessary to provide flexibility to local EOPS programs and to insure accountability in those programs. As each of the 106 community colleges serve a different and unique community, EOPS programs will vary significantly. Thus, colleges must be given flexibility to meet the unique needs of the community they serve. The Chancellor must insure the programs are effectively using state funds. The use of the plan meets both needs.

Section 56272

This section is necessary to establish the minimum elements

required in the EOPS program plan by the Chancellor's Office for the approval of the EOPS program, services and expenditures. Education Code Section 69652 authorizes the Board to adopt rules and regulations related to the form and content of applications and procedures for review, evaluation, and approval thereof.

(a) This section is necessary to require a community college district to identify the goals it is attempting to meet in its EOPS program. Only when goals are identified, can progress toward those goals be effectively made.

(b) Districts need to develop short-term , (year to year) objectives on how they will achieve the long term goals contained in ECS 69640. A review of these objectives by the Chancellor's Office is necessary to insure that individual districts are functioning within the parameters established in ECS 69640. This is necessary in order to insure continuity within the EOPS program.

(c) Because objectives require specific activities and functions to carry them out, it is necessary to identify what services are going to be provided, how financial assistance is going to be awarded, and how the EOPS staff will be provided with adequate training to meet the students needs. The colleges, through the program plan, must provide the Chancellor's Office with a document which can be used to verify the services or activities and functions to be performed. This section is necessary because it will provide information to the Chancellor's Office that can be used to make an evaluation of the EOPS program.

(d) Inclusion of an operating budget is needed to determine that state funds are well spent in meeting the program goals and objectives. The program plan is essentially an application for state funds. The budget is necessary to reveal how state funds will be spent by the district.

(e) Requiring an accounting of the number of students served by the program is based on the need for data, the allocation of funds and a legislative requirement 69655 (b). This section merely states the method used for reporting this element, (i.e., the project plan)

(f) Sections 69648 (d) and (e) authorizes the Chancellor and requires the districts to establish procedures and submit for review and evaluation respectively, program information in conjunction with the Chancellor's authority. This sub-section is necessary in order to set in regulation a method of reporting information for the purpose of evaluating the results achieved in the prior year of funding. This, in term, will enable the Chancellor's Office to determine the effectiveness of the program.

Section 56274

This section is necessary to insure that colleges are given sufficient time to prepare those plans and to insure that colleges submit program plans to the Chancellor's Office in time for their review.

Section 56276

Again, this section is necessary to insure the effective use of state funds.

Section 56278

This section is included pursuant to ECS 69648 (d) and (e), which authorizes the Chancellor to evaluate programs and services. This section is necessary to authorize the Chancellor to develop procedures for the review of programs. The Chancellor has determined that annual evaluation in the form of on-site operational reviews, audits, and/or measurements of student success are the best means of gathering evaluation data, reporting data, evaluating the program and expenditures and of meeting the legislative mandates of Education Code sections 69640, 69648, 69652 and 69655, all of which meet the requirements of the Chancellor to evaluate the program. An annual review conducted by the Chancellor's Office will insure that EOPS programs are being effectively run.

Section 56280

This section is necessary in order to establish an equitable priority system within each program based on the population of the community being served by the college.

Section 56290

This article is necessary in order to insure that colleges set up income and expenditure accounts for the EOPS program in a uniform manner and in accordance with requirements for community college accounting generally. Subchapter 3 of these regulations describes the financial and budget requirements of the EOPS program. These provisions necessitate specific requirements for accounting for EOPS funds. The following materials describe these Budget and Accounting requirements for EOPS and the object code classification system which should be utilized in recording expenditures charged against this account.

Section 84030 of the California Education Code requires that:

The accounting system including the reform fund structure used to record the financial affairs of any community college district shall be in accordance with the definitions, instructions, and procedures published in the California Community Colleges Budget and Accounting Manual as approved by the Board of Governors and furnished by the Board of Governors. No accounting manual so approved shall expressly or by implication affect the content of any educational program or objective, except as otherwise specifically provided for by this code. The Legislature hereby finds that such content shall be best determined by those involved in the administration of educational programs, including community college district governing boards, local administrators, instructors, students, and parents.

These provisions are reaffirmed in the current Title 5 provisions (Section 56281) adopted for EOPS. Expenses incurred by the EOPS program are required to be recorded and accounted for on the basis of the object of the expenditure. A classification system for reporting a variety of object expenses is described in Section A, pages 111-01 - 111-10 of the Budget and Accounting Manual. Compliance with this section will insure that colleges have uniform accounting procedures for funding and expenditures, this is necessary to assist the Chancellor's Office in evaluating EOPS programs.

Section 56292

This section is necessary in order to allow the Chancellor to make necessary adjustments to allocations for the purposes stated. Without the ability to adjust allocations, allocations could not be made in advance and would have to be limited to reimbursement for expenditures previously incurred.

Section 56293

This section is necessary to define the term supplement as being over, above, and in addition to regular expenditures for education programs and services of the college. This section defines the terms and conditions of funding which shall be applied to these programs and services by the Chancellor's Office. The concept is called direct excess cost, which means that if a college offers services to all students, then the extended opportunity program cannot be charged for those services unless the student in the extended opportunity program has received the same service for an extended period of time, in which case, the program can be charged only for the amount of time in excess of that provided to all students. If the service is unique for students in the program, then the entire cost of the service may be charged to the program. These regulations are necessary to establish a base level of district

contribution. These regulations are necessary to establish the district's contribution, the Extended Opportunity Programs and Services Director salary, at a minimum level.

In its decision of disapproval, OAL stated that this regulation was not clear because it used a term, "EOPS supplemental costs," which was not defined and which has no clearly understood meaning. The regulation was amended to state requirements rather than to define terms.

Section 56294

This section is necessary to complement Section 56293 and the concept of, "over, above and addition to" with regard to the expenditure of funds.

In its decision of disapproval, OAL stated that this regulation was not clear. OAL stated that the regulation should not define terms and impose requirements simultaneously. The regulation has been amended to clearly state a requirement and to delete any perceived inconsistency with the previous section by stating the requirements of this regulation with specific reference to the prior regulation.

Section 56295

This section is necessary to establish the use of and limitations placed on the expenditure of EOPS discretionary funds. Discretionary expenditures are authorized if they amount to 10% of discretionary or \$50,000.00, whichever is less. The Board determined that EOPS programs do not need to spend more of their allocation on discretionary items than the amounts listed above. EOPS programs have a limitation on the amount of funds available, and the Board determined that services to students are more important than expenditures for discretionary items. These discretionary items include but are not limited to: the purchase of new equipment, equipment exchange or replacement, rental or lease purchase of equipment, equipment maintenance, instructional supplies, media supplies, office supplies, textbooks, other books, rental and lease of space, staff travel and conference expenses, student travel and conference expenses, contract services, consultants, cultural awareness and cultural enrichment activities, recruitment mileage, and other items submitted to and approved by the Chancellor's Office. The purpose of EOPS is to provide financial assistance to eligible students and other costs associated with running the program, e.g., overhead costs should be kept to a minimum. 10% or \$50,000 is adequate funding to meet the indirect costs of the program. Computer hardware and/or software can be purchased more effectively by a centralized service. Centralized purchasing also insures that the hardware and/or software will

be computer compatible.

Section 56296

This section is necessary in order to establish the expenditures of EOPS funds that are not allowed. The Board determined that this regulation was necessary in order to insure that districts which accepted EOPS funds did not use them to supplant the district obligation to provide similar services to its EOPS program. These include the funding and services that the district provides to all other programs. ECS 69641 states that participation in an EOPS program shall not preclude participation in any other program offered by the community college. The Board felt that this should apply equally to the EOPS program and that EOPS programs should receive the same college services that other programs receive.

Sub-section (a). This section is necessary because previous audits, program reviews, and program plans have shown that colleges have attempted to charge against the EOPS program positions listed in this section. In addition, there have been attempts to charge costs associated with college presidents, telephone operators, district accounting personnel, and all levels of deans to EOPS funds.

Sub-section (b). These items are necessary because they cannot be easily monitored or prorated. Many programs are housed in buildings where attempts to isolate specific cost for services would be difficult, if not impossible, to calculate. These are costs that the Board has determined are part of the normal cost of doing business and would not be decreased if the EOPS programs were not located in the building, and therefore should not be charged to the EOPS program. The two sub-sections above are considered to be standard operating costs and EOPS funds should not be used to fund them.

Sub-section (c). This section will insure that EOPS funds are not used to pay for either political contributions or dues in any association which may be used to gain political favor or lobby the state for additional funding. The Board views this as a conflict of interest and not an appropriate use of EOPS funds.

Sub-section (d). Most EOPS programs have been in operation for 15 years or longer and have all of the necessary office furniture they need. Districts supply this equipment, and the Board has determined that this should be a district responsibility. This is an example of the manner in which expenditures for discretionary items can be limited, while maximizing expenditures for programs and services.

Sub-section (e). The Board determined this section was necessary to insure that EOPS funds were not used to remodel or renovate office space because the change would benefit the

college more than the program. This would also prevent the proration of cost of a general renovation or remodeling which the college decided to undertake. Vehicles were added because a number of colleges have requested the use of EOPS funds to purchase vehicles. It has been the policy of the Chancellor's Office to deny colleges the use of EOPS funds for this purpose because of the costs associated with vehicles such as purchase price, maintenance, and insurance. Due to the number of requests for vehicle purchases received in the past, the Board saw the need to specifically prohibit this type of purchase.

Sub-section (f). This section was included because previous audits and program reviews have shown that colleges have attempted to, and actually have, charged travel cost against the EOPS program for the travel of district employees who are not EOPS staff members or students. The majority of the findings involve travel cost for Deans and financial aid personnel. The Board felt this regulation was necessary in order to prevent this from happening. The Board recognized that circumstances arise that do not fit the norm. Circumstances that require a waiver in order for the EOPS program to function more efficiently, or to take advantage of an opportunity which could prove to be beneficial to the program. Under circumstances where a waiver would be beneficial to the program, as determined by the staff of the Chancellor's Office, waivers for sub-section (d), (e) or (f) may be requested.

Section 56297

This section is necessary in order to establish in regulation the use of set aside funds which are authorized in the Governor's budget annually. This regulation is an expansion of a prior regulation which specified the use of these funds. This section allows for the use of these funds as an incentive for colleges which meet stated goals and objectives as they relate to student achievement of educational goals and objectives.

In its decision of disapproval, OAL stated that this regulation was unclear, because it did not provide criteria and procedures for selection and approval of special projects and so did not clearly establish a special projects program. The regulation has been amended to delete the provision for later-adopted criteria and procedures and instead requires the advisory committee to recommend special projects to the Chancellor for funding. The advisory committee can then exercise their discretion to recommend projects on a case-by-case basis.

Section 56298

This section is necessary in order to insure that colleges maintain a financial aid level which insures that EOPS funding will provide grants to qualified students. This section would permit programs to reduce the grant amount to fund priority

services or to correct a problem with the allocation caused by adjustments to the funding level. The percentage of EOPS funds going into grants has dropped dramatically over the past 10 years from a high of 61% of the allocated amount to 27% for 1986/87. Waivers are necessary because the restricted funding does not allow the flexibility that programs need in order to allocate funds in areas where they will accomplish the most good. The Chancellor's staff needed the same kind of flexibility in allowing reductions as identified in (a) - (c) below. It is necessary to maintain expenditure levels in order to serve the ever-increasing number of qualified students.

Sub-section (a). The book service is included as redirection of EOPS financial aid funds. Instead of being awarded their portion of direct aid as grants or work-study, the student would receive books. As a service, books could be provided to students before they qualified for financial aid. Although the financial aid available to EOPS students in a participating program could be reduced to establish this service, it would be returned to them in the form of a service which all EOPS students could take advantage of. This section is necessary because it addresses one of the major problems students have, the inability to purchase textbooks prior to receiving aid. If students are unable to purchase books prior to the commencement of class, their ability to compete will be severely limited.

Sub-section (b). This section is necessary in order to allow colleges to reduce their minimum financial aid obligation when funds are returned which were allocated during the same fiscal year, or a return of funds based on an audit. Both of these circumstances would be adequate justification for reducing the amount of funds available for financial aid, and this would allow more students to participate in the EOPS program.

Sub-section (c). This section is necessary to allow those colleges which have large sums of money in financial aid the ability to redirect some of those funds when appropriate to provide a wider range of services to EOPS students. Article 3 outlines the program services components and establishes for the college those services which may be funded by reducing financial assistance to students for the purpose of providing more services.

FINAL STATEMENT OF REASONS

Background

In 1975, Extended Opportunity Programs and Services in the California Community Colleges was created to extend the opportunity for community college education to all who may profit therefrom regardless of economic, social and educational status. Local community college districts were encouraged to identify and establish programs for students affected by language, social and economic handicaps. Education Code Section 69640 et seq. Chapter 1178 of the statutes of 1984 substantially amended the earlier legislation to require greater specificity and accountability in the Board of Governors' implementing regulations. Specifically, the Board of Governors was directed to adopt regulations:

Chapter 1178 of the Statutes of 1984 requires the Board of Governors to adopt rules and regulations which establish the following:

1. establishing the goals of the Extended Opportunity Program and Services (Education Code Section 69640).
2. requiring that the program supplement the regular educational programs of community colleges to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives; (ECS 69641);
3. establishing develop minimum standards for Extended Opportunity Program and Services (ECS 69648);
4. establishing procedures for the review and evaluation of the district's Extended Opportunity Program and Services program (ECS 69648);
5. requiring that in order to be eligible for state funding, each district would meet the standards, unless waived by the Chancellor;
6. prohibiting the district from using state EOPS funds for the operation and administration of the program to supplant district resources, programs, or services provided under its EOPS (ECS 69651);

The Board of Governors' proposed regulations to comply with this statute on May 23, 1986, after extensive consultation with those in the community colleges who would be affected by the regulations. The statutory Advisory Committee on Extended Opportunity Programs and Services held informal hearings throughout the state and state staff received comments from many persons and organizations from the community colleges prior to noticing the proposed regulations. Thus, the proposed regulations, while still controversial, reflected the consideration of much public comment.

The Regulations

Article 1 General Provisions and Requirements

Section 56200

This section is necessary for the purpose of defining the scope of this chapter. All provisions of the Education Code Sections 69640-69657 and Title 5 of the California Administrative Code Sections 56200-56298 regulate the EOPS program only. These provisions do apply to other college programs or services. The statement is needed to insure that these regulations are not applied in

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confusion or error to other programs.

Section 56201

The section is necessary to authorize the Chancellor to waive particular requirement of the EOPS program in conformance with Education Section 69649 where those requirements would be detrimental to a college or program. Commenters asked that automatic waivers be granted for all small colleges. This request was denied as waivers should only be granted in unusual circumstances and thus requires a case by case analysis to protect the viability of the EOPS program.

Section 56202

This section is necessary to define a term used in the regulations. This definition is consistent throughout the community colleges and throughout community college programs for a student to be considered full time. It is used as a criteria for eligibility for this program as it is for other state and federal programs which require full time enrollment. The regulation allows a student enrolled in equivalent instructional programs to be considered to be full time even though the student does not carry 12 credit units in those cases where the college recognizes the course work to be equivalent to 12 credit units. This is necessary for student enrolled in noncredit courses or certain vocational programs which do not enroll a student in 12 units at a given time although the student is full time. For a student enrolled in a summer program, the Chancellor's Office will accept the college's definition of full time enrollment for the purpose of program eligibility. This is necessary as summer sessions are of varying lengths and offer varying audit as a full load.

Section 56204

The purpose of this section is to define for the colleges the required services and documentation necessary to count a student as being served. The definition is needed because "served student" is an element in the allocation formula.

Section 56206

This section is necessary to insure that the Chancellor receives data necessary to evaluate the EOPS program and to make program allocations.

Section 56208

This regulation is necessary to insure that community college districts receive advice on program direction and need for services from a broad based group which has education and community support.

Section 56210

Education Code Section 69651 establishes a restriction on the use of funds appropriated for Extended Opportunity Programs and Services and further states that these funds cannot supplant district resources. This regulation is necessary to define supplantation and to identify the base year for purposes of establishing the required level of district resources. The Chancellor may waive this requirement for districts which experience EOPS program decline to avoid undue hardship to those districts.

Article 2. Student Eligibility and Responsibility

Section 56220

This section is necessary to set the eligibility requirements for students who participate in the EOPS program. Education Code Section 69640 establishes legislative intent and goals for the EOPS program. Part (a) of that section states that the first goal of the program is; "To increase the number and percentage of students enrolled in community colleges who are affected by language, social and matriculation policies."

Uniform eligibility requirements set in regulation are necessary to insure that this goal is met and that this program most effectively serve students with language, economic or social disadvantages. Without a uniform definition of eligibility limiting the pool of eligible students the resources of the program would not be well spent. However, the section was modified to allow some flexibility to EOPS directors in determining which students are educationally disadvantaged. This was determined to be necessary because of the breadth of disadvantage found in community college students.

Section 56222

This section is necessary in order to establish in regulation the responsibilities of students who qualify for and accept the services of the EOPS program and insure that the funds are expended by students who will benefit. This will eliminate inconsistent criteria being applied in different districts. The regulations require students to apply for financial aid to insure that where other funds are available, they are used to support these students. Again, this is necessary to insure that maximum benefits are received from these funds.

Section 56224

This section is necessary to establish the criteria for EOPS students to be eligible for EOPS financial aid. The EOPS program will provide some students with services and some with financial aid also. The eligibility criteria for those also receiving aid must be defined.

Section 56226

This section is necessary to establish limitations on the length of time and the conditions for a student to be in the program where none have heretofore existed. This is necessary to insure that EOPS funds are spent for students who will most benefit from those funds. This section also complements sections 56220 and 56222.

Section 56228

This section is necessary to protect both the program and students recruited prior to the effective date of this section from being out of compliance with these regulations for a period of one year.

Article 3 Program Standards

This article identifies the standards for services that each program shall provide. The intent is to standardize program staffing and services on a

statewide basis. Each of the next six sections identify program standards that each state funded program must adhere to in order to receive state funding.

Section 56230

This section is necessary to establish that there shall exist a base level of funding in all programs in the form of the EOPS Director's salary. Further, it is the intent and in the best interest of the state and the students in the program to have a full-time district paid director to provide the basis for a strong program. This salary would be viewed as a district contribution and evidences commitment to the program by the community college district.

Section 56232

This section is necessary in order to conform to ECS 69648 (b) (4) and to insure that EOPS programs serve as many eligible students as possible and assist their success in college. It is not enough for the EOPS program to assist disadvantaged students who have been able to enroll in college to be successful the program must reach out to those who otherwise would not enroll.

Section 56234

The purpose of this section is to insure that there shall exist an assessment service that carries out the provisions of the Education Code Section 69648 (b) (5). In order to insure that students who are capable of benefitting from the program do benefit from the program, the college must assess both the students' abilities and needs for support services.

Section 56236

This provision of effective counseling is necessary to maximize the success of disadvantaged students in college. The counseling must include planning a student's program, assistance as the student is engaged in his/her program and evaluation of the program for planning a new program. Thus, three contact sessions per term are required.

Section 56238

This section is necessary to maximize the success of disadvantaged students in college. It would be an abuse of the program to admit students who lack basic skills or require tutoring and then fail to provide these services.

Section 56240

This section is necessary to maximize the educational opportunities of EOPS eligible students. These students must be helped not only to obtain a community college education, but to transfer successfully to four year institutions or to find career employment.

Article 4 EOPS Financial Aid Standards

This is necessary to define the purpose of EOPS financial aid, the limitations on the award amounts, procedures for awarding and criteria for making loans.

Section 56252

This section is necessary to insure that EOPS financial aid be used to meet a student's unmet need after receiving all other available aid or to lower a student's indebtedness by reducing a student's loan amount. This will insure that the funds are not used where other grant funds are available. Decreasing indebtedness is necessary to encourage these students in their education.

Section 56254

This section is necessary to insure the equitable distribution of these funds by placing a limitation on the amount of financial aid funds a student may receive through grants or earn through workstudy.

Section 56256

This section is necessary in order to set priorities for awarding limited funds.

Section 56258

This section is necessary to allow EOPS programs to create a fund for emergency loans. Restrictions on that loan funds are necessary for accountability and to maximize the effectiveness of the program.

Article 5. Staffing Standards

The three sections in this article are a result of SB 2283, Chapter 609 which added ECS 69648.5. This provision authorizes the Board of Governors to adopt rules and regulations establishing appropriate credentials to be held by extended opportunity programs and services professional faculty and staff paraprofessionals.

Section 56260

This section is necessary to insure that EOPS directors, instructors, and counselors be certificated and to designate the director as the one individual with primary responsibility for the EOPS program. This is necessary for communication with the program and to insure program cohesiveness.

This section is necessary to insure that EOPS directors are qualified as community college supervisors and have experience working with the EOPS clientele.

Section 56264

This section is necessary to insure that EOPS Counselors may effectively meet the unique needs of EOPS eligible students.

Article 6. Plans and Priorities

This article deals with the submittal, review, approval and evaluation of extended opportunity program plans.

Section 56270

This section is necessary to provide flexibility to local EOPS programs and to insure accountability in those programs. As each of the 106 community colleges serves a different and unique community, EOPS programs will vary significantly.

Thus, colleges must be given flexibility to meet the unique needs of the community they serve. The Chancellor must insure the programs are effectively using state funds. The use of the plan meets both needs.

Section 56272

This section is necessary in order to establish in regulation the minimum elements required in the program plan by the Chancellor's Office in order to approve the program, services and expenditures. These elements are necessary to give the Chancellor sufficient information to evaluate the plan.

Section 56274

This section is necessary to insure that colleges are given sufficient time to prepare those plans and to insure that colleges submit program plans to the Chancellor's Office in time for their review.

Section 56276

Again, this section is necessary to insure the effective use of state funds.

Section 56280

This section is necessary in order to establish an equitable priority system within each program based on the population of the community being served by the college.

Article 7 Funding and Expenditures

Section 56290

This article is necessary in order to insure that colleges set up income and expenditure accounts for the extended opportunity program in accordance with the budget and accounting manual to allow for accountability in fund expenditure.

Section 56291

This section is necessary to allow the Chancellor to allocate funds. As the available funds vary each year but are never sufficient to meet the full need, the allocation must be adaptable to meet the greatest need.

Section 56292

This section is necessary in order to allow the Chancellor to make necessary adjustments to allocations for the purposes stated. Without the ability to adjust allocations, allocations could not be made in advance and would have to be limited to reimbursement for expenditures previously incurred.

Section 56293

This section is necessary to define the term supplement as being over, above, and in addition to regular expenditures for education programs and services of the college. This section defines the terms and conditions of funding which

shall be applied to these programs and services by the Chancellor's Office. The concept is called direct excess cost, which means that if a college offers services to all students, then the extended opportunity program cannot be charged for those services unless the student in the extended opportunity program has received the same service for an extended period of time in which case the program can be charged only for the amount of time in excess of that provided to all students. If the service is unique for students in the program, then the entire cost of the service may be charged to the program. In order to establish a base level of district contribution for all colleges, these regulations would establish as district contribution, the extended opportunity programs and services director salary as the minimum level.

Section 56294

This section is necessary to complement Section 56293 and the concept of "over, above and in addition to "with regard to the expenditure of funds.

Section 56296

This section is necessary in order to establish the use of limitations placed on the expenditure of discretionary funds within the program. It also establishes the computational method necessary for a college to determine its total operating cost for the receipt of the administrative allowance. It also establishes a priority system for allocating the allowance.

Section 56296

This section is necessary in order to establish for those colleges the expenditures that are not allowed, however, there are some waiver provision authorized.

Section 56297

This section is necessary in order to establish in regulation the use of set aside funds which are authorized in the Governors' budget annually. This regulation is an expansion of a prior regulation which specified the use of these funds. This section allows for the use of these funds as an incentive for colleges which meet stated goals and objectives as they relate to student achievement of educational goals and objectives.

Section 56298

This section is necessary in order to insure that colleges maintain a financial aid level which is constant from year to year. Waivers may be authorized for the reasons listed. This replaces a similar section which was established through budget control language.

Cost

The regulations do not impose a mandate on local agencies or school districts.

Response to comments

Comments were received to the proposed regulations in informal testimony before the Board of Governors Student Services and Special Programs Committee on May 29, 1986 and at the public hearing on July 11, 1986. The comments and

response are summarized below:

Testimony Before the Board of Governors
Student Services and Special Programs Committee
Sacramento
May 29, 1986

Section 56230

Jack Randall
President, Chief
Executive Officers
California Community
Colleges.

COMMENTS:

RECOMMENDATION: We object to Section 56230 which mandates a full-time EOPS director. The employment of a full-time EOPS director does not insure a quality program nor is it needed on many campuses. It would also require additional district expenditures for many campuses. We realize that this section includes a grandfather clause and process for obtaining a waiver, but these are not necessary if you remove the words "full-time".

RESPONSE: This provision remains unchanged. It was presented by staff to the Board that local colleges are best situated to decide the appropriate levels management for EOPS; on the other hand, data from colleges for EOPS and financial aid personnel clearly shows that while most colleges maintain a full-time director, many colleges which once had full-time directors converted them to part-time directors even though EOPS funds had remained fairly constant or increased. These data lead staff to conclude that in a significant number of cases, financial factors rather than managerial need have dominated decisions concerning the full-time status of the EOPS director. Because AB 3775 mandates more ridged accountability standards for EOPS staff and the advisory committee concluded that, on balance, the full-time requirement for the EOPS director should remain. However, local colleges which currently have part-time directors may continue this practice subject to review by the Chancellor based upon the size and complexity of the program, the size of the staff, the size of the budget, and the number of students served.

Section 56236

The next section of concern is Section 56236. This section requires counseling for all "EOPS eligible students" at a ratio of 300 students to one full-time professional counselor. This regulation will definitely be an added cost to many districts and it provides what we believe to be an unnecessary State restriction. We recommend the elimination of 56236(a) which requires the 300 to 1 ratio, since it is unnecessary if you include parts (b) and (c) which indicate the services desired. We will strongly resist the establishment of student/counselor ratios in this and any other program. This should be a local decision.

RESPONSE: The Chief Executive Officers Association opposed and the EOPS Directors association supported this ratio. The resolution was that the ratio was removed from the regulation and adopted as a resolution by the Board of Governors as a goal of the EOPS program. The Board also ask that staff study and report to the Board the cost of providing EOPS students with a counselor to student ratio of 200:1.

Section 56293

There are two major problems in Section 56293. It is not clear to use how the first two sentences would be implemented. For example, if students at the college average one appointment with a counselor each year and each EOPS student has three, do we only charge two-thirds of the EOPS counselor's salary to EOPS funds? The second concern and most important is the fact that the district must support the EOPS director's salary and benefits. Why is this necessary when the director is providing services above and beyond those for other students? This will again be an added cost for some district since the eight percent allowance provided in Section 56294 does not always cover the director's salary and benefits. We recommend clarification of the meaning of the first two sentences of the section and the elimination of the restriction that the director's salary and benefits cannot be charged to the EOPS allotment.

RESPONSE: This issue in part requires the districts to fully fund the cost of the EOPS director. The Advisory committee and the Chancellor retained this requirement but modified its implementation to a three year phase in such that districts need not fund any portion of the directors salary for 1986-87. It was felt that a district fiscal commitment to the program was essential to institutionalizing the EOPS program locally.

Section 56295 (b)

There is a minor correction which we believe is needed in Section 56295(b). It states that "Requests to purchase computer hardware and/or software shall be approved by the district data processing manager prior to transmittal for approval by the Chancellor". As a matter of protocol, it seems that you should get the approval of the District Superintendent or College President, rather than the data processing manager. We recommend that District Superintendent or College President by substituted for data processing manager.

RESPONSE: The language was changed to give the authority of approving the purchase of computer components to the President /Superintendent.

Section 56298

RECOMMENDATION: we would like you to reconsider Section 56298, which reads: "In each fiscal year colleges shall expend for EOPS grants and workstudy an amount equal to that expended in the prior fiscal year, unless waived by the Chancellor, for the following reasons: (a) to establish a book service program; (b) the college allocation was corrected pursuant to Section 56292; (c) to meet the requirements of Article 3". This is an unrealistic requirement especially in light of decreased real funding. Personnel fixed costs will increase in 1986-87 at a much greater rate than EOPS funding. The current wording also does not allow for a district to either increase or decrease the amount expended the prior fiscal year for grants and

workstudy. It appears that almost every college would be requesting a waiver each year. We recommend that you eliminate this section.

RESPONSE: The reaction to this section can as a surprise because it essentially allows colleges flexibility to reducing services in one area an increase them in another. The fact that college funding and EOPS funding has been erratic is exactly why this provision was put in. In addition, this is merely a refinement of current regulations which allow the college to redistribute funds within the EOPS program. The regulation was not changed.

Peter M. Hirsch
Executive Director,
CACC

COMMENTS:

RECOMMENDATIONS: A case-in-point regards the requirement of having a full-time EOPS Director or waiver from the Chancellor for continuing a Director who devotes less than full-time to the EOPS program. Section 56230

From our vantage point, the issue is not whether the director is full-time or less than full-time. The issue is whether needed services are being provided in an effective manner, students are being well served, and student and program successes are enhanced and can be documented.

Second, sections of the recommendations seem to be at odds with one-another -- either between sections or within sections.

For example, EOPS Counselors -- as described in Section 56264 must have a minimum of . . . "nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social or economic disadvantages".

By comparison, the Director to who they report and to whom they are accountable-- and who we suspect would provide leadership and would mentor the staff -- is only required to have six semester units of similar course work. (as

identified in Section 56260 and 56262.

RESPONSE: It is difficult to respond to Mr. Hirsch's comments because they do not easily follow. However, the issue of the full-time director was addressed above in response to Jack Randall's testimony. The second issue regarding differences with-in the program director's and counselor's requirements are such that staff is not sure of the issue. However, these regulations were required by SB 2283 September, 1984. The qualifications of the Director require the possession of a supervisors credential. People possessing this credential must have prior experience on campus. There is no prior requirement for working on a campus for counselors. The counseling requirements are viewed as the entry level for EOPS and the managers may be drawn from their ranks. Otherwise, supervisors must have minimal additional qualifications because of their educational experience on campus and it made little sense to require more of them than the counselor. This regulation was not changed.

The following presenters did not hand out written testimony. There comments are paraphrased to the best of our ability.

Audrey Yamagata-Noji
EOPS Association

COMMENTS: Spoke before on changes needed in the regulation for them to be accepted by the Directors association.

RECOMMENDATIONS: to make the changes that had been agreed upon by the association and presented to the Advisory Committee at the public forums.

RESPONSE: The association made no new points at the Board meeting. Although they did not like the regulations in the form that they were presented to the Board, most of these changes were made before the July meeting and are reflected in it. Most of the comments made by the Director's Association were a repeat of the issues raised at the public forums conducted by the EOPS Statutory Advisory Committee and are

responded to above.

Bill Cordero
Santa Barbara City

COMMENTS: Stated that his testimony was going to be brief.

RECOMMENDATION: I recommend that the Board of Governors pull the item for further study.

RESPONSE: The Board committee decided to leave the item for action by the full Board at its next meeting.

Ken Amendola
Los Rios District

COMMENTS: That there had to be some changes in the regulations in order to make the regulations more workable for the colleges and districts.

RECOMMENDATIONS: That the directors salary was not an equitable way to handle district commitment if in fact that is what the regulation was trying to get at. Section 56230 would be better handled if there were a matching requirement than by telling districts what they have to pay for.

RESPONSE: Earlier drafts of the regulations required a matching amount which was opposed by staff members from Cosumnes River College which is in the Los Rios District. One of the reasons that section was eliminated was because of the opposition raised by employees of that district. We do not understand their change. But in response to this as well as other off the record comments a matching requirement was added to section 56210. Section 56230 which requires the district to pay the full salary of the EOPS director was unchanged.

Maryanne Wood
Santa Rosa College

COMMENTS: I support the regulations as they have been presented to the Board as well as having a counseling ratio of 200:1 and hope you pass them as presented.

RECOMMENDATIONS:

RESPONSE: Staff agreed.

Hoyt Fong
President
EOPS Association

COMMENTS: Spoke in favor of the regulations with the caveat that Directors Associations concerns as presented by Audrey Noji be considered by the Board when making their decision.

RECOMMENDATIONS:

RESPONSE: No response.

Ray Reyes
Glendale College

COMMENTS: Mr. Reyes comments were somewhat disjointed and had little to do with the regulations. Instead he verbally attacked the Board for being insensitive to the plight of minority people in general, accused the Board of being more interested in the testimony of others such as Presidents, associations and others rather than hearing what the field has to say. Mr. Reyes also threatened to sue the Board if the tried to rush his testimony.

RECOMMENDATIONS: That the counselor to student ratio be set at 200:1.

RESPONSE: This issue was addressed above. The Board passed a resolution stating that college EOPS programs should strive to achieve a 200:1 counselor to student ratio.

Response to Comments to the Proposed Regulations
Before the Board of Governors
Student Services and Special Programs Committee
Burlingame CA
July 10, 1986

Millie McAullie,
Chair, EOPS
Statutory Advisory
Committee

COMMENTS: The Committee and staff have worked very diligently on these regulations, taking into consideration the comments and discussions carried on over the public forums and at the last Board meeting. These regulations as presented are the work of the Staff, field, and the Committee.

RECOMMENDATION: The Committee urges the Board to adopt the regulations as presented.

RESPONSE: We support the recommendation.

Kirk Avery
Superintendent/President
Palo Verde College

Comments: I am here representing small colleges through out the state. Those are colleges with less than 3000 ADA. We feel that the regulations will be harmful to colleges of this size and that for many the financial obligations and other requirements will cause us to not be able to afford the EOPS program.

RECOMMENDATION: We are recommending that colleges with less than 3000 ADA be given a waiver for all of those provisions for which a waiver is possible.

RESPONSE: Many small colleges, including Palo Verde, will qualify for a waiver of the full-time directors position because of their size. The Board agreed that the language as currently written would be adequate to handle the problems of these small colleges. The Board felt that we should not make exception to the regulations because they were flexible enough to take care of small colleges concerns.

Peter Hirsch
Executive Director,
California Association
of Community Colleges

COMMENTS: Small colleges have had their say but I want to inform the Board that I represent all the members of the association including the small colleges. In response to a question from a member

of the Board I want to insure all of you that the colleges believe in the goals of the EOPS program. However, they believe that the regulations are too prescriptive and do not give the colleges the flexibility they need.

RESPONSE: We do not believe that these regulations would have to be as oriented toward accountability as they are except that the legislation requires ~~certain amount and our own evaluation~~ accountability.

Jack Randall,
President, Chief
Executive Officers
Association.

COMMENTS: I appreciate listening to the comments about the regulations and am pleased that the staff of the Chancellors Office accepted many of our comments and made some significant changes based on the recommendations we and other groups made since the last meeting of the Board. However, there remain some serious concerns, the regulations are too restrictive and too prescriptive. The regulations should not prescribe process and method and should look at what is already in place. These regulation amount to overkill and although they do not directly mandate cost they amount to over regulation.

RECOMMENDATION: Do away with the need for a full-time director and the salary for the director. Section 56230 and section 56293.

RESPONSE: This provision remains unchanged. It was presented by staff to the Board that local colleges are best situated to decide the appropriate levels management for EOPS; on the other hand, data from colleges for EOPS and financial aid personnel clearly shows that while most colleges maintain a full-time director, many colleges which once had full-time directors converted them to part-time directors even though EOPS funds had remained fairly constant or increased. These data lead staff to conclude that in a significant number of cases, financial factors rather than managerial need have dominated decisions concerning the full-time status of the EOPS director. Because AB 3775 mandates

more ridged accountability standards for EOPS staff and the advisory committee concluded that, on balance, the full-time requirement for the EOPS director should remain. However, local colleges which currently have part-time directors may continue this practice subject to review by the Chancellor based upon the size and complexity of the program, the size of the staff, the size of the budget, and the number of students served.

RESPONSE: This issue in part requires the districts to fully fund the cost of the EOPS director. The proposed regulations retained this requirement but modified its implementation to a three year phase in. It was determined that a district fiscal commitment to the program was essential to institutionalizing the EOPS program locally.

Hoyt Fong
President EOPS
Association

COMMENTS: Title 5 reflects the needs of AB 3775 and we support a full time Director. We also support the 200 to 1 student to counselor ratio, and oppose an administrative allowance.

RECOMMENDATIONS: None.

RESPONSE: None.

Danny Rubalcava
President, California
Association of
Financial Officers.

COMMENTS: I would like to make a few comments about the regulations and how they relate to financial aid. Section 56252 would impact negatively on Financial Aid offices because of the additional workload involved. This section requires all other federal and state funds to be awarded before EOPS funds are included. This will cause financial aid offices to go through an additional process in order to award EOPS funds.

RECOMMENDATIONS: The administrative cost allowance should not have been deleted and should be put back into the regulations. In addition, we support a full time Director because one individual cannot do EOPS and Financial Aid.

RESPONSE: Staff agrees that EOPS Directors need to be full time as well as financial

aid officers. Staff, the EOPS Director's Association and the Board's Advisory Committee do not believe that the administrative allowance should be put back into regulation because financial aid offices typically must re-award students through out the academic year and there is no evidence that this procedure costs any more for EOPS students than for all other students.

Peter Espinoza
Counselor
Saddleback College

COMMENTS: I support a 200 to 1 student to counselor ratio over a 300 to 1 ratio because there is a relation ship between ratios and retention. Prescriptive regulations happen when there is a lack of trust and it is not getting better.

RECOMMENDATIONS: Section 56298 (c) should be deleted because there are not enough dollars for students now in the program and there is money generated by the EOPS students in the program.

RESPONSE: Section 56298 (c) was not deleted because it would have locked the EOPS programs into a set dollar figure for student grants without the ability to lower that amount in order to pay for salaries of service providers. The program has received a smaller cost of living increase than the colleges in general over the past few years and the only way they have been able to continue to provide services is to lower student grants.

Bill Love
Affirmative Action
Officer
Peralta Community
College District

COMMENTS: I am here to state that I do not have a problem with the regulation requiring a full time Director. However, our district is having severe fiscal problems and we cannot support, fiscally, full time directors in the EOPS program.

RECOMMENDATIONS: None.

RESPONSE: The regulation, 56230, does not take effect until the 1987/88 academic year it was felt that colleges would have ample time to prepare for this expenditure. Also, the EOPS program is not a state mandated program and does not necessarily have to exist on a campus. Staff believes that if the college wants an EOPS program there should be some fiscal

John Rivers
Dean of Students
Cuesta College

commitment.

COMMENTS: Dr. Rivers comments dealt with how the regulations would impact students. However, his statements were not easily understood by a majority of people at the Board meeting.

RECOMMENDATION: Dr. Rivers he did not make any specific recommendations.

RESPONSE: Because of the nonspecific nature of the comments it is impossible to respond to his concerns.

Maryann Wood
EOPS Director
Santa Rosa College

COMMENTS: I want to tell the Board that the Chancellor's Office should be congratulated on having a good process and coming up with such excellent regulation.

RECOMMENDATIONS: None.

RESPONSE: Staff agrees with Ms. Woods observation.

Audrey Yamagata-
Noji
EOPS Director
Saddleback College

COMMENTS: Several points you should make note of. We (the director's Association) want to make sure that we are included in the process of writing a operational manual for the program, and that the waiver process is clear to all who may apply. We interpret the statutory intent of the language mean in the Education Code as the professionalization of EOPS staff.

RECOMMENDATIONS: None.

RESPONSE: We agree with Mrs. Noji's position.

Tom Van Groningen
Association of
Community College
Administrators

COMMENTS: We believe that the Board of Governors should review the EOPS regulations as proposed and consider rewriting the regulations to conform to a more acceptable set.

RECOMMENDATIONS: Pull the regulations and rewrite.

Response: The proposed regulations are a product of a long period of consultation with college and program representatives.

The Board cannot respond to a generalized criticism but only to specific comments.

Attached correspondence received after the May 23, 1986 filing date.

Albert Canizales
Bartstow College
President EOPS Advisory
Board

COMMENTS: We are mainly concerned about the proposed Title 5 regulations, Section 56220, Eligibility for Programs and Services, subsection (e). The educationally disadvantaged, as determined by Director or designee, in at least one of the following ways:

- (1) Not qualify at the college of attendance for enrollment into the minimum level English or math course that is applicable to the associate degree.
- (2) Not have graduated from high school or obtained the GED.
- (3) Graduate from high school with a grade point average below 2.00 on a 4.00 scale.

In essence, the EOPS program will be looking at recruiting and servicing high risk students at the front end while the Board of Governors and AB1114 have proposed transition as one of the top goals of the EOPS program.

The Board of Governors proposed goals stating that the "EOPS programs should support college efforts to increase the number and percentage of EOPS students who are successfully placed into career employment" or who transfer to four year institutions. AB 1114 directs the EOPS to attract and serve transfer students.

RECOMMENDATIONS: None.

RESPONSE: The Barstow Advisory Committee overlooks one important feature in the Ed Code section 69640 which states that EOPS is "directed to identifying those students affected by language, social and economic handicaps, to increase the number of eligible EOPS students served, and to achieve their educational objectives and goals, including, but not limited to obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions." Staff believes that with the services provided students who come in with fewer academic skills will develop then while in the EOPS program. What other purpose would there be in providing services if it

where not to help the student succeed.

Michael Hill
Assistant Superintendent
San Jose/Evergreen
Community College
District

COMMENTS: On July 11, 1986, a recommendation is being presented to you regarding the EOPS program. One point of the recommendation is to transfer the cost of the salaries of the EOPS directors from the State categorical fund to the local district's general fund. I disagree strongly with that recommendation. The reasons given by Chancellor's Office staff for this recommendation do not appear to me to be compelling.

1) Your staff has stated that districts should participate financially in the program. We do. All indirect support costs are contributed by the local districts.

2) Your staff states that some districts put in additional, direct, support dollars to the EOPS program while others do not. If the State indicates that it is willing to support EOPS to a certain level, with each district participating at least at that level and some choosing to go beyond, what is wrong with that? Why is it necessary for the Board of Governors to step in and mandate an additional cost for all districts?

3) Your staff argues that this change is to bring uniformity to the programs not augment the EOPS budget.

I disagree. The Chancellor's Office can control the EOPS program through mechanisms currently in place. The only real affect of this recommendation is to transfer costs to the general fund because State allocations for the EOPS program have held back. It will make no real difference beyond that.

4) In my district this recommendation means \$100,000 of new cost in the general fund. This translates into 4 classified staff or 1/2% on the salary schedule, which sometimes either settles a contract or sends us to arbitration. \$100,000 is enough to significantly improve the supply at our 2 campuses. \$100,000 makes a difference.

Are we to expect that as categorical programs are squeezed budgetarily, we will be expected to fund the programs even though our general apportionments are barely adequate to maintain current general fund activities?

5) As the Board of Governors for community colleges, you re-present all segments within

our system. Why, then, would you assist one segment at the expense of another? The stated objectives of the staff recommendation regarding EOPS can be accomplished without taking this action. By approving the recommendation the message is that if a program isn't funded by the state then it will be funded at the expense of the general fund.

I don't want to sound too much like Tommy Smothers but his statement of "Mom always liked you best," comes to mind as I try to sort out the facts and rationale for the recommendation.

RECOMMENDATIONS: Obviously he wants the requirement for a full time director, paid for by the district eliminated.

Kirk Avery
Superintendent/President
Palo Verde
Community College
District

COMMENTS: I am writing to express our District's concerns regarding the proposed Title 5, Final Draft of Chapter 2.5, Extended Opportunity Programs and Services regulations.

We wish to respond to several sections of the regulations, including Article 2, Section 56220, Eligibility Criteria, and Article 7, Section 56293, District Fiscal Responsibility.

Sections 56220 (a) and (e), Eligibility Criteria, concerning both California residency and the definition of "educationally disadvantaged", if enacted as currently stated, will severely reduce the number of students Palo Verde College can serve and have a significant negative impact on District enrollment. For example, in (a), it states that a student must be a California resident to receive financial aid and services. Due to proposed changes, Arizona students, who are within our service area (we are the closest higher educational institution within a 100 mile radius), will no longer qualify for EOPS services or direct aid.

In (e), if we must interpret "educationally disadvantaged" to mean that we must exclude all those students who are above (a) "the minimum level English or mathematics course that is applicable to the Associate Degree," or (b), be a non-graduate of high school or (c), a graduate with less than a 2.00, we will lose EOPS support for over 50% of our full-time enrolled students.

Seventy-nine of the 147 EOPS students who were eligible for FY 85-86 will be excluded from the program solely on the basis of (a). EOPS students currently constitute eighty percent of our total student body that is enrolled for 12 units or more. Also, it is likely that additional students will be excluded on the basis of the remaining criteria.

I would like to meet with you to discuss these concerns as they are of crucial significance to the long-range viability of Palo Verde College.

Thank you for your consideration of this request.

RECOMMENDATIONS: None.

RESPONSE: The staff review of Mr. Avery's letter found several discrepancies. The first one is that the 2.00 GPA requirement was changed to a 2.5. The second being that according to college officials, the EOPS program did not have 79 out of state students. There was some concern at the college as to whether or not there were that many out of state residents on the campus.

The reason the the staff did not change the residency requirement was based on the fact that no other state funded program in higher education (financial aid) allows out of state students to participate until they become residents. The other reason is that EOPS is a state funded program and staff felt that these funds should be restricted for use by California residents.

The GPA requirement was changed to 2.5 and in addition the director no has the ability to use other criteria for determining educational disadvantages than the ones listed.

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The Board of Governors proposed goals stating that the "EOPS programs should support college efforts to increase the number and percentage of EOPS students who are successfully placed into career employment" or who transfer to four year institutions. AB 1114 directs the EOPS to attract and serve transfer students.

RECOMMENDATIONS: None.

RESPONSE: The Barstow Advisory Committee overlooks one important feature in the Ed Code section 69640 which states that EOPS is "directed to identifying those students affected by language, social and economic handicaps, to increase the number of eligible EOPS students served, and to achieve their educational objectives and goals, including, but not limited to obtaining job skills, occupational certificates, or associate degrees, and transferring to four-year institutions." Staff believes that with the services provided students who come in with fewer academic skills will develop then while in the EOPS program. What other purpose would there be in providing services if it

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I disagree. The Chancellor's Office can control the EOPS program through mechanisms currently in place. The only real affect of this recommendation is to transfer costs to the general fund because State allocations for the EOPS program have held back. It will make no real difference beyond that.

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In (e), if we must interpret "educationally disadvantaged" to mean that we must exclude all those students who are above (a) "the minimum level English or mathematics course that is applicable to the Associate Degree," or (b), be a non-graduate of high school or (c), a graduate with less than a 2.00, we will lose EOPS support for over 50% of our full-time enrolled students.

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INITIAL STATEMENT OF REASONS

Background

Chapter 1178 of the Statutes of 1984 requires the Board of Governors to adopt rules and regulations which establish the following:

1. goals of the Extended Opportunity Program and Services;
2. that the program supplement the regular educational programs of community colleges to encourage the enrollment of students handicapped by language, social, and economic disadvantages, and to facilitate the successful completion of their educational goals and objectives;
3. develop minimum standards for Extended Opportunity Program and Services;
4. procedures for the review and evaluation of the district's Extended Opportunity Program and Services program;
5. that in order to be eligible for state funding, each district would meet the standards, unless waived by the Chancellor;
6. prohibit the district from using state EOPS funds for the operation and administration of the program to supplant district resources, programs, or services provided under its EOPS;

Article 1 General Provisions and Requirements

Section 56200

This section is necessary for the purpose of defining the Education Code and Title 5 Sections dealing with the Extended Opportunity Programs and Services. All references in the Education Code Sections 69640-69657 and Title 5 Sections 56200 - 56298 are made for the purpose of the EOPS program and students therein. It is not intended to be applied to other college programs or services unless specifically identified as such. The statement is needed to insure that these regulations are not applied to other programs and, that references to other sections of Title 5 within these regulations apply. The Chancellor through Education Code Section 69648.5 and 69649 is authorized to waive provisions regarding staff requirements and minimum program standards. This authorization is included in this section to identify the Articles within this chapter subject to the waiver and to establish the reasons for a waiver request.

Section 56202

This definition is consistent throughout the community colleges for a student to be considered full time for the purpose of being eligible for this program as well as other state and federal programs which require full time enrollment. A student enrolled in equivalent instructional programs may be considered to be full time even though the student does not carry 12 credit units but only in those cases where the college recognizes the course work as such. A student enrolled in a vocational or certificate program may be eligible for the EOPS program if the college recognizes the hours

of attendance as being equivalent to full time enrollment. For a student enrolled in a summer program, the Chancellor's Office will accept the college's definition of full time enrollment for the purpose of program eligibility.

Section 56204

The purpose of this section is to define for the colleges the required services and documentation necessary to count a student as being served. The definition is needed because "served student" is and will continue to be used as an element in the allocation formula. The existing allocation formula has "served student" as an element without a definition. The Extended Opportunity Program and Services Statutory Advisory Committee has requested that a definition of this element be included in regulation to avoid problems associated with allocating funds to colleges that provide services to students when the services have not been defined.

Section 56206

This section is necessary to insure that EOPS does not establish, independent of the needs of the Chancellor's Office, a data base that is separate and unique. Education Code Section 69655 list documentation and reporting requirements for the EOPS program beginning in 1987. The Chancellor's Office is collecting this data through the EOPS application and reporting process. Once the Chancellor's Office has established the revised Uniform Statewide Integrated Reporting System referred to in this section, the data elements will be dropped from the EOPS application and reporting process.

Section 56208

This provision is a carried over and expanded version of the prior regulations. The primary difference is the addition of the length of the term served by committee members and the size of the committee. Education Code Section 69643 requires an advisory committee for the purpose of recommending policy to the Board of Governors. The original and current purpose of campus advisory committees is to serve a similar purpose which is to advise on program direction and need for services from a broad based group which has education and community support.

Section 56210

Education Code Section 69651 establishes a restriction on the use of funds appropriated for Extended Opportunity Programs and Services and further states that these funds cannot supplant district resources. The Chancellor's office has added this Section in order to operationalize this Education Code provision and identify the base year for purposes of establishing the level of district resources. However, the Chancellor has added a waiver provision for districts that experience financial difficulties.

Article 2. Student Eligibility and Responsibility

Section 56220

The purpose of this section is to set the eligibility requirements for students who participate in the EOPS program. Education Code Section 69640 establishes legislative intent and goals for the EOPS program. Part (a) of that section states that the first goal of the program is; "To increase the number and percentage of students enrolled in community colleges who are affected by language, social and economic disadvantages, consistent with state and local matriculation policies." The Requirement for California residency is consistent with other state categorical programs. The requirement to attend college full-time is carried over from prior regulations. The 70 unit limit is to insure that the limited resources of the program serve first and second year students only. The adoption of the Board of Governors Grant income levels is to insure continuity between programs which serve similar populations. Education Code Section 69648 (a) calls for the program to prescribe the procedure by which a district shall identify a student eligible for EOPS on the basis of the student' language, social, or economic disadvantages. This section address this requirement under the heading educationally disadvantaged by including criteria which meets the intent.

Section 56222

This section conforms with ECS 69648 (a) and is necessary in order to establish in regulation the responsibilities of student who qualify for and accept the services of the EOPS program. This will eliminate the need for EOPS programs to develop criteria that is inconsistent with state purposes regarding EOPS students. Current title 5 regulations require students to apply for financial aid. This section adds an academic progress standard and outlines the minimum documents to insure that these services have been provided to students which conforms with ECS 69640 (b) and 69641.

Article 3 Program Standards

Section 56224

This section is necessary to establish the criteria for EOPS students who apply for and receive EOPS financial aid. The Chancellor's Office has been carrying out audits of EOPS programs for several years. The most urgent problem has consistently been in the area of eligibility of students based on financial aid criteria. This regulation would solve this problem by identifying the requirements for students who receive EOPS financial aid.

Section 56226

This section is necessary unready to establish limitations on the length of time and the conditions for a student to be in the program where none have heretofore existed. This section also

complements sections 56220 and 56222.

Section 56228

This section is necessary unreader to protect both the program and the students recruited prior to the effective date of this section from being out of compliance with these regulations for a period of one year.

Article 3 Program Standards

This article identifies the standards for services that each program shall provide. The intent is to standardize programs staffing and services on a statewide basis. Each of the next six sections identify program standards that each state funded program must adhere to unreader to receive state funding. ECS 69648 identifies the standards, ECS 69649 (a) establishes that unreader to receive state funding colleges programs must meet the standards and, part (b) allows the Chancellor to waive any or all of these standards for unusual circumstances. The Chancellor's waiver process is established in section 56200 of these regulations.

Section 56230

This section is necessary in order to conform to ECS 69648 (b) (1). The purpose of this section is to establish that there shall exist a base level of funding in all programs in the form of the EOPS Director's salary. Further, it is the intent and in the best interest of the state and the students in the program to have a full-time district paid director unreader to provide the basis for a strong program. This salary would be viewed as a district contribution and commitment for the program in the form of salary and benefits for the director. In addition, it shall be proposed to the Board of Governors that the district contribution element previously approved be implemented using only salary and benefits paid to EOPS employees as the contribution.

Section 56232

This section is necessary in order to conform to ECS 69648 (b) (4). The purpose of this section is to establish that there shall exist an outreach service that carries out the provisions of the Education Code.

Section 56234

This section is necessary in order to conform to ECS 69648 (b) (5). The purpose of this section is to establish that there shall exist an assessment service that carries out the provisions of the Education Code

Section 56236

This section is necessary in order to conform to ECS 69648 (b) (5).

The purpose of this section is to establish that there shall exist an assessment service that carries out the provisions of the Education Code. In addition, the Chancellor's Office has determined that a counseling ratio of 400-450 to a full-time equivalent counselor is appropriate for the number of counseling sessions required of the students served in the program.

Section 56238

This section is necessary in order to conform to ECS 69648 (b) (5). The purpose of this section is to establish that there shall exist a Basic Skills Instruction and Tutoring service that carries out the provisions of the Education Code.

Section 56240

This section is necessary in order to conform to ECS 69648 (b) (5). The purpose of this section is to establish that there shall exist an assessment service that carries out the provisions of the Education Code.

Article 4 EOPS Financial Aid Standards

This is a new article and necessary in order to establish the purpose of EOPS financial aid, the limitations on the award amounts, procedures for awarding and criteria for making loans. This article is an expanded version of the prior regulations.

Section 56252 Purpose

This section establishes for the first time that it is the intent of EOPS financial aid to be used to meet a students unmet need after receiving all other available aid or to be used to lower a students indebtedness by reducing a students loan amount.

Section 56254

This section is necessary to establish limitations placed on the amount of financial aid funds a student may receive through grants or earn through workstudy. This provision is an up dated version of the pervious regulations with minor changes.

Section 56256

This section is necessary in order to establish for the first time, procedures to be used by financial aid office for the awarding of funds. Because the process may cause an additional workload in that office, an administrative allowance is included to help offset this additional work.

Section 56258

This section is necessary in order to put into regulation the legal opinion of our staff regarding the district treatment of loan funds. This section also establishes that EOPS funds may only be granted in emergency situations.

Article 5. Staffing Standards

The three sections in this article are a result of SB 2283, Chapter 609 which added ECS 69648.5. This provision authorizes the Board of Governors to adopt rules and regulations establishing appropriate credentials to be held by extended opportunity programs and services professional faculty and staff paraprofessionals.

Section 56260

This section states intent language, which is that EOPS must be provided by certificated personnel pursuant to ECS 69648.5

Section 56262

This section is necessary in order to adhere to intent language for extended opportunity program and services directors, which is that EOPS must be provided by certificated personnel who possess appropriate training requirements pursuant to ECS 69648.5.

Section 56264

This section is necessary in order to adhere to intent language for extended opportunity program and services counselors, which is that EOPS must be provided by certificated personnel who possess appropriate training requirements pursuant to ECS 69648.5.

Article 6. Plans and Priorities

This article deals with established for the submittal, review, approval and evaluation of extended opportunity program plans. It also priorities for selecting and serving students.

Section 56270

The purpose of this section is to make the plan submitted by a district a binding contract between the district and the Chancellor's Office for the purpose of operating the Extended Opportunity Program and Services. This means that the Chancellor's Office, as the conservator of state resources, has the authority to hold the district to the letter of their program plan and that expenditures that are not in accordance with the plan are illegal.

Section 56272

This section is necessary in order to establish in regulation the minimum elements required in the program plan by the Chancellor's Office in order to approve the program, services and expenditures.

Section 56274

This Section establishes a deadline date for the submission of program plans in order to insure that colleges submit program plans to the Chancellor's Office in a timely manner.

Section 56276

This section is included pursuant to ECS 69648 (d) and (e), which authorizes the Chancellor to evaluate programs and services.

Section 56278

This section is included pursuant to ECS 69648 (d) and (e), which authorizes the Chancellor to evaluate programs and services.

Section 56280

This section is necessary in order to establish an equitable priority system with in each program based on the population of the community being served by the college. This regulation also establishes an additional priority system with in another in order to further identify for the program a population to be served by intent language pursuant to ECS 69640 (a) and (e).

Article 7 Funding and Expenditures

Section 56290

This article is necessary in order to insure that colleges set up income and expenditures accounts for the extended opportunity program in accordance with the appropriate accounting manual.

Section 56291

This section authorizes the Chancellor to allocate funds once an appropriate formula is adopted by the Board of Governors.

Section 56292

This section is necessary in order to allow the Chancellor to make necessary adjustments to allocations for the purposes stated.

Section 56293

This section is necessary in order to identify for those districts conducting and extended opportunity programs the requirement expected of them pursuant to ECS 69640 (f), and ECS 69641. Further, the purpose of this section is to define the term supplement as being over, above, and in addition to regular expenditures for education programs and services of the college. This section defines the terms and conditions of funding which shall be applied to these programs and services by the Chancellor's

Office. The concept is called direct excess cost, which means that if a college offers a services to all students then the extended opportunity program cannot be charged for those services unless the student in the extended opportunity program has received the same service for an extended period of time in which case the program can be charged only for the amount of time in excess of that provided to all students. If the service is unique for students in the program then the entire cost of the service may be charged to the program. In order to establish a base level of district contribution for all colleges these regulations would establish as district contribution, the extended opportunity programs and services director salary as the minimum level. Current Board of Governors policy calls for a district contribution in the allocation formula. However, the definition of district contribution has always been a matter left to the districts in reporting expenditures from their general funds for the operation of the program. The Chancellor is given waiver authority, with consequences establish in the following section, if districts cannot meet this obligation.

Section 56294

This section complements section 56293 and the concept of over, above and in addition to with regard to the expenditure of funds. It also establishes an administrative allowance for the operation of services to extended opportunity program and services students which are received from sources outside of the program. These expenditures shall be provided for the cost of providing services that are in addition to those provided to all students. A college may only receive this allowance if it meets the minimum district contribution.

Section 56296

This section is necessary in order to establish the use of and limitations placed on the expenditure of discretionary funds within the program. It also establishes the computational method necessary for a college to determine its total operating cost for the receipt of the administrative allowance. It also establishes a priority system for allocating the allowance.

Section 56296

This section is necessary in order to establish for those colleges the expenditures that are not allowed, however, there are some waiver provision authorized.

Section 56297

This section is necessary in order to establish in regulation the use of set aside funds which are authorized in the Governors budget annually. This regulation is an expansion of a prior regulation which specified the use of these funds. This section allows for the use of these funds as an incentive for colleges which meet

stated goals and objective as they relate to student achievement of educational goals and objectives.

Section 56298

This section is necessary in order to insure that colleges maintain a financial aid level which is constant from year to year. Waivers may be authorized for the reasons listed. This replaces a similar section which was establish through budget control language.

Board of Governors of the
California Community Colleges
July 10-11, 1986

Item 7

Title: EOPS Regulations

Staff Presentation: Ron Dyste, Acting Vice Chancellor
Rod Tarrer, EOPS Coordinator
Student Services and Special Programs

Summary

At its meeting of May 29, 1986, the Board's Committee on Student Services and Special Programs received considerable testimony concerning proposed new regulations governing the operation of Extended Opportunity Programs and Services. These regulation proposals were developed pursuant to Chancellery evaluation results of EOPS, and are further required by recently-enacted law (AB 3775, Chacon, SB 2283, Dills). During the discussion on May 29, the Board's Statutory Advisory Committee for EOPS identified (from testimony at public forums it had conducted) five major issues which the Advisory Committee said it would consider on June 9, 1986, before making its final recommendations to the Board. The Advisory Committee met with staff and others as scheduled and has revised recommendations affecting fourteen of the proposed regulations. The Chancellor concurs with the Advisory Committee's revisions, and recommends Board approval of the proposed regulations, which incorporate those revisions.

Recommended Action

The Chancellor recommends the Board President declare a public hearing and that:

1. The Board endorse the proposed EOPS regulations, including the revisions, which appear in Appendix A, and delegate authority to the Chancellor to adopt the regulations pursuant to Section 71091 of the Education Code.
2. The Board requests the Chancellor to continue work which would develop appropriate policy on EOPS administrative allowances for future Board consideration.

Background

At the May 1986 Board meeting, staff presented the Chancellor's proposals for changing the future direction of the EOPS program. Contained in new regulation proposals, these changes would essentially:

1. Redefine who is eligible to receive EOPS services: by establishing criteria appropriate for programs and services as well as for EOPS financial aid; by establishing student responsibility expectations; and by limiting the length of time a student can remain eligible.
2. Establish minimum program, service, and staff standards pursuant to AB 3775 and SB 2283. These standards apply to the program director, staff, outreach, assessment, counseling, basic skills and tutoring, transition (college-leaving) services, and EOPS financial aid.
3. Retain, but clarify and reorganize, existing Board policies concerning EOPS plans, budgets, accountability, and evaluation requirements.

Altogether, the Chancellor's proposals are contained in 40 new regulations. Compared to the 57 existing regulations, the Chancellor's proposals would: a) reduce the number of regulations by nearly one-third, b) establish new priorities enabling EOPS programs to actively pursue student equity objectives, particularly to increase the number of Black and Hispanic students served, and c) increase accountability of colleges and EOPS program staff, and d) increase accountability of the students served.

In preparation for the Board Committee discussion on May 29, the Board's Advisory Committee for EOPS hosted two public forums to receive comment on the proposed regulations. At least two dozen speakers testified on 22 of the regulations making 34 recommendations for revisions, 15 questions of clarification, and 25 recommendations for deletions. Speakers represented EOPS staff, chief executive officers, chief student services officers and other student services staff, financial aid officers, and business officials, plus a student. Additional written comments have been received from the California Association of Community Colleges, staff of Ohlone College, the presidents of Yuba, Palo Verde and Siskiyou Colleges, and the Association of California Community College Administrators. These comments echo those made by speakers at the public forums or at the Board Committee meeting, and essentially endorsed comments already made.

Although the number of comments was considerable and affected more than half of the regulations proposed, careful analysis by staff and by the Board's Advisory Committee for EOPS revealed that the testimony raised five major issues which were substantive enough to warrant reconsideration by the Chancellor and by the Board's Advisory Committee. These issues are discussed next as are the resulting recommendations which add clarifying language to eight regulations, and which change the policies proposed in another six of the regulations.

Discussion of Issues

1. *Full-Time EOPS Director (Section 56230)*

Testimony essentially argued that the full- or part-time status of the EOPS director should not be subject to Board regulation because the managerial requirements of EOPS operations are a local decision.

The Board's Advisory Committee believes this argument has merit, but also maintains the community college system's interest is better served by regulating this requirement. This is because there is clear evidence suggesting colleges are faced with strong temptations to cut or downgrade administrative staff, spreading their responsibilities over a larger range of functions. Although the reasons often given for such changes are to achieve greater efficiency, this is not always the result. For example, in 1982-83, full-time financial aid officers reported spending nearly 80 percent of their work time directly administering financial aid. By 1984-85, this percent had dropped to 66 percent, in large part because the same administrator was handling EOPS. Yet, EOPS budgets have grown on average from \$60,000 in the 1970's to more than \$250,000 in the 1980's, and, there were more full-time EOPS directors in the last decade than now.

The Board's Advisory Committee is concerned that administrative reorganization may be starving both financial aid and EOPS programs of adequate managerial support, and recommends the full-time requirement be retained, subject to waiver by the Chancellor on a case-by-case basis. It is felt the waiver provision provides local colleges with a mechanism to continue part-time directors if the Chancellor approves after he has considered the size of the program budget, the size of the staff, the variety of the services offered and the number of students served.

2. *District Paying 100 Percent of the Director's Salary and Benefits (Section 56293)*

Testimony argued this requirement would increase local costs, and since EOPS is a supplemental program, so also should the supplemental cost of the director be charged to EOPS. If the proposal should be retained, testimony recommended either a phase-in of this provision or a simple local match requirement.

The Board's Advisory Committee concluded this testimony had sufficient merit to alter its recommendation to a phase-in of the requirement. Hence, during the 1987-88 fiscal year, districts accepting EOPS funds must pay at least 50 percent of the director's salary and benefits, and then, beginning in 1988-89, must pay 100 percent.

3. *Comparable Level of Services (Section 56210)*

Testimony vigorously opposed this requirement despite its statutory basis because it would freeze existing inequity among those districts contributing different amounts to EOPS in 1984-85, and because, in many instances, district revenues have declined since that year.

The Board's Advisory Committee essentially agreed with these objections. Nonetheless, cognizant that the requirement is in statute and a recommendation to the Board on how to implement it is necessary, the Board's Advisory Committee now recommends that the amount of spending a college must maintain be either the average dollar level of services supported with non-EOPS funds as reported for the past three years or 15 percent of the average EOPS allocation to the college for that same three year period, the amount to be determined by whichever is greater. In addition, the Advisory Committee recognizes that falling EOPS student participation should justify some reduction in the required level of maintenance of effort, and recommends the development of a mechanism for adjustments.

4. *EOPS Administrative Allowance (Sections 56256(a), 56294, 56295(c))*

Testimony from EOPS staff recommended deletion of this provision on the grounds such costs were not justified and were in violation of Education Code Section 69651. This section prohibits supplanting with EOPS funds expenses for EOPS which are currently funded with district dollars.

The Board's Advisory Committee believes that certain administrative costs (primarily in learning centers or in financial aid) would justify an EOPS administrative allowance of some kind, but also believes the present proposal needs more thought, particularly on ways to simplify its implementation. Consequently, the Advisory Committee recommends deleting the provision and any references to it from the proposed regulations. However, the Committee recommends the Chancellor continue to work on a proposal that produces a better policy for allowing an administrative cost.

5. *Student Counselor Ratio (Section 56236(a))*

Perhaps the most controversial issue was the proposed ratio of 300 students to one full-time counselor. This issue drew criticism from everyone. EOPS staff argued for a lower ratio, while chief executive officers and others argued to delete the requirement entirely because it would be too costly, would not guarantee quality counseling, and furthermore, was unnecessary since other regulations were sufficiently specific on counseling requirements.

The Board's Advisory Committee was quite sensitive to all of these viewpoints. After considerable deliberation, the Advisory Committee concluded that, as a practical matter, higher-risk students should be served by a lower ratio, but that allowance for flexibility is needed. Consequently, the Committee recommends that a 200 to 1 ratio "should" (rather than "shall") be achieved, and believes monitoring and evaluation of this objective combined with the other counseling requirements should precede a Board mandate on the question of ratios. The Chancellor therefore recommends the Board adopt, as part of its resolution concerning the proposed regulations, a statement about the 200 to 1 ratio, rather than adopting this ratio as part of the regulations. This is because the legal office has advised the Chancellor of the strong probability that the Office of Administrative Law will reject the ratio provision if placed into the regulations on the grounds that it is an intention, and not a regulation.

Following consultation with the Chancellor concerning these Advisory Committee recommendations, the Chancellor approved the provisions and recommends them to the Board for adoption.

Other Changes

In addition to the foregoing policy recommendations, the Advisory Committee recommends refinements to nine other regulations, i.e., Sections 56220, 56228, 56230, 56232, 56234, 56236, 56260, 56278, and 56296. These refinements are chiefly minor technical corrections, or clarifications of intent which do not materially alter these proposals as discussed in May. Staff will highlight these changes during the Board presentation on this item.

Implementation

If adopted by the Board and approved by the Office of Administrative Law, the new regulations would technically take effect about mid-September 1986. Careful review by staff indicates that of the 40 regulations proposed, all but 9 can and should be implemented as of the date of effect. Seven regulations should not be fully enforced until 1987-88, and two other regulations would be implemented as written in the proposed regulation language.

Briefly, therefore:

1. All provisions of Articles 1, 2, 4 (except Section 56256, "Award Procedures"), 5, 6, and 7 can be implemented in 1986-87.
2. Article 3 and Section 56256 of Article 4 would require a phase-in implementation such that full implementation would be required in 1987-88.
3. Sections 56210 (Comparable Level of Services) and 56293 (District Fiscal Responsibility Contribution) would be implemented as written.

In addition, full implementation will require review of current Board allocation policy during 1986-87, with proposals for altering the EOPS Allocation Formula brought to the Board for consideration and action as may be appropriate.

The Chancellor recommends the President of the Board of Governors declare a public hearing, and that the Board adopt the actions below.

Resolution

BE IT RESOLVED by the Board of Governors of the California Community Colleges that it hereby endorses the following regulatory changes in Title 5, Part 6, of the California Administrative Code:

1. Chapter 2.5 of Division 8 is repealed.

2. New Chapter 2.5 of Division 8 is added to read as set forth in Appendix A, including all of the revisions as indicated therein. (Note that the revisions in Appendix A are revisions to the regulations initially proposed by the Chancellor at the May Board meeting.)

BE IT FURTHER RESOLVED by the Board of Governors that it:

3. Requests the Chancellor to return to the Board with policy proposals as may be appropriate concerning the provision of an EOPS Administrative Allowance which is consistent with applicable statutes governing Extended Opportunity Programs and Services, and
4. Expresses to district governing boards and to superintendents and presidents that in meeting the requirements of Section 56236, concerning counseling and advisement, districts receiving EOPS funds are directed to strive towards achieving a ratio of 200 EOPS students to 1 full-time EOPS counselor and to employ students as role models.

BE IT FURTHER RESOLVED by the Board of Governors, acting under the authority of Section 71091 of the Education Code; that the authority to adopt the regulations on behalf of the Board is hereby delegated to the Chancellor of the California Community Colleges. In accordance with the delegation of this authority, the Chancellor shall make copies of these proposed regulations available to the public for at least 15 days. The Chancellor shall then adopt the regulations as endorsed by the Board in this Resolution if the Chancellor determines on the basis of any comments received no changes are necessary.

BE IT FURTHER RESOLVED that these regulation changes mandate no cost to local agencies or community college districts within the meaning of Section 2231 of the Revenue and Taxation Code.

APPENDIX A

Proposed Regulations Relating to
Extended Opportunity Programs and Services

CHAPTER 2.5. EXTENDED OPPORTUNITY PROGRAMS AND SERVICES

Article 1. General Provisions and Requirements

56200. Implementation.

This chapter implements, and should be read in conjunction with, Chapter 2, Article 8 (commencing with Section 69640), Part 42, Division 5, of the Education Code. The definitions in this article apply to the requirements of this chapter.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56201. Waiver.

The Chancellor is authorized to waive any part or all of Articles 3 and 5. Waiver requests must be submitted to the Chancellor in writing by the district superintendent/chancellor setting forth in detail the reasons for the request and ~~potential~~ the resulting problems caused if the request ~~is~~ were denied.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56202. Full-Time Student.

"Full-Time Student" means a student, who during a regular semester or quarter, is enrolled in a minimum of 12 credit units or the equivalent in community college courses. Full-time student for a summer or inter session shall be defined by the college district.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56204. Student Served.

For purposes of allocating EOPS funds, ~~and~~ conducting audits and evaluations, an EOPS student served is a person for whom, at minimum, the EOPS program has documentation in the student's file of an EOPS application, Educational Plan, and Mutual Responsibility Contract developed pursuant to Section 56222(c).

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56206. EOPS Information.

The Chancellor shall require districts receiving EOPS funds shall to provide information about students served and the level and type of programs and services each student received. ~~in accordance with requirements of the California Community Colleges Uniform Statewide Integrated Reporting System.~~

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56208. Advisory Committee.

Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The purpose of the advisory committee is to assist the college in developing and maintaining effective extended opportunity programs and services. The term of each committee member shall be for two years, July 1 to June 30 of the succeeding year. Members may serve more than one term. The committee shall consist of no fewer members than the members of the local Board of Trustees. Members shall serve without compensation. Members may be reimbursed for necessary expenses incurred in performing their duties. The advisory committee should include representation from college personnel, EOPS students, local or feeder high schools, community and business sectors, and four-year colleges where possible. The Advisory Committee and shall meet at least once during each academic year.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56210. Comparable Level of Services.

Beginning with the ~~1986-87~~ 1987-88 academic year and every year thereafter, ~~the plan shall provide that a college shall maintain the same dollar level of services supported with non-EOPS funds as was the average reported in its 1984-85 program plan.~~ final budget report in the previous three academic years. At a minimum, this amount shall equal the three-year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollments in the EOPS program decline.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

Article 2. Student Eligibility and Responsibility

56220. Eligibility for Programs and Services.

To receive programs and services authorized by this chapter, a student must: ~~meet all of the standards and conditions of this section.~~

(a) be a resident of California pursuant to the provisions of Part 41 commencing with Section 68000 of the Education Code.

(b) be enrolled full-time when accepted into the EOPS program. The EOPS director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units.

(c) not have completed more than 70 units of degree applicable credit coursework in any combination of post-secondary higher education institutions.

(d) qualify to receive a Board of Governors Grant pursuant to Section 58620(1) ~~and~~ or (2).

(e) be educationally disadvantaged as determined by the EOPS director or designee. In making that determination at least one or more of the following factors, at minimum, shall should be considered; the student has:

(1) not qualified at the college of attendance for enrollment into the minimum level English or mathematics course that is applicable to the associate degree.

(2) not have graduated from high school or obtained the General Education Diploma (G.E.D.).

(3) graduated from high school with a grade point average below ~~2.00~~ 2.50 on a 4.00 scale.

(4) been previously enrolled in remedial education.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56222. Student Responsibility.

To remain eligible to receive programs and services, students shall:

(a) apply for state and/or federal financial aid pursuant to the applicable rules and procedures of the college of attendance.

(b) maintain academic process progress towards a certificate, associate degree, or transfer goal pursuant to the academic standards established by the college of attendance applicable to all credit enrolled students.

(c) file an initial EOPS application, and, ~~with the guidance and follow-up of appropriate EOPS or other counseling and advisement staff,~~ complete and adhere to a student educational plan and an EOPS mutual responsibility contract for programs and services.

(d) within two months of acceptance into the EOPS program, provide income documentation from ~~appropriate~~ state or federal income tax forms, or public assistance documentation pursuant to Section 58620 (2) of this part, or other documentation as required for financial aid by the college of attendance.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56224. Eligibility for EOPS Financial Aid.

To receive EOPS financial aid a student shall:

(a) be eligible for and receive programs and services pursuant to Sections 56220 and 56222 above.

(b) demonstrate financial need according to the rules and procedures established for financial aid at the college of attendance.

(c) have need for EOPS financial aid in accordance with Sections 56252 and ~~56258~~ 56254 of this Chapter.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56226. Limitations on Eligibility.

A student who has met the eligibility requirements of Sections 56220 and 56222, and who participates without term-to-term interruption, shall continue to be eligible until the student:

(a) has completed 70 degree applicable credit units of instruction, or has completed consecutively six consecutive semester terms or nine quarter terms of enrollment. Time spent by the student enrolled in remedial courses, including remedial level English as a Second Language courses, shall not be included when computing the requirements of this sub-section. The EOPS Director may waive this limitation only in cases where students are enrolled in programs which require more than 70 units, or which require prerequisites that would exceed the limitations.

(b) has failed to meet the terms, conditions, and follow-up provisions of the student education plan and/or the EOPS mutual responsibility contract.

~~(c) has been determined to have provided false information concerning any provision of this Article pertaining to the determination of eligibility.~~

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56228. Grandfather Provision.

Eligible students who were eligible for served by EOPS prior to the effective date of this Article and who would otherwise become ineligible, shall continue to be eligible for one academic year after the effective date of this Article.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

Article 3. Program Standards

56230. Full-Time EOPS Director.

Each college receiving EOPS funds shall employ a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities. Colleges having less than full-time EOPS director positions may continue such positions upon approval of the Chancellor. The Chancellor shall consider the number of students served, the size of the EOPS staff and budget, and the scope and level of services offered when approving requests for less than full-time EOPS director positions.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56232. Outreach, Orientation, and Registration Services.

Each college receiving EOPS funds shall provide access services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:

(a) outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college.

(b) orientation to familiarize EOPS eligible students with: the location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology (e.g., grade points, units), course add and drop procedures and related rules; financial aid application procedures; and transfer procedures to four-year institutions.

(c) registration assistance for priority enrollment pursuant to Section 58108 of this Part.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56234. Assessments.

Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the ~~Chancellor~~ college president certifies ~~determines~~ are reliable, valid, and appropriate for students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum, include:

(a) course and placement tests in reading, comprehension, vocabulary, writing, and computations.

(b) diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.

(c) study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.

(d) support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extra-curricular pursuits).

(e) assessment instruments that are not culturally or linguistically biased.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56236. Counseling and Advisement.

~~Each college receiving EOPS funds shall provide professional academic, career, and personal counseling to EOPS eligible students which, at minimum, shall meet the following standards:~~

~~(a) counseling shall be provided in a ratio of 300 students to one full-time professional counselor.~~

~~(b) student role models shall be employed as counselor assistants and shall be trained and supervised by professional counselors to assist EOPS students to understand routine procedures, meet deadlines, understand printed college or EOPS program information, or perform other advisement services determined to be appropriate by professional counselors.~~

~~(c) counseling and advisement services shall provide for to EOPS-eligible three contact sessions for each EOPS student in each term as follows:~~
provide counseling and advisement to EOPS-eligible students of at least three contact sessions per term for each student as follows:

(1)(a) a contact session which combines interview and other interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.

(2)(b) an in-term contact session to ensure the student is succeeding adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success.

(3)(c) a term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS program or the college.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56238. Basic Skills Instruction and Tutoring Services.

Colleges receiving EOPS funds shall provide basic skills instruction and tutoring services to EOPS eligible students who, on the basis of assessments and counseling, need such services to succeed in reaching their educational goals.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56240. Transfer and Career Employment Services.

Colleges receiving EOPS funds shall provide assistance to EOPS eligible students to transfer to four-year institutions and/or to find career employment in their field of training. Appropriate college and EOPS staff shall attempt to articulate coursework and support services needed by EOPS students with four-year institutional staff, particularly four-year institutional staff who are responsible for programs and services that are similar to EOPS.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

Article 4. EOPS Financial Aid Standards

56252. Purpose.

Financial assistance in the form of EOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to EOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after Pell grants and other state, federal or institutional financial aid has been ~~packaged,~~ awarded to the student.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56254. EOPS Grants and Workstudy Awards.

(a) Grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.

(b) Workstudy awards shall not exceed \$1,800 per academic year, or the amount of a student's unmet need, whichever is less. Workstudy programs shall conform to ~~guidelines applicable to either federal or state workstudy programs, requirements.~~ However, contracts with private industry may be utilized to place EOPS workstudy students.

(c) No combination of EOPS grant and workstudy awards may exceed \$1,800 or exceed the amount of a student's unmet need, whichever is less in an academic year.

(d) EOPS grants shall be disbursed to each student equally among terms in the college academic year.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56256. Award Procedures.

(a) Financial aid offices shall package award and disburse EOPS grant and workstudy awards funds according to college procedures upon the authorization of the EOPS office, and shall receive an administrative allowance to Section 56295(e) of this Chapter.

(b) EOPS offices shall authorize EOPS grant and workstudy awards such that:

(1) Awards are distributed as evenly as possible between ~~state-defined~~ dependent and independent students.

(2) Priority ~~of~~ in awards is made given to dependent or independent students having the lowest family or personal incomes, respectively.

(c) EOPS offices may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56258. Emergency Loans.

EOPS programs may establish an emergency loan program for EOPS students to meet unexpected or untimely costs for books, college supplies, transportation and housing, subject to the following provisions:

(a) loans may not exceed \$300 in a single academic year and must be repaid within the academic year in which the loan was made.

(b) loan funds shall be held in a separate account established by the district for that purpose; collected funds and interest earned shall be credited to the loan account and all loan funds may be carried over fiscal years for the life of the loan program.

(c) the total amount held for the loan program may not exceed three times the amount originally set aside to establish the program. Amounts in excess of this limit, or the total amount held when the program is terminated, shall be returned to the Chancellor.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

Article 5. Staffing Standards

56260. Staff.

EOPS shall be provided by certificated directors, instructors and counselors and other support staff approved by the governing board of the community college district. All staff funded by EOPS who are not supervised by the EOPS Director shall ~~work at the direction of, and be accountable to, the EOPS Director~~ for the services rendered to EOPS students pursuant to the approved EOPS program plan.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56262. Director Qualifications.

(a) The EOPS Director must possess a Community College Supervisor Credential.

(b) An EOPS Director hired after the effective date of this Article must have, within the last four years, two years of full-time experience or the equivalent:

(1) in the management or administration of educational programs, community organizations, government programs, or private industry in which the applicant dealt predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages or,

(2) as a community college EOPS counselor or EOPS instructor, or have comparable experience in working with disadvantaged clientele.

(c) shall have completed a minimum of six units of college-level course work predominantly relating to ethnic minorities or persons handicapped by educational, language, or social disadvantages.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56264. Counselor Qualifications.

(a) EOPS "Counselors" are those persons designated by the community college to serve as certificated counselors in the EOPS program and must possess a Community College Counselor Credential and,

(b) EOPS counselors hired after the effective date of this Article shall:

(1) have completed a minimum of nine semester units of college course work predominantly relating to ethnic minorities or persons handicapped by language, social or economic disadvantages or,

(2) have completed six semester units or equivalent of a college-level counseling practicum or counseling field work courses in a community college EOPS program, or in a program dealing predominantly with ethnic minorities or persons handicapped by language, social or economic disadvantages and,

(c) have two years of occupational experience in work relating to ethnic minorities or persons handicapped by language, social or economic disadvantages.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

Article 6. Plans and Priorities

56270. Contract Plan.

Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of this ~~Article~~ Chapter for each college within the district which intends to conduct an EOPS program. A college plan approved by the Chancellor shall constitute a contract ~~with~~ between the district which operates the college, and the Chancellor. Changes

to the program plan may be made only with the prior written approval of the Chancellor.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56272. Outline.

Each plan shall address the following:

(a) the long-term goals of the EOPS program in supporting the goals of the college and the goals adopted for EOPS by the Board of Governors.

(b) the objectives of the EOPS program to be attained in the fiscal year for which EOPS funds are allocated.

(c) the activities to be undertaken to achieve the objectives, including how the college plans to meet the standards set forth in Articles 3, 4, and 5 of this Chapter.

(d) an operating budget which indicates the planned expenditures of EOPS funds, and of other district funds to be used to finance EOPS activities.

(e) the number of students to be served.

(f) an evaluation of the results achieved in the prior year of funding.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56274. Deadlines.

The Chancellor's Office shall annually establish a final date for the submission of EOPS plans and shall notify districts of this date and distribute the forms for the submission of the plan not less than 90 days prior to that date. Applications and plans received after that date shall be returned to the applying district without evaluation or consideration.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56276. Review and Approval of District Plans.

All plans and requests for funding submitted on or before the deadline shall be reviewed and evaluated by the Chancellor. The Chancellor shall approve plans for funding in whole or in part.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56278. Program Evaluation by the Chancellor.

Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation shall may include on-site operational reviews, audits, and measurements of student success in achieving their educational objectives.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56280. Priorities in Serving Students.

Each plan shall incorporate the priorities of this Section in the order presented when serving students from among those who are eligible pursuant to Section 56220. The purpose of these priorities is to ensure that colleges strive to achieve and maintain a racial, ethnic, and gender composition among income eligible students served which matches the racial, ethnic, and gender composition by income group of eighteen years and above who reside in the college service area.

(a) priority in outreach and recruitment services shall be directed towards correcting the greatest underrepresentation among students served. Additional priority among underrepresented students shall be given to serving individuals who are the first in their family to attend college.

(b) priority in serving students enrolled at the college shall be:

- (1) serving continuing EOPS students with the lowest income.
- (2) serving continuing EOPS students with the lowest income who are transferring from another EOPS program conducted by a community college.
- (3) serving first-time EOPS students with the lowest income.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

Article 7. Funding and Expenditures

56290. Income and Expenditure Accountability.

In accordance with the California Community College Budget and Accounting Manual, districts shall maintain separate accounts for monies provided for, and expended in, support of EOPS activities, by specific line item.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56291. Allocations.

The Board of Governors shall annually adopt an EOPS Allocation Formula which includes as elements the number of EOPS-eligible students, the number of students served and the funds available. The Chancellor shall annually allocate EOPS funds to colleges within districts in accordance with the EOPS Allocation Formula as adopted by the Board of Governors.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56292. Adjustment To Allocations.

The Chancellor may adjust the allocation to any college during a fiscal year for one or more of the following reasons:

- (a) to correct over or under allocated amounts in any of the three prior fiscal years.
- (b) to correct for over or under utilization of allocated amounts in the current fiscal year.
- ~~(c) to correct for over or under allocated amounts based upon the results of audits or the return of unexpended funds.~~

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56293. District Fiscal Responsibility and Contribution.

Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide to EOPS students who need them the same programs and services the college offers to all of its credit enrolled students. The district fiscal responsibility is to fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. The district contribution is the amount expended above the district fiscal responsibility, exclusive of EOPS supplemental costs, to support EOPS activities, and shall, at minimum, consist of the salary and benefits of the EOPS Director position. ~~The Chancellor may waive the EOPS Director cost upon written request of the district superintendent/chancellor detailing the reasons for the request and the consequences if denied.~~ Districts accepting EOPS funds will be required to pay the salary of the EOPS director at the rate of at least 50% of salary and benefits for 1987-88 and 100% of salary and benefits for 1988-89 and every year thereafter.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56294. EOPS Supplemental Costs.

Colleges shall expend EOPS funds only for programs and services which are over, above, and in addition to the district fiscal responsibility, ~~plus an administrative allowance of up to 8% of the college EOPS allocation. Such allowance shall be granted to colleges which meet the minimum district contribution.~~

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56295. Expenditures Allowed.

(a) Colleges may expend EOPS funds to meet the EOPS supplemental costs as defined in Section 56294 for all personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-6000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less.

(b) Requests to purchase computer hardware and/or software shall be approved by the district ~~data processing manager~~ superintendent/president prior to transmittal for approval by the Chancellor.

~~(c) The EOPS administrative allowance shall be allocated only to college service sites serving EOPS students as prescribed by the EOPS office and which claim EOPS supplemental costs for the EOPS students served. The amount allocated shall be expended to augment on-site operations only. Allocated amounts shall be calculated by computing the EOPS supplemental cost of serving EOPS students as a percent of the site's total operating cost, and multiplying that percent by the administrative cost of the site. If EOPS allowance funds are not adequate to meet the full cost of such calculations, priority shall go first to the college's financial aid office, tutoring program, and counseling program, in that order.~~

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56296. Expenditures Not Allowed.

EOPS funds shall not be expended for the following: ~~Except for items (a) through (c), waivers may be approved by the Chancellor on a case-by-case basis.~~

(a) college administrative support costs (e.g., staff of the business office, bookstore, reproduction, staff at the all-titled deans salary level or their equivalent and above).

(b) indirect costs (e.g., heat, lights, power, janitorial service).

(c) political or professional association ~~activities~~, dues and/or contributions.

(d) costs of furniture (chairs, desks, coat hangers, etc.)

(e) costs of construction, remodeling, renovation, or vehicles.

(f) travel costs ~~(except for EOPS staff and students other than travel costs of EOPS staff and students for EOPS activities or functions).~~

Except for items (a) through (c) above, waivers may be approved by the Chancellor on a case-by-case basis.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56297. Special Projects and Incentives.

(a) The Chancellor may allocate funds for special projects which seek to benefit the statewide, regional, or local conduct of EOPS programs, provided that no special project duplicates college or EOPS activities.

(b) Criteria and procedures for the selection and approval of special projects shall be recommended by the advisory committee established pursuant to Section 69643 of the Education Code.

(c) Funding for special projects shall consist of amounts set aside for this purpose in the Governor's Budget. The Chancellor may redirect funds released pursuant to Section ~~56292~~ 56292 to fund additional special projects.

(d) Colleges which demonstrate outstanding effectiveness based upon evaluations conducted pursuant to Section 56278 of this Chapter shall receive priority consideration for use of special project funds or other funds which may be released pursuant to Section 56292.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

56298. EOPS Financial Aid Restriction.

In each fiscal year the colleges shall expend for EOPS grants and workstudy an amount equal to that expended in the prior fiscal year, unless waived by the Chancellor, for the following reasons:

- (a) to establish a book service program.
- (b) the college allocation was corrected pursuant to Section 56292.
- (c) to meet the requirements of Article 3.

NOTE: Authority cited: Sections 69648, 69648.5 and 71020, Education Code.
Reference: Sections 69640 through 69655, Education Code.

EXPLANATION OF CHANGES FROM REGULATIONS AS ORIGINALLY
NOTICED

The following sections of Title 5 were changed from the original version which was filed with the Office of Administrative Law on May 23, 1986. The majority of changes were made upon the recommendation of legal counsel who felt that much of the language required minor changes in order to make it acceptable. Other changes more substantive in nature are a result of both legal counsel and field input. We have attempted to identify below these changes to the regulations as staff, staff and field, and field changes. We have listed only the regulations which were modified in some manner.

Article 1. General Provisions and Requirements

56201. Waiver.

The Chancellor is authorized to waive any of the requirements of Articles 3 and 5. Waiver requests must be submitted to the Chancellor in writing by the district superintendent/chancellor setting forth in detail the reasons for the request and ~~potential~~ the resulting problems caused if the request ~~is~~ were denied.

Reason for Modification

The language was changed from the original version in order to avoid ambiguity.

56204. Student Served.

For purposes of allocating EOPS funds, and conducting audits and evaluations, an EOPS student served is a person for whom, at minimum, the EOPS program has documentation in the student's file of an EOPS application, Educational Plan, and Mutual Responsibility Contract developed pursuant to Section 56222 (c).

Reason for Modification

The term evaluation was added to indicate that conducting an evaluation is a separate and distinct activity and should not to be confused with an audit. In addition, when conducting evaluations, the services that students received will be reviewed

56206. EOPS Information.

The Chancellor shall require districts receiving EOPS funds shall to provide information about students served and the level and type of programs and services each student received. ~~in accordance with requirements of the California Community Colleges Uniform Statewide Integrated Reporting System.~~

Reason for Modification

To identify the person who has the authority to require information.

56208. Advisory Committee.

Each EOPS program shall have an Advisory Committee appointed by the president of the college upon recommendation of the EOPS Director. The purpose of the advisory committee is to assist the college in developing and maintaining effective extended opportunity programs and services. The term of each committee member shall be for two years, July 1 to June 30 of the succeeding year. Members may serve more than one term. The committee shall consist of no fewer members than the members of the local Board of Trustees. Members shall serve without compensation. Members may be reimbursed for necessary expenses incurred in performing their duties. The advisory committee should include representation from college personnel, EOPS students, local or feeder high schools, community and business sectors, and four-year colleges where possible. The Advisory Committee and shall meet at least once during each academic year.

Reason for Modification

Staff felt that the addition was needed to eliminate any ambiguity.

56210. Comparable Level of Services.

Beginning with the ~~1986-87~~ 1987-88 academic year and every year thereafter, ~~the plan shall provide that a~~ college shall maintain the same dollar level of services supported with non-EOPS funds as was the average reported in its ~~1984-85 program plan,~~ final budget report in the previous three academic years. At a minimum, this amount shall equal the three-year average or 15% of the average EOPS allocation to that college for the same three base years, whichever is greater. The Chancellor may approve reductions in the required amount if enrollment in the EOPS program decline.

Reason for Modification

Testimony that was given vigorously opposed this requirement. However, the Statutory Advisory Committee (created pursuant to ED Code Section 69643) which serves as the advisory body to the Board of Governors, reviewed Ed Code Section 69651 and developed the language above to identify the term supplant as expenditures made over a specific period of time. The statutory basis needed additional explanation. The Board's advisory committee essentially agreed with some of the objections. Nonetheless, cognizant that the requirement and a recommendation to the Board on how to implement it was necessary, the Board's Advisory Committee recommended that the amount of spending a college must maintain be either the average dollar level of services supported with non-EOPS funds as reported for the past three years or 15 percent of the average EOPS allocation to the college for that same three year

period, the amount to be determined by whichever is greater. In addition, the Advisory Committee recognized that falling EOPS student participation should justify some reduction in the required level of maintenance of effort, and recommended the development of a mechanism for adjustments. The Board agreed with this position which was in part recommended by several people who testified before the Advisory Committee.

Article 2. Student Eligibility and Responsibility

56220. Eligibility for Programs and Services.

To receive programs and services authorized by this chapter, a student must: ~~meet all of the standards and conditions of this section.~~

(a) be a resident of California pursuant to the provisions of Part 41 commencing with Section 68000 of the Education Code.

(b) be enrolled full-time when accepted into the EOPS program. The EOPS director may authorize up to 10% of EOPS students accepted to be enrolled for 9 units.

(c) not have completed more than 70 units of degree applicable credit course work in any combination of post-secondary higher education institutions.

(d) qualify to receive a Board of Governors Grant pursuant to Section 58620 (1) and or (2).

(e) be educationally disadvantaged as determined by the EOPS director or designee. In making that determination at least one or more of the following factors, at minimum, shall should be considered; the student has:

(1) not qualified at the college of attendance for enrollment into the minimum level English or mathematics course that is applicable to the associate degree.

(2) not have graduated from high school or obtained the General Education Diploma (G.E.D.).

(3) graduated from high school with a grade point average below ~~2.00~~ 2.50 on a 4.00 scale.

(4) previous enrollment in remedial education.

Reason for Modification

This section was modified based on testimony regarding the lack of flexibility Directors could exercise when selecting students for the EOPS program. The changes were incorporated to allow some subjectivity into the selection process. Most Director's felt that a human factor was needed unless the regulations covered every educationally disadvantaged criteria that could be thought of.

56222. Student Responsibility.

To remain eligible to receive programs and services, students shall:

(a) apply for state and/or federal financial aid pursuant to the applicable rules and procedures of the college of attendance.

(b) maintain academic ~~prereqs~~ progress towards a certificate, associate degree, or transfer goal pursuant to the academic standards established by the college of attendance applicable to

all credit enrolled students.

(c) file an initial EOPS application, and ~~with the guidance and follow-up of appropriate EOPS or other counseling and advisement staff,~~ complete and adhere to a student educational plan and an EOPS mutual responsibility contract for programs and services.

(d) within two months of acceptance into the EOPS program, provide income documentation from appropriate state or federal income tax forms, or public assistance documentation pursuant to Section 58620 (2) of this part, or other documentation as required for financial aid by the college of attendance.

Reason for Modification

The first change was made to correct a typographical error. The second change was made because the student does not determine the follow up procedures or who provides those services. It was felt that because of this, the statement was inappropriate for a regulation on student responsibility.

56224. Eligibility for EOPS Financial Aid.

To receive EOPS financial aid a student shall:

(a) be eligible for and receive programs and services pursuant to Sections 56220 and 56222 above.

(b) demonstrate financial need according to the rules and procedures established for financial aid at the college of attendance.

(c) have need for EOPS financial aid in accordance with Sections 56252 and ~~56258~~ 56254 of this Chapter.

Reason for Modification

This change was made to correct a typographical error.

56226. Limitations on Eligibility.

A student who has met the eligibility requirements of Sections 56220 and 56222, and who participates without term-to-term interruption, shall continue to be eligible until the student:

(a) has completed 70 degree applicable credit units of instruction, or, has completed consecutively ~~consecutive~~ six semester terms or nine quarter terms of enrollment. Time spent by the student enrolled in remedial courses, including remedial level English as a Second Language courses, shall not be included when computing the requirements of this sub-section. The EOPS Director may waive this limitation only in cases where students are enrolled in programs which require more than 70 units, or which require prerequisites that would exceed the limitations.

(b) has failed to meet the terms, conditions, and follow-up provisions of the student education plan and/or the EOPS mutual responsibility contract.

~~(c) has been determined to have provided false information concerning any provision of this Article pertaining to the determination of eligibility.~~

Reason for Modification

This change was made to correct any ambiguity in the meaning of this regulation.

56228. Grandfather Provision.

Eligible students who were ~~eligible for~~ served by EOPS prior to the effective date of this Article and who would otherwise become ineligible, shall continue to be eligible for one academic year after the effective date of this Article.

Reason for Modification

This change was made to correct the problem of eligible students continuing to be eligible for services one year after the effective date of these regulations. It was called to our attention by EOPS Directors that we should only extend the grandfather provision to those students who had been served. We agreed and made the change.

Article 3. Program Standards

56230. Full-Time EOPS Director.

Each college receiving EOPS funds shall employ a full-time EOPS director to directly manage and/or coordinate the daily operation of the programs and services offered, and to supervise and/or coordinate the staff assigned to perform EOPS activities. Colleges having less than full-time EOPS director positions may continue such positions upon approval of the Chancellor. The Chancellor shall consider the number of students served, the size of the EOPS staff and budget, and the scope and level of services offered when approving requests for less than full-time EOPS director positions.

Reason for Modification

The words "staff and" were added to include the size of the staff in the program as an additional criteria for use in determining whether a waiver should be granted. This change recognizes that the size of a programs budget does not necessarily indicate that there is a large supportive staff which needs to be managed. This could be used as a strong argument for not having a full time Director.

56232. Outreach, Orientation, and Registration Services.

Each college receiving EOPS funds shall provide access services to identify EOPS eligible students and facilitate their enrollment in the college. Access services shall include at minimum:

(a) outreach and recruitment to increase the number of potential EOPS eligible students who enroll at the college.

(b) orientation to familiarize EOPS eligible students with: The location and function of college and EOPS programs and services; the college catalog, application, and registration process, with emphasis on academic and grading standards, college terminology (e.g., grade points, units), course add and drop procedures and related rules; financial aid application procedures; and transfer procedures to four-year institutions.

(c) registration assistance for priority enrollment pursuant to Section 58108 of this Part.

Reason for Modification

The word "potential" was added because outreach and recruitment efforts cannot be geared to EOPS eligible students in all cases. Without the word potential, this section would not allow the recruitment of students who were not currently enrolled in college.

56234. Assessments.

Each college receiving EOPS funds shall assess EOPS eligible students using instruments and methods which the ~~Chancellor~~ college president certifies determines are reliable, valid, and appropriate for students being assessed and for the purpose of the assessment. All assessment results which make use of standardized scoring shall be explained and interpreted to EOPS students by counselors trained in the use and meaning of such assessments. Assessments shall, at minimum, include:

(a) course placement tests in reading, comprehension, vocabulary, writing, and computations.

(b) diagnostic tests to determine the specific academic skill deficiencies in areas in which placement tests indicate that the student has a low probability of success in degree applicable courses as defined by college policies.

(c) study skill assessment which determines how well the student is able to take lecture notes, outline written material, use library services, and use effective study techniques.

(d) support service assessment which determines what services the student may need to attend regularly and participate in campus life (such as the need for financial aid, child care, part-time employment, or extra-curricular pursuits).

(e) attempts should be made to utilize assessment instruments that are culturally and linguistically unbiased.

Reason for Modification

This section was modified to allow for flexibility in the certification of assessment instruments. It was pointed out that because of the diversity among the colleges in their location, student bodies, and funding levels, it would be more appropriate to have the college president certifying the reliability than the Chancellor. On the other hand, it was also felt by staff and some EOPS Directors that the assessment instruments should be unbiased culturally and linguistically. The addition of (e) above will allow programs to see if such instruments exist and if they do there will be an impetus to use them.

56236. Counseling and Advisement.

Each college receiving EOPS funds shall ~~provide professional academic, career, and personal counseling to EOPS eligible students which, at minimum, shall meet the following standards:~~

~~(a) counseling shall be provided in a ratio of 300 students to one~~

~~full-time professional counselor,~~

~~-(b) student role models shall should be employed as counselor assistants and shall should be trained and supervised by professional counselors to assist EOPS students to understand routine procedures, meet deadlines, understand printed college or EOPS program information, or perform other advisement services determined to be appropriate by professional counselors.~~

~~-(c) counseling and advisement services shall provide for three contact sessions for each EOPS student in each term as follows: provide counseling and advisement to EOPS eligible students of at least three contact sessions per term for each student as follows:~~

~~(1) (a) a contact session which combines interview and other interpretation of assessment results to prepare a student educational plan and a mutual responsibility contract specifying what programs and services the student shall receive and what the student is expected to accomplish.~~

~~(2) (b) an in-term contact session to insure the student is succeeding adequately, that programs and services are being provided effectively, and to plan changes as may be needed to enhance student success.~~

~~(3) (c) a term-end or program exit contact session to assess the success of students in reaching the objectives of that term, the success of the programs and services provided in meeting student needs, and to assist students to prepare for the next term of classes, or to make future plans if students are leaving the EOPS program or the college.~~

Reason for Modification

This section has major modification and requires a more extensive response. This issue at one point was perhaps the most controversial of all the regulations. The issue drew criticism from everyone. EOPS staff at the colleges argued for a lower ratio, while chief executive officers and other argued to delete the requirement entirely because it would be too costly, would not guarantee counseling, and furthermore, was unnecessary since other regulations were sufficiently specific on counseling requirements.

The Board and the Board's Advisory Committee were sensitive to all of these viewpoints. After considerable deliberation, the Advisory Committee concluded that, as a practical matter, higher risk students should be served by a lower ratio, but that allowance for flexibility is needed. Consequently, the Committee recommended that a 200 to 1 ratio "should" (rather than "shall") be achieved, and felt that monitoring and evaluation of this objective combined with other counseling requirements should precede a Board mandate on the question of the ratios. The Chancellor recommended that the Board adopt, as part of its resolution concerning the proposed regulations, a statement about the 200 to 1 ratio, rather than adopting this ratio as part of the regulations.

The regulation was then modified to its present form because the Advisory Committee and members of the EOPS community could not make a change of this type to strengthen the regulation without

consulting with all affected parties. This process would have delayed the regulations and it was felt that overall it would be best to proceed with them in their current form.

Article 4. EOPS Financial Aid Standards

56252. Purpose.

Financial assistance in the form of EOPS grants and workstudy shall be awarded in accordance with the provisions of this Article to EOPS eligible students for the purpose of reducing potential student loan indebtedness, or to reduce unmet financial need, after PELL grants and other state, federal, or institutional financial aid has been ~~packaged~~ for the student.

Reason for Modification

To identify who was being served by this regulation. The word "awarded" has more meaning than the word "packaged".

56254. EOPS Grants and Workstudy Awards.

(a) grants may be awarded in an amount not to exceed \$900 per academic year, or the amount of a student's unmet need, whichever is less.

(b) workstudy awards shall not exceed \$1,800 per academic year, or the amount of a student's unmet need, whichever is less. Workstudy programs shall conform to ~~guidelines-applicable-to either~~ federal or state workstudy programs, ~~requirements. except that~~ However, contracts with private industry may be utilized to place EOPS workstudy students.

(c) no combination of EOPS grant and workstudy awards may exceed \$1,800 or exceed the amount of a student's unmet need, whichever is less in an academic year.

(d) EOPS grants shall be disbursed to each student equally among terms in the college academic year.

Reason for Modification

The words "guidelines applicable to" was changed to "either" to clarify the intent and to insure that the reader understood that these were requirements and not guidelines.

The words "to each student" were added to indicate for whom this regulation was to apply and to eliminate ambiguity.

56256. Award Procedures.

(a) financial aid offices shall ~~package award~~ and disburse EOPS grant and workstudy awards ~~funds~~ according to college procedures upon the authorization of the EOPS office ~~and shall receive an administrative allowance pursuant to Section 56295-(e)-of-this Chapter.~~

(b) EOPS offices shall authorize EOPS grant and workstudy awards such that:

(1) Awards are distributed as evenly as possible between state defined dependent and independent students.

Testimony received from the field opposed giving data process managers the authority to approve of computer purchases when this actually was the responsibility of the Superintendent/President. staff agreed and made the change.

The second part of this section which has been deleted was based on the reason for modification in section 56294 above.

56296. Expenditures Not Allowed.

~~EOPS funds shall not be expended for the following: Except for items (a) through (e), waivers may be approved by the Chancellor on a case-by-case basis.~~

(a) college administrative support costs (e.g., staff of the college business office, bookstore, reproduction, staff at the all titled deans salary level or their equivalent and above).

(b) indirect costs (e.g., heat, lights, power, janitorial service).

(c) political or professional association activities, dues and/or contributions.

(d) costs of furniture (chairs, desks, coat hangers, etc.)

(e) costs of construction, remodeling, renovation, or vehicles.

(f) travel costs of EOPS staff and students for EOPS activities or functions. Except for items (a) through (c) above, waivers may be approved by the Chancellor on a case-by-case basis.

Reason for Modification

The language was changed to make the regulation clear as to intent. Other changes were made to improve sentence structure.

56297. Special Projects and Incentives.

(a) the Chancellor may allocate funds for special projects which seek to benefit the statewide, regional, or local conduct of EOPS programs, provided that no special project duplicates college or EOPS activities.

(b) criteria and procedures for the selection and approval of special projects shall be recommended by the advisory committee established pursuant to Section 69643 of the Education Code.

(c) funding for special projects shall consist of amounts set aside for this purpose in the Governor's Budget. The Chancellor may redirect funds released pursuant to Section ~~56282~~ 56292 to fund additional special projects.

(d) colleges which demonstrate outstanding effectiveness based upon evaluations conducted pursuant to Section 56278 of this Chapter shall receive priority consideration for use of special project funds or other funds which may be released pursuant to Section 56292.

Reason for Modification

This change was made because staff transposed a number and referenced the wrong regulation.

required to pay the salary of the EOPS director at the rate of at least 50% of salary and benefits for 1987-88 and 100% of salary and benefits for 1988-89 and every year thereafter.

Reason for Modification

This change was made after testimony argued that this requirement would increase local cost, and since EOPS is a supplemental program, so also should the supplemental cost of the director be charged to EOPS. Testimony recommended either a phase-in of this provision or a simple local match requirement.

The Board's Advisory Committee concluded this testimony had sufficient merit to alter its recommendation to phase-in the requirement as indicated in the regulation.

56294. EOPS Supplemental Costs.

Colleges shall expend EOPS funds only for programs and services which are over, above, and in addition to the district fiscal responsibility. ~~plus an administrative allowance of up to 8% of the college EOPS allocation. Such allowance shall be granted to colleges which meet the minimum district contribution.~~

Reason for Modification

This provision was deleted on the grounds such cost were not justified and were in violation of Education Code Section 69651. This section prohibits supplanting with EOPS funds expenses for EOPS which are currently funded with district contribution.

56295. Expenditures Allowed.

(a) Colleges may expend EOPS funds to meet the EOPS supplemental costs as defined in Section 56294 for all personnel and other expenses approved in the EOPS annual plan. Expenditures for other expenses in object categories 4000-7000 (except for EOPS financial aid) in the Budget and Accounting Manual shall not exceed 10% of the EOPS allocation or \$50,000, whichever is less.

(b) Requests to purchase computer hardware and/or software shall be approved by the district ~~data-processing manager~~ Superintendent/President prior to transmittal for approval by the Chancellor.

~~(c) The EOPS administrative allowance shall be allocated only to college service sites serving EOPS students as prescribed by the EOPS office and which claim EOPS supplemental costs for the EOPS students served. The amount allocated shall be expended to augment on-site operations only. Allocated amounts shall be calculated by computing the EOPS supplemental cost of serving EOPS students as a percent of the site's total operating cost, and multiplying that percent by the administrative cost of the site. If EOPS allowance funds are not adequate to meet the full cost of such calculations, priority shall go first to the college's financial aid office, tutoring program, and counseling program, in that order.~~

Reason for Modification

student success in achieving their educational objectives.

Reason for Modification

This change was made to exemplify but not mandate the elements of the annual review. Although the Chancellor may perform each element each year, he or she is not required to do so.

Article 7 Funding and Expenditures

56290. Income and Expenditure Accountability.

In accordance with the California Community College Budget and Accounting Manual, districts shall maintain separately account for moneys provided for, and expended in, support of EOPS activities, by specific line item.

Reason for Modification

This section was modified for clarity. The comments were that most colleges do this already.

56291. Allocations.

The Board of Governors shall annually adopt an EOPS Allocation Formula which includes as elements the number of EOPS-eligible student, the number of students served and the funds available. The Chancellor shall annually allocate EOPS funds to colleges within districts in accordance with the EOPS Allocation Formula as adopted by the Board of Governors.

Reason for Modification

This change was made to identify the allocation formula as one formally adopted each year to insure that college and program concerns were always before the Board.

56293. District Fiscal Responsibility and Contribution.

Districts shall insure that colleges under their jurisdiction conducting EOPS programs provide to EOPS students who need them the same programs and services the college offers to all of its credit enrolled students. The district fiscal responsibility is to fund the cost of such programs and services from resources available to it, except EOPS funds, at a rate per EOPS student that is at least equal to the average cost per student served (including EOPS students) in these programs and services. The district contribution is the amount expended above the district fiscal responsibility, exclusive of EOPS supplemental costs, to support EOPS activities, and shall, at minimum, consist of the salary and benefits of the EOPS Director position. ~~The Chancellor may waive the EOPS Director cost upon written request of the district superintendent, chancellor detailing the reasons for the request and the consequences if denied.~~ Districts accepting EOPS funds will be

(2) priority of in awards is ~~made~~ given to dependent or independent students having the lowest family or personal incomes, respectively.

(c) EOPS offices may authorize an EOPS grant to reduce packaged student employment awards on a case by case basis.

Reason for Modification

Several terms were changed in this section so that the reader would understand the meaning better. The reference to "administrative allowance" was deleted as were all references to this term through out the document. A more complete explanation can be found under section 56294.

Article 5. Staffing Standards

56260. Staff.

EOPS shall be provided by certificated directors, instructors and counselors and other support staff approved by the governing board of the community college district. All staff funded by EOPS who are not supervised by the EOPS Director shall work at the direction of, and be accountable to, the EOPS Director, for the services rendered to EOPS students pursuant to the approved EOPS program plan.

Reason for Modification

There was some controversy involved with this regulation which centered on the supervisory responsibility of the EOPS Director. The changes were made by staff in order to clarify the Director's role in supervision. Many programs have employees working in areas which are not immediately located in or near the office.

Article 6. Plans and Priorities

56270. Contract Plan.

Districts wishing to participate in EOPS shall submit for approval by the Chancellor a plan which conforms to the provisions of this ~~Article~~ Chapter for each college within the district which intends to conduct an EOPS program. A college plan approved by the Chancellor shall constitute a contract with between the district which operates the college, and the Chancellor. Changes to the program plan may be made only with the prior written approval of the Chancellor.

Reason for Modification

These changes were made for clarity and identify the Chancellor as the second party in the contract.

56278. Program Evaluation by the Chancellor.

Each college having an approved plan shall participate annually in an evaluation of the effectiveness of the program which shall be conducted by the Chancellor. The annual evaluation ~~shall~~ may include on-site operational reviews, audits, and measurements of



CALIFORNIA BALLOT PAMPHLET



SPECIAL STATEWIDE ELECTION NOVEMBER 6, 1979

COMPILED BY MARCH FONG EU • SECRETARY OF STATE
ANALYSES BY WILLIAM G. HAMM • LEGISLATIVE ANALYST

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 12 y 13. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a lo menos el día 30 de octubre de 1979.

NOTICE

A Spanish translation of this ballot pamphlet may be obtained by completing and returning the postage-paid card which you will find between pages 12 and 13. Please PRINT your name and mailing address on the card and return it no later than October 30, 1979.



Secretary of State

SACRAMENTO 95814

Estimados Californianos:

Esta es la versión en inglés del folleto de la balota de California para la Elección Especial Estatal del 6 de noviembre de 1979. Contiene el título de la balota, un breve resumen, el análisis del Analista Legislativo, los razonamientos a favor y en contra y las refutaciones y el texto completo de cada proposición. También contiene el voto legislativo depositado a favor y en contra de todo proyecto de ley propuesto por la legislatura.

Con objeto de reducir los pasos innecesarios asociados con la distribución de este folleto y para evitar demoras indebidas en el tiempo necesario para que usted lo reciba, la oficina de la Secretaria del Estado lo esta enviando directamente a los votantes registrados 60 días antes de la elección. Los funcionarios electorales de los condados enviarán los folletos a votantes registrados entre los 59 y los 29 días antes de la elección.

Si usted desea recibir un folleto de la balota en español, simplemente complete y envíe la tarjeta adjunta entre las páginas 12 y 13 de este folleto. No se necesitan estampillas.

Lea cuidadosamente cada uno de los proyectos de ley y la información respecto a los mismos contenidos en este folleto. Las proposiciones legislativas y las iniciativas patrocinadas por ciudadanos estan diseñadas específicamente para darle a usted, el votante, la oportunidad de influir las leyes que nos gobiernan a todos.

Aproveche esta oportunidad y vote el 6 de noviembre de 1979.

March Fong Eu

MARCH FONG EU
Secretaria del Estado



Secretary of State

SACRAMENTO 95814

Dear Californians:

This is the English version of the California ballot pamphlet for the November 6, 1979, Special Statewide Election. It contains the ballot title, short summary, the Legislative Analyst's analysis, the pro and con arguments and rebuttals, and the complete text of each proposition. It also contains the legislative vote cast for and against any measure proposed by the Legislature.

To reduce unnecessary steps associated with the distribution of this pamphlet and to avoid any undue delays in the amount of time it takes to reach you, pamphlets are being mailed directly by the Secretary of State's office to voters registered 60 days before the election. County election officials will mail pamphlets to voters registered between the 59th and 29th days before the election.

If you wish to receive a Spanish language ballot pamphlet, simply fill out and mail the card enclosed between pages 12 and 13 of this pamphlet. No postage is needed.

Read carefully each of the measures and the information about them contained in this pamphlet. Legislative propositions and citizen-sponsored initiatives are designed specifically to give you, the electorate, the opportunity to influence the laws which regulate us all.

Take advantage of this opportunity and vote on November 6, 1979.

March Fong Eu
MARCH FONG EU
Secretary of State

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School Assignment and Transportation of Pupils

Official Title and Summary Prepared by the Attorney General

SCHOOL ASSIGNMENT AND TRANSPORTATION OF PUPILS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends Section 7(a) of Article I of the Constitution to provide that nothing in the California Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the United States Constitution with respect to the use of pupil school assignment or transportation. Provides for modification of existing judgments, decrees, writs or other court orders to conform to the provisions of this subdivision. Provides that governing boards of school districts may voluntarily continue or commence a school integration plan. Financial impact: Indeterminable. Potential savings if school districts elect to reduce or eliminate pupil transportation or assignment programs as a result of this measure.

FINAL VOTE CAST BY LEGISLATURE ON SCA 2 (PROPOSITION 1)

Assembly—Ayes, 62
Noes, 17

Senate—Ayes, 28
Noes, 6

Analysis by Legislative Analyst

Background:

The U.S. Supreme Court has interpreted the U.S. Constitution to require public school desegregation only when the segregation was caused by government action with a discriminatory intent. The California Supreme Court has interpreted the State Constitution to require that public school segregation be alleviated regardless of what caused the segregation. Thus, the State Constitution now requires public school desegregation in cases where the U.S. Constitution does not.

Currently, there are many California school districts which are providing pupil transportation and/or assigning pupils to schools outside of their immediate neighborhoods in order to alleviate segregation. Other school districts are currently involved in court actions concerning desegregation, and still others could become involved in court actions at some time in the future.

Some school districts have started desegregation plans because of federal court orders or because of agreements with the U.S. Office of Civil Rights. Other school districts are carrying out desegregation plans because of California court decisions. A third group of school districts is implementing desegregation plans on a voluntary basis.

Proposal:

This proposition would limit the power of California courts to require desegregation. Specifically, desegregation could be required only in cases where the U.S. Constitution would require it. As a result, the proposition could affect 13 school districts which now have desegregation plans ordered or approved by a California court plus other school districts that are involved or could become involved in desegregation actions before California courts.

This measure has four major provisions. First, it would require California courts to follow applicable

federal court decisions when deciding if changes in pupil school assignment or pupil transportation are required to alleviate segregation. Consequently, if a California school district is found to have segregation for reasons other than government action with a discriminatory intent, the proposition would prohibit a California court from ordering the school district to start a pupil school assignment or pupil transportation desegregation plan.

Second, the proposition would make past California court decisions requiring desegregation through changes in pupil school assignment or pupil transportation subject to court review using the same standards applicable to the federal courts. Any person could request a court to review its prior decision that resulted in a pupil school assignment or pupil transportation plan. The court would then have to reconsider its prior decision, and if necessary issue a new ruling based upon the California Constitution as amended by this proposition.

Third, the proposition would require California courts that are asked to review their prior decisions to give first priority to such a review relative to other civil cases.

Fourth, public schools would be allowed to continue current desegregation plans and start new desegregation plans on a voluntary basis.

Fiscal Effect:

The proposition would have an unknown fiscal effect. It would not require any school district to stop or reduce current busing programs. Thus, it would not necessarily affect school district costs. However, because review of current court-ordered busing programs, as permitted by the proposition, might result in some of these programs being modified to require less busing, the proposition could result in significant sav-

ings to the state and school districts. The savings would only occur, however, if school districts chose to eliminate or reduce their current busing programs based on new court decisions. Additional state and local costs would result from court review of existing court decisions, and these costs would offset some portion of any

savings that might occur due to decreased busing.

Therefore, the net fiscal impact of this measure could range from a net increase in state and local government costs (if no districts chose to reduce or eliminate pupil transportation programs) to significant net savings (if many districts reduce or eliminate these programs).

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment No. 2 (Statutes of 1979, Resolution Chapter 18) expressly amends an existing section of the Constitution; therefore, new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE I

Subdivision (a) of Section 7 is amended to read:

(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; *provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this state may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.*

Except as may be precluded by the Constitution of the United States, every existing judgment, decree, writ, or other order of a court of this state, whenever rendered, which includes provisions regarding pupil school assignment or pupil transportation, or which requires a plan including any such provisions shall, upon application to a court having jurisdiction by any interested person, be modified to conform to the provisions of this subdivision as amended, as applied to the facts which exist at the time of such modification.

In all actions or proceedings arising under or seeking application of the amendments to this subdivision proposed by the Legislature at its 1979-80 Regular Session, all courts, wherein such actions or proceedings are or may hereafter be pending, shall give such actions or proceedings first precedence over all other civil actions therein.

Nothing herein shall prohibit the governing board of a school district from voluntarily continuing or commencing a school integration plan after the effective date of this subdivision as amended.

In amending this subdivision, the Legislature and people of the State of California find and declare that this amendment is necessary to serve compelling public interests, including those of making the most effective use of the limited financial resources now and prospectively available to support public education, maximizing the educational opportunities and protecting the health and safety of all public school pupils, enhancing the ability of parents to participate in the educational process, preserving harmony and tranquility in this state and its public schools, preventing the waste of scarce fuel resources, and protecting the environment.

Arguments in Favor of Proposition 1

CURRENTLY, THE CALIFORNIA CONSTITUTION CAN BE INTERPRETED TO REQUIRE COMPULSORY BUSING, INCLUDING METROPOLITAN COMPULSORY BUSING, IN CIRCUMSTANCES WHERE BUSING WOULD *NOT* BE REQUIRED BY THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

THE INTENT AND PURPOSE OF MY AMENDMENT IS TO PROHIBIT ANY CALIFORNIA JUDGE FROM ORDERING MANDATORY BUSING UNLESS THE BUSING IS REQUIRED BY FEDERAL LAW. This amendment is based on the conclusion that forced busing is *not* a useful tool in achieving desegregation because its financial and educational costs render it counterproductive.

COURT-ORDERED COMPULSORY BUSING HAS BECOME PART OF THE PROBLEM RATHER THAN PART OF THE SOLUTION. *The racial tension and strife of compulsory busing is counterproductive* to our goal of maximum racial harmony, and the furor over compulsory busing stands in the way of community support for voluntary integration. By adopting this amendment, we will allow our courts and local school officials to turn to other *more appropriate solutions*.

ON TUESDAY, NOVEMBER 6, PLEASE JOIN ME IN DOING EVERYTHING THAT WE LEGALLY CAN TO HELP STOP COMPULSORY BUSING. PLEASE VOTE YES ON PROPOSITION 1.

ALAN ROBBINS
State Senator, 30th District

One of the great myths of our society is that blacks and other minority children can only receive an effective and equal education through the use of forced busing programs. This is simply *not* true. The use of forced busing hinders voluntary integration participation and other steps which could improve the quality of education available in our schools.

AS MAYOR TOM BRADLEY HAS SAID, "MOST PARENTS, WHATEVER THEIR COLOR, WHATEVER THEIR BACK-

GROUND, WHEREVER THEY LIVE, DON'T WANT THEIR KIDS TRANSPORTED BACK AND FORTH ACROSS THE CITY."

Norman Cousins, the respected editor of *Saturday Review* and a strong supporter of integration, said a few years ago:

"The evidence is substantial that busing is leading away from integration and not toward it; that it has not significantly improved the quality of education accessible to blacks . . . that it has resulted in the exodus of white students to private schools inside the city or to public schools in the comparatively affluent suburbs beyond the economic means of blacks; and finally, that it has not contributed to racial harmony but has produced deep fissures within American society."

As a black parent and minister who cares about children, I urge you to help end forced school busing in California by voting YES on the Robbins Amendment.

REV. W. C. JACKSON
Pastor, Beth Ezel Baptist Church, Watts

As the plaintiff in *Serrano v. Priest*, I have worked to insure equal educational opportunity for all California children. The excessive use of court-ordered forced busing will not guarantee this result.

FORCED BUSING TO ACHIEVE INTEGRATION IS A SHAM. TO FORCE A CHILD TO SPEND THREE HOURS ON A BUS AND FIVE HOURS IN A CLASS DOES NOTHING MORE THAN CHANGE THE COLOR BALANCE OF A FEW SCHOOLS FOR A FEW HOURS.

Children would be better off if we spent these dollars on teachers and buildings rather than wasting it on compulsory busing.

ON NOVEMBER 6, I WILL CAST MY VOTE IN FAVOR OF EQUAL, QUALITY EDUCATION—I WILL VOTE YES ON PROPOSITION 1.

JOHN SERRANO, JR.
Plaintiff, *Serrano v. Priest*

Rebuttal to Arguments in Favor of Proposition 1

1. Busing will NOT come to a halt if Proposition 1 is passed.
2. Proposition 1 will NOT prevent metropolitan integration.
3. Proposition 1 will NOT release money for classroom use in Los Angeles.

Proposition 1's proponents would have you believe that the issue is busing, that amending the California Constitution will stop so-called compulsory busing, and that busing cannot be required under the U.S. Constitution.

Proponents hold up the specter of metropolitan busing, implying that Proposition 1 would block such a plan in Los Angeles and other California metropolitan areas.

Just this year the U.S. Supreme Court approved sweeping compulsory desegregation plans in which federal courts required metropolitan busing. Thus, federal standards may impose broader rather than narrower duties to desegregate.

Proponents complain of the excessive cost of busing under the existing Los Angeles integration order. But, in fact, under a metropolitan plan, busing would cost less and children would spend less time

traveling to and from school than some children spend under the current plan.

Since 1954, selfish and shortsighted persons who were responsible for the building of schools and housing in communities throughout California have refused to plan and implement long-term solutions which could have effected integration WITHOUT busing.

Until thoughtful planning for school locations and metropolitan zoning and intelligent housing programs are implemented, busing is one of the only tools we have to provide equal educational opportunity.

WE URGE YOU TO VOTE NO ON PROPOSITION 1.

DIANE E. WATSON
State Senator, 30th District
TERESA P. HUGHES
Member of the Assembly, 47th District
SUSAN F. RICE
President
League of Women Voters of California

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

School Assignment and Transportation of Pupils

1

Argument Against Proposition 1

Contrary to the promises made by the Amendment's supporters, neither desegregation in Los Angeles, nor the busing used as a tool to achieve it, would come to a halt with the passage of this measure.

In the Los Angeles school integration case, the trial court found—and the State Supreme Court agreed—that the segregation resulted from official acts of the school board. Even if the California Constitution were to be amended to make the so-called Federal standard on desegregation apply in California, *de jure* (i.e.: intentional) segregation would still require a remedy not only in Los Angeles but in other school districts all over the state.

There is good reason to believe that Proposition 1 will ultimately be declared unconstitutional, since its very enactment could be interpreted to be *de jure* (intentional) segregation. The backers of Proposition 1 have made it clear in public statements that it is their intention in seeking this amendment to thwart the court's mandate to desegregate the schools in Los Angeles.

The right of every citizen to equal protection of the law, currently guaranteed by our strong California Constitution; is effectively diluted by Proposition 1. The Tenth Amendment to the U.S. Constitution expressly reserves to the States the power to establish greater Constitutional protections for their citizens than those provided by the U.S. Constitution. Proposition 1 drastically weakens the California Constitution's protection of minority students and their right to equal educational opportunity, consigning a generation of minority children to segregated inferior schools.

The campaign in favor of this amendment has played on fears and stirred up racial hostilities. If enacted, it will be a signal to all citizens

of California that the state is on the side of prejudice, not equality. By making it possible to reopen cases in districts presently under California court order, the amendment would further generate disruption and turmoil where progress is being made toward desegregation.

Quality education should be available to all the students of our state; it cannot be achieved in a segregated setting. School districts should be encouraged and committed to making education a realistic experience, as we live in an integrated society. But passage of this amendment effectively prevents our school system from preparing our children to function in the real world.

In short, the enactment of this proposition will not deliver what its proponents have promised: the blocking of court-ordered school desegregation in Los Angeles. It will make the state a party to discrimination; it will increase racial conflict; it will restrict educational opportunities for school children; it will touch off a series of costly court battles; and it will set a precedent of altering the California Constitution for political gain.

We urge voters to vote "NO" on Proposition 1.

DIANE E. WATSON
State Senator, 30th District

TERESA P. HUGHES
Member of the Assembly, 47th District

SUSAN F. RICE
*President
League of Women Voters of California*

Rebuttal to Argument Against Proposition 1

THE ROBBINS AMENDMENT HAS BEEN VERY CAREFULLY DRAFTED TO WITHSTAND ANY CONSTITUTIONAL CHALLENGE AND TO STOP COURT-ORDERED FORCED BUSING IN CALIFORNIA. That is what it is designed to do, and that is all it will do.

The opponents of Proposition 1 argue that it will cause segregation and reduce the quality of our schools. In fact, it will do just the opposite.

The Robbins Amendment will assure quality education for the children of California. **IT WILL PUT MONEY WHERE IT IS NEEDED—INTO SCHOOLS, TEACHERS AND BOOKS—NOT INTO BUSES, GAS AND BUS DRIVERS.**

Forced busing has *not* eased racial tension, it has *not* stopped discrimination, and it has *not* improved the quality of education. It merely forces large numbers of children to take long daily bus rides.

THE SCOPE OF OUR AMENDMENT IS LIMITED TO THE PROBLEMS CAUSED BY COURT-ORDERED BUSING. It makes no attempt to interfere with the prerogatives of local school districts

and does *not* diminish their obligation to provide minority students with equal educational opportunities.

By ending the use of court-ordered forced busing, unless such busing is required by the U.S. Constitution; *Proposition 1 does everything the people of California may legally do to stop court-ordered forced busing* in Los Angeles and in all other California school districts. That is one reason why the California P.T.A. has urged the adoption of this type of amendment.

When you vote on the 6th of November, please vote YES on Proposition 1, the Robbins Amendment, and help end forced busing in California.

ALAN ROBBINS
State Senator, 20th District

REV. W. C. JACKSON
Pastor, Beth Exel Baptist Church, Watts

JOHN SERRANO, JR.
Plaintiff, Serrano v. Priest

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Official Title and Summary Prepared by the Attorney General

LOAN INTEREST RATES. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends constitutional limit of 10 percent on loan interest rates. Applies 10 percent rate limit to loans primarily for personal, family or household purposes. For other purposes authorizes interest rate limit to be higher of 10 percent or 5 percent plus rate of interest charged by San Francisco Federal Reserve Bank to member banks 25 days prior to execution of loan contract or making of loan. Continues exemption of specified lending institutions from rate restrictions. Extends exemption to loans made or arranged by licensed real estate brokers when secured by lien on real property. Financial impact: No direct fiscal effect on state or local government.

FINAL VOTE CAST BY LEGISLATURE ON ACA 52 (PROPOSITION 2)

Assembly—Ayes, 73
Noes, 5

Senate—Ayes, 33
Noes, 0

Analysis by Legislative Analyst

Background:

The California Constitution prohibits any lender of money, other than those specifically exempted by the Constitution, from charging interest on any loan at a rate exceeding 10 percent per year. This provision of the Constitution is commonly referred to as the usury law.

The Constitution specifically exempts the following lenders from the usury law: savings and loan associations, state and national banks, industrial loan companies, credit unions, pawnbrokers, personal property brokers and agricultural cooperatives.

Proposal:

This ballot measure would amend the Constitution to make several changes in existing law regarding the level of interest rates that may be charged:

1. Under existing law, loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property are subject to a 10 percent interest rate ceiling. Such loans commonly are made by mortgage brokers and mortgage bankers. Under this measure such loans would be exempt from the constitutional limitations on interest rates that may be charged.

2. Under existing law, lenders not specifically exempted by the Constitution, such as insurance companies and private individuals, are subject to the 10 percent interest rate ceiling on all of their loans. This measure would retain the 10 percent ceiling on loans made by these lenders if the loans were made for personal, family or household purposes. However, if these loans were made for other purposes, such as the pur-

chase, construction or improvement of real property, or financing business activity, they would become subject to a new ceiling. The new interest rate ceiling on these nonpersonal loans would be the higher of (a) 10 percent per year or (b) the prevailing annual interest rate charged to member banks for moneys advanced by the Federal Reserve Bank of San Francisco, plus 5 percent per year. In June 1979, the interest rate charged by the Federal Reserve Bank was 9½ percent. Thus, the allowable rate on loans made during that month would have been 14½ percent had this measure been in effect.

3. The Legislature would be authorized to exempt any other class of persons from the restrictions on interest rates. Currently, exemptions may only be granted by amending the Constitution, which requires a vote of the people.

4. Under the measure, a loan which is exempt from the provisions of the usury law at the time it is made would continue to be exempt from these provisions even if the loan is sold or transferred to another party. While such a loan generally does not become subject to the limitation on interest rates under existing law, the courts have the authority to review the particular circumstances surrounding the sale or transfer. If the court finds that the transaction violates the intent of existing law limiting the rate of interest that may be charged, it may rule that the loan is subject to the limitation. This ballot measure may restrict the court's authority to make such rulings.

Fiscal Effect:

The proposition would have no direct fiscal effect on state or local governments.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment No. 52 (Statutes of 1979, Resolution Chapter 49) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in *strikeout type* and new provisions proposed to be inserted are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XV

SECTION 1. The rate of interest upon the loan or forbearance of any money, goods, or things in action, or on accounts after demand, shall be ~~7 per cent percent~~ per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest ~~not exceeding 10 per cent per annum~~ :

(1) *For any loan or forbearance of any money, goods, or things in action, if the money, goods, or things in action are for use primarily for personal, family, or household purposes, at a rate not exceeding 10 percent per annum; provided, however, that any loan or forbearance of any money, goods or things in action the proceeds of which are used primarily for the purchase, construction or improvement of real property shall not be deemed to be a use primarily for personal, family or household purposes; or*

(2) *For any loan or forbearance of any money, goods, or things in action for any use other than specified in paragraph (1), at a rate not exceeding the higher of (a) 10 percent per annum or (b) 5 percent per annum plus the rate prevailing the 25th day of the month preceding the earlier of (i) the date of execution of the contract to make the loan or forbearance, or (ii) the date of making the loan or forbearance established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended (or if there is no such single determinable rate of advances, the closest counterpart of such rate as shall be designated by the Superintendent of Banks of the State of California unless some other person or agency is delegated such authority by the Legislature).*

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than ~~10 per cent per annum~~ the interest authorized by this section upon any loan or forbearance of any money, goods or things in action.

However, none of the above restrictions shall apply to any obligations of, loans made by, or forbearances of, any building and loan association as defined in and which is operated under that certain act known as the "Building and Loan Association Act," approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining industrial loan

companies, providing for their incorporation, powers and supervision," approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining credit unions, providing for their incorporation, powers, management and supervision," approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any loans made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property, or any bank as defined in and operating under that certain act known as the "Bank Act," approved March 1, 1909, as amended, or any bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code in loaning or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, live stock, poultry and bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any ~~Federal~~ federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923," as amended in loaning or advancing credit so secured, or any other class of persons authorized by statute, or to any successor in interest to any loan or forbearance exempted under this article, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, ~~bonus~~ bonuses, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or ~~forbearance~~ forbearance of any money, goods or things in action.

The rate of interest upon a judgment rendered in any court of this state shall be set by the Legislature at not more than 10 percent per annum. Such rate may be variable and based upon interest rates charged by federal agencies or economic indicators, or both.

In the absence of the setting of such rate by the Legislature, the rate of interest on any judgment rendered in any court of the state shall be 7 percent per annum.

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.

Argument in Favor of Proposition 2

In our society today, every family, individual, and employer faces an occasional need for money.

Because sometimes there are problems in securing that money, and some of those problems are actually *caused* by outdated laws adopted in totally different circumstances, Proposition 2 attempts to eliminate *one* problem area.

The Usury Law of California, adopted in 1934 (during the Depression), limited the price which many lenders could charge for the use of money to 10 percent. Unfortunately, inflation and other factors have made that limit unrealistic.

Because 10 percent is not enough today, many lenders no longer loan money in California (although others who are *now* exempt from the Usury Law still do). For example, mortgage bankers, who last year provided \$13 billion for housing loans in California, are limited to a 10 percent rate and in 1979 have practically abandoned providing conventional mortgage loans.

This *shortage* of money is curtailing the building of new homes, apartments, stores, and factories to provide needed new jobs. Because this reduces competition among lenders, it actually forces interest *up* on money from lenders now exempt from the Usury Law.

Now, it might *seem* good to be able to have a law which limited the price of a loaf of bread to 10 cents; but, if we had such a law, there would be no bread or only black market bread. We are approaching that stage on the availability of *extra* money—for a family to buy a home, an employer to buy a new factory, tools, a store, or some other job-creating opportunity.

Proposition 2 deals with that problem in realistic and *controlled* circumstances.

It is complex and technical because both the law and the money market are complex and technical. Proposition 2 is explained in the Legislative Analyst's analysis in this pamphlet with text of the changes.

An important fact is that this constitutional provision *retains* present provisions enabling a control by law on "the maximum rate per annum" and on fees or other compensation—a vital control against abuse. Proposition 2 removes the arbitrary, inflexible, and unrealistic *constitutional* limits on nonconsumer loans and on exemptions which have severely limited the flow of money to California to buy homes, create job opportunities, and for other purposes.

Cheap money is no good if you can't get it when you need it. In that case, cheap money is no money.

In the last few years, state after state has found it necessary to change its usury law *for* the people in those states. Today, in today's world, California must change too *for* the people of California.

Proposition 2 is endorsed by labor, business, civic, and governmental leaders who have studied this issue and recognize the need. No group and no individual appeared before the legislative committees to oppose this measure, which passed the Senate 33-0 and the Assembly 73-5.

Because sometimes we all need money, we need to remove outdated limitations on the availability of that money. Vote "YES" on Proposition 2.

WALTER M. INGALLS
Member of the Assembly, 68th District

WILLIAM CAMPBELL
State Senator, 33rd District
Senate Minority Floor Leader

No rebuttal to argument in favor of Proposition 2 was submitted.

Argument printed on this page is the opinion of the authors and has not been checked for accuracy by any official agency.

Argument Against Proposition 2

Proposition 2 would weaken California's usury laws by boosting interest rates on certain loans above the current 10% maximum. Eroding these laws would be a misstep in the direction of higher costs and tighter money.

In both the primary and general elections in 1976, the voters clearly said NO to similar ballot proposals which would have increased interest rates by changing the portion of the California Constitution that has protected consumers for more than 40 years. I ask you to vote NO once again.

Proposition 2 would boost interest rates for other than consumer loans above the current 10% maximum. These maximum interest rates would be tied to the prevailing discount rate or the interest rate which the Federal Reserve Bank charges member banks. Thus, if this measure had been law in July 1979 when the discount rate was at an all-time high of 9½%, the interest rate charged by a nonexempt lender could now be 14½%.

If higher interest rates can be charged on loans to businesses and corporations than can be charged for consumer loans, then obviously there will be a greater incentive to loan more money to corporations. This will take money away from the consumer loan market and could virtually dry it up. Consumer loans will be harder and harder to get.

Proposition 2, contrary to what supporters say, could affect consumer loans. Although loans used primarily for personal, family, or household purposes would be exempt, you could be charged these higher interest rates if under half of the money borrowed is to be used for household needs and over half for some other purpose.

We need our consumer protection laws. Let's keep California's usury laws intact. Let's say NO to higher interest rates. Vote NO on Proposition 2.

HERSCHEL ROSENTHAL
Member of the Assembly, 45th District

Rebuttal to Argument Against Proposition 2

Opponents say that we should deny businesses and corporations the opportunity to pay higher interest rates—a primary purpose of Proposition 2.

Make no mistake; business does not want to pay a penny more in interest than it must—and will not. But, business needs money to build housing, factories, stores, and offices and develop farms and energy sources so that they can create jobs and homes for our growing population.

And today, not enough money is available because of the outdated restrictions of our interest laws applicable to business or nonconsumer loans. California business needs a change to compete fairly for dollars.

Proposition 2 will have essentially no effect on loans for personal, family, or household purposes—such loans will remain subject to the 10 percent interest limit and,

in many cases, are *already* and have always been exempt from constitutional control. Our consumer protection laws will remain essentially unchanged and as strong as they are today.

Conditions today are very different than they were even in 1976, when the voters last examined this issue; and are certainly different than they were in 1934, when this provision was originally written.

We cannot go back to the 10% loaf of bread. In realism, California must join other states in making money available for all its citizens.

WALTER M. INGALLS
Member of the Assembly, 68th District
WILLIAM CAMPBELL
State Senator, 33rd District
Senate Minority Floor Leader

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Official Title and Summary Prepared by the Attorney General

PROPERTY TAXATION — VETERANS' EXEMPTION. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Adds Section 3.5 to Article XIII of the Constitution to require that, in any year in which the assessment ratio is changed, the Legislature shall adjust the valuation of assessable property of eligible veterans, unmarried spouses of deceased veterans, and parents of deceased veterans to maintain the same proportionate values of such property. Financial impact: No effect on the amount of property taxes levied. No effect on tax liability of taxpayers claiming the veterans' exemption. Minor initial costs to local government.

FINAL VOTE CAST BY LEGISLATURE ON SCA 60 (PROPOSITION 3)

| | |
|-------------------|-----------------|
| Assembly—Ayes, 76 | Senate—Ayes, 35 |
| Noes, 1 | Noes, 0 |

Analysis by Legislative Analyst

Background:

The California Constitution provides that all property subject to property taxation shall be assessed for property tax purposes at the same percentage of full value. The Legislature, however, may determine what specific percentage of "full value," commonly referred to as the assessment ratio, is to be used by assessors. Existing law requires county assessors to assess property at 25 percent of full value. Thus, a property with a full value of \$80,000 would be assessed for property tax purposes at \$20,000.

The California Constitution also provides for the exemption of certain types of property from property taxation. The veterans' exemption excludes from property taxation \$1,000 of the *assessed* value of taxable property owned by a veteran of the armed services, the unmarried spouse of a deceased veteran, or the parent of a deceased veteran. Eligible persons must own property valued at less than \$5,000 in the case of single persons, and \$10,000 in the case of married persons, in order to qualify for the exemption. These property value limits have been interpreted by the California courts to be based on the *assessed* value of taxable property and the *full* value of all other property.

Proposal:

Passage of this ballot proposition would cause legislation enacted in 1978 to go into effect. This legislation—Chapter 1207, Statutes of 1978—would change the assessment ratio from 25 percent of full value to 100 percent of full value, beginning with the 1981–82 tax year. It would also make a number of technical changes in various provisions of law to make them consistent with the change in the assessment ratio. Chapter 1207 contains a provision specifying that it will not take effect until this ballot proposition is approved by the voters.

This ballot proposition would also require the Legislature to adjust the amount of the veterans' exemption, which currently is \$1,000 of assessed value, to reflect any changes made by the Legislature in the assessment ratio. Chapter 1207 increases this ratio from 25 percent to 100 percent, and requires that the amount of the veterans' exemption be increased from \$1,000 to \$4,000 of assessed value.

Passage of this ballot proposition would also cause legislation enacted in July 1979 to go into effect. This legislation—Chapter 260, Statutes of 1979—would provide that the property value limit used in determining eligibility for the veterans' exemption (\$5,000 in the case of a single person and \$10,000 in the case of married persons) is to be increased to reflect any increase in the value of a claimant's property resulting from the change in the assessment ratio.

Fiscal Effect:

The change in the assessment ratio from 25 percent to 100 percent would have no effect on the amount of property taxes levied or the amount of value exempted by current property tax exemptions. The proposition would require certain state and local agencies to make adjustments in all computations which use assessed value as a factor. Most of these changes would affect data processing procedures used by county auditors and assessors. The cost of these adjustments statewide is estimated to be relatively minor. Because these local costs would result from a constitutional amendment approved by the voters, they would not be reimbursed by the state.

The change in the veterans' exemption would have no effect on the tax liability of any taxpayer claiming the veterans' exemption.

Property Taxation — Veterans' Exemption

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Argument in Favor of Proposition 3

Proposition 3 is concerned with the method of stating property taxes on your property tax bill. *Its passage would neither raise nor lower property taxes but would make it easier for you to understand how your taxes are computed.*

For many years, tax assessors have used a 25% assessment ratio in computing property taxes. If your house is valued at \$80,000 for property tax purposes, the assessor multiplies that amount by 25% for an assessed value of \$20,000. The tax collector then divides the assessed value by 100, and multiplies it by the county tax rate per \$100 of assessed value to yield the amount of tax due. If you have never understood the computation of your property tax when you paid your bill, it was because of this confusing system.

Passage of Proposition 3 will eliminate use of the 25% assessment ratio and the rate per \$100. Instead, the tax rate will be stated as a simple percentage of the assessed value. Property taxes on an \$80,000 house will, under the 1% limitation of Proposition 13, be stated as 1% of \$80,000 (plus the addition allowed under Proposition 13

for outstanding indebtedness from voter-approved bonds). The result will be an understandable system without complicated or confusing formulas.

The language of Proposition 3 also ensures that the current Veterans' Property Tax Exemption guaranteed by the California Constitution is not reduced by this change.

Proposition 3 is designed to simplify the property tax system and make it more easily understandable to property taxpayers *without increasing or decreasing anyone's taxes. Proposition 3 in no way changes the property tax limitations or the amount of property taxes payable under Proposition 13.*

Proposition 3 received bipartisan support in the Legislature. We urge its adoption by the people.

ALAN SIEROTY

State Senator, 22nd District

ROSE ANN VUICH

State Senator, 15th District

MEL LEVINE

Member of the Assembly, 44th District

No argument against Proposition 3 was submitted

Text of proposed law appears on page 22

Argument printed on this page is the opinion of the authors and has not been checked for accuracy by any official agency.

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Limitation of Government Appropriations — Initiative Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

LIMITATION OF GOVERNMENT APPROPRIATIONS. INITIATIVE CONSTITUTIONAL AMENDMENT. Establishes and defines annual appropriation limits on state and local governmental entities based on annual appropriations for prior fiscal year. Requires adjustments for changes in cost of living, population and other specified factors. Appropriation limits may be established or temporarily changed by electorate. Requires revenues received in excess of appropriations permitted by this measure to be returned by revision of tax rates or fee schedules within two fiscal years next following year excess created. With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by state. Financial impact: Indeterminable. Financial impact of this measure will depend upon future actions of state and local governments with regard to appropriations that are not subject to the limitations of this measure.

Analysis by Legislative Analyst

Background:

The Constitution places no limitation on the amount which may be appropriated for expenditure by the state or local governments (including school districts), provided sufficient revenues are available to finance these expenditures. Nor does the Constitution limit the amount by which appropriations in one year may exceed appropriations in the prior year.

Proposal:

This ballot measure would amend the Constitution to:

- Limit the growth in appropriations made by the state and individual local governments. Generally, the measure would limit the rate of growth in appropriations to the percentage increase in the cost of living and the percentage increase in the state or local government's population.
- Establish the general requirement that state and local governments return to the taxpayers moneys collected or on hand that exceed the amount appropriated for a given fiscal year.
- Require the state to reimburse local governments for the cost of complying with "state mandates." "State mandates" are requirements imposed on local governments by legislation or executive orders.

The appropriation limits would become effective in the 1980-81 fiscal year, which begins on July 1, 1980, and ends on June 30, 1981. These limits would only apply to appropriations financed from the "proceeds of taxes," which the initiative defines as:

- All tax revenues (we are advised by Legislative Counsel that this would include those tax revenues carried over from prior years);
- Any proceeds from the investment of tax revenues; and
- Any revenues from a regulatory license fee, user charge or user fee that *exceed* the amount needed to cover the reasonable cost of providing the regulation, product or service.

The initiative would not restrict the growth in appropriations financed from other sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.

The *appropriation limit for the state government* in fiscal year 1980-81 would be equal to the sum of all appropriations initially available for expenditure during the period July 1, 1978-June 30, 1979, that were financed from the "proceeds of taxes," less amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriation limit for each succeeding year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. Thus, even if the state appropriations in a given year were held below the level permitted by this ballot measure, the appropriation limit for the following year would not be any lower as a result. The limit would still be based on the limit for the prior year, and not on the actual level of appropriations for that year.

The following types of appropriations would *not* be subject to the state limit:

- (1) State financial assistance to local governments—that is, any state funds which are distributed to local governments other than funds provided to reimburse these governments for state mandates;
- (2) Payments to beneficiaries from retirement, disability insurance and unemployment insurance funds;
- (3) Payments for interest and redemption charges on state debt existing on January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
- (4) Appropriations needed to pay the state's cost of complying with mandates imposed by federal laws and regulations or court orders.

We estimate that the state appropriated approxi-

Continued on page 20

Text of Proposed Law

This initiative measure proposes to add a new Article XIII B to the Constitution; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED ADDITION OF ARTICLE XIII B

PROPOSED ARTICLE XIII B. CONSTITUTION GOVERNMENT SPENDING LIMITATION

SEC. 1. *The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article.*

SEC. 2. *Revenues received by any entity of government in excess of that amount which is appropriated by such entity in compliance with this Article during the fiscal year shall be returned by a revision of tax rates or fee schedules within the next two subsequent fiscal years.*

SEC. 3. *The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows:*

(a) *In the event that the financial responsibility of providing services is transferred, in whole or in part, whether by annexation, incorporation or otherwise, from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount.*

(b) *In the event that the financial responsibility of providing services is transferred, in whole or in part, from an entity of government to a private entity, or the financial source for the provision of services is transferred, in whole or in part, from other revenues of an entity of government, to regulatory licenses, user charges or user fees, then for the year of such transfer the appropriations limit of such entity of government shall be decreased accordingly.*

(c) *In the event of an emergency, the appropriation limit may be exceeded provided that the appropriation limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency.*

SEC. 4. *The appropriations limit imposed on any new or existing entity of government by this Article may be established or changed by the electors of such entity, subject to and in conformity with constitutional and statutory voting requirements. The duration of any such change shall be as determined by said electors, but shall in no event exceed four years from the most recent vote of said electors creating or continuing such change.*

SEC. 5. *Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation.*

SEC. 6. *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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:*

(a) *Legislative mandates requested by the local agency affected;*

(b) *Legislation defining a new crime or changing an existing definition of a crime; or*

(c) *Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*

SEC. 7. *Nothing in this Article shall be construed to impair the ability of the state or of any local government to meet its obligations with respect to existing or future bonded indebtedness.*

SEC. 8. *As used in this Article and except as otherwise expressly provided herein:*

(a) *"Appropriations subject to limitation" of the state shall mean any authorization to expend during a fiscal year the proceeds of taxes levied by or for the state, exclusive of state subventions for the use and operation of local government (other than subventions made pursuant to Section 6 of this Article) and further exclusive of refunds of taxes, benefit payments from retirement, unemployment insurance and disability insurance funds;*

(b) *"Appropriations subject to limitation" of an entity of local government shall mean any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6 of this Article) exclusive of refunds of taxes;*

(c) *"Proceeds of taxes" shall include, but not be restricted to, all tax revenues and the proceeds to an entity of government, from (i) regulatory licenses, user charges, and user fees to the extent that such proceeds exceed the costs reasonably borne by such entity in providing the regulation, product, or service, and (ii) the investment of tax revenues. With respect to any local government, "proceeds of taxes" shall include subventions received from the state, other than pursuant to Section 6 of this Article, and, with respect to the state, proceeds of taxes shall exclude such subventions;*

(d) *"Local government" shall mean any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state;*

(e) *"Cost of living" shall mean the Consumer Price Index for the United States as reported by the United States Department of Labor, or successor agency of the United States Government; provided, however, that for purposes of Section 1, the change in cost of living from the preceding year shall in no event exceed the change in California per capita personal income from said preceding year;*

(f) *"Population" of any entity of government, other than a school district, shall be determined by a method prescribed by the Legislature, provided that such determination shall be revised, as necessary, to reflect the periodic census conducted by the United States Department of Commerce, or successor agency of the United States Government. The population of any school district shall be such school district's average daily*

Continued on page 22

Limitation of Government Appropriations — Initiative Constitutional Amendment

Arguments in Favor of Proposition 4

The 'Spirit of 13' citizen-sponsored initiative provides permanent constitutional protection for taxpayers from excessive taxation. A 'yes' vote for Proposition 4 will *preserve* the gains made by Proposition 13.

VERY SIMPLY, this measure:

- 1) WILL limit state and local government spending.
- 2) WILL refund or credit excess taxes received by the state to the taxpayer.
- 3) WILL curb excessive user fees imposed by local government.
- 4) WILL eliminate government waste by forcing politicians to re-think priorities while spending our tax money.
- 5) WILL close loopholes government bureaucrats have devised to evade the intent of Proposition 13.

ADDITIONALLY, this measure:

- 1) WILL NOT allow the state government to force programs on local governments without the state paying for them.
- 2) WILL NOT prevent the state and local governments from responding to emergencies whether natural or economic.
- 3) WILL NOT prevent state and local governments from providing essential services.
- 4) WILL NOT allow politicians to make changes (in this law) without voter approval.
- 5) WILL NOT favor one group of taxpayers over another.

Proposition 4 is a well researched, carefully written citizen-sponsored initiative that is sponsored by the signatures of nearly one million Californians who know that the 'Spirit of 13' is the next logical step to Proposition 13.

Your 'yes' vote will guarantee that excessive state tax surpluses will be returned to the taxpayer, not left in the State Treasury to fund useless and wasteful programs.

This amendment is a reasonable and flexible way to provide discipline in tax spending at the state and local levels and will not override the desires of individual communities—a majority of voters may adjust the spending limits for local entities such as cities, counties, etc.—

it will force return of any additional taxation to voter control. To protect our government's credit rating on behalf of the taxpayers, the limit does not apply to user charges required to meet obligations to the holders of existing or future bonds regardless of voter approval.

For California's sake, we sincerely urge a Yes vote on Proposition 4 to continue the Spirit of Proposition 13.

PAUL GANN
Coauthor, Proposition 13

CAROL HALLETT
*Member of the Assembly, 29th District
Assembly Minority Leader*

No government should have an unrestricted right to spend the taxpayer's money. Government should be subject to fiscal discipline no less than the citizens it represents.

Proposition 4 is a thoughtfully drafted spending limit. It will require state and local governments to limit their budgets yet provide for reasonable growth and meet emergencies.

It will not require wholesale cuts in necessary services. Californians want quality education, health services, police and fire protection.

Our citizens want to provide adequately for the elderly, the disabled, the abandoned children. Such programs will not be impaired.

Government must continue to be sensitive to human needs. A rational spending limit is not only consistent with that view, it is essential if government services are to be rendered effectively.

Nothing hinders the prompt attention to real needs as surely as an inefficient bureaucracy.

We need lean, flexible, responsive government. We need sensible spending controls that will help eliminate waste without sacrificing truly useful programs.

Proposition 4 offers that possibility.

LEO T. MCCARTHY
*Member of the Assembly, 18th District
Speaker of the Assembly*

Rebuttal to Arguments in Favor of Proposition 4

Don't be misled by promises!

The proponents make Proposition 4 sound like a cure-all for every government ail. They make Proposition 4 seem like a magic wand that will transform government into an efficient machine perfectly responsive to the public will. What nonsense!

Proposition 4

- will NOT eliminate government waste;
- will NOT eliminate user fees;
- will NOT allow governments to respond to emergencies without severe penalty.

What about waste? Proposition 4 puts the power to decide how spending limits will be met right back into the hands of the very same officials who have yet to prove they know how to cut waste. They find it much easier to cut services than to cut fat!

What about fees? The measure itself states that user fees, service charges and admission taxes can still be levied. (Check Sections 3(b) and 8(c)).

What about emergencies? Every time an emergency occurs, future expenditures in other important areas will have to be cut back. It is irresponsible to pit everyday services (like police and fire protection)

against the extraordinary needs of an emergency.

Proposition 4

- will NOT guarantee YOU a tax refund;
- will NOT preserve needed services;
- will NOT allow California to cope with the ravages of inflation and unemployment.

Recession and inflation are ganging up on government and on taxpayers. Proposition 4 is too inflexible to assure adequate government services for an uncertain future.

VOTE NO ON PROPOSITION 4!

JONATHAN C. LEWIS
*Executive Director
California Tax Reform Association*

SUSAN F. RICE
*President
League of Women Voters of California*

JOHN F. HENNING
*Executive Secretary-Treasurer
California Labor Federation AFL-CIO*

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Limitation of Government Appropriations — Initiative Constitutional Amendment

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Argument Against Proposition 4

Proposition 4 DOES NOT guarantee that the "fat" will be cut from government. Proposition 4 IS NOT tax reform. Proposition 4 is, instead, a rash measure that places a straitjacket on government at the very moment when Californians are faced with an uncertain economic future.

Some of the state's largest businesses, financial institutions, utilities, agribusiness and real estate interests spent \$537,000 putting Proposition 4 on the ballot. Doesn't it strike you as strange that these interests are backing a so-called "grassroots" initiative?

All Californians are understandably concerned about rising taxes. We all want efficient government *and* a fair tax system. But who will really benefit from Proposition 4? Will it be *you* or the special interests backing this measure?

Proposition 4 does not guarantee tax relief for the individual. There is no guarantee that any excess government revenues will necessarily be used to lower *your* taxes. Genuine tax reform means changing the tax system so everyone pays his or her fair share.

During the past 20 years the burden of taxation has shifted from business and commercial interests to the individual taxpayer. The percentage of state and local taxes paid by business has dropped from 57% to only 37%. This partially accounts for the increase in your tax bills.

It is a myth to believe that Proposition 4 will streamline government. Nowhere in the proposal is there a requirement to cut

unnecessary or wasteful government spending. The "fat" in government could go untouched while cuts are made in vital and important services.

Passage of this measure could cripple economic growth in California. There will be no advantage for cities and counties to approve new commercial developments. Because of the spending limitation, revenues generated by new commercial development cannot be spent by local entities already at their spending limit. However, services must still be provided to new commercial and housing developments, which will result in a reduction in the level of services already provided to existing residents and businesses. Communities will be forced to choose between creating new jobs and cutting services.

Proposition 4 is smokescreen politics. That is why we ask you to join us in voting NO.

JONATHAN C. LEWIS
Executive Director
California Tax Reform Association

SUSAN F. RICE
President
League of Women Voters of California

JOHN F. HENNING
Executive Secretary-Treasurer
California Labor Federation, AFL-CIO

Rebuttal to Argument Against Proposition 4

The arguments submitted by the groups opposing Proposition 4 should come as no surprise—particularly to those of us who supported Proposition 13 last year. Scare tactics, distortion and a healthy smattering of "buzzwords" are the same devices used time and again against the people whenever they decide it's time to offer a logical and reasonable solution. In this case, the people simply want to place *a limit on government spending*.

If you are among the people who think government should *not* have the unrestricted right to spend taxpayers' money, you can recite these facts to your friends and neighbors.

FACT: In the past 20 years, government spending increased 3 times beyond the allowable limits of Proposition 4.

FACT: Proposition 4 *requires* that surplus funds be returned to the taxpayers.

FACT: Proposition 4 will force politicians to prioritize and

economize just as households and small businesses do to make ends meet.

FACT: Proposition 4 is supported by nearly one million voter signatures, the Democratic and Republican leaders of the State Assembly, state cochairperson Secretary of State March Fong Eu, the California Taxpayers' Association, the California Chamber of Commerce, the 83,000 family-farm member California Farm Bureau, the 55,000 small business member Federation of Independent Business, local taxpayer associations, and scores of civic and community leaders concerned about the ever-increasing growth of government spending.

Please join us in voting "Yes" on Proposition 4 to maintain the Spirit of 13.

PAUL GANN
Cosponsor, Proposition 13

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mately \$7.9 billion from the "proceeds of taxes" in fiscal year 1978-79, after taking into account the exclusions listed above. This amount, referred to as "appropriations subject to limitation," represents approximately 40 percent of total General Fund and special fund appropriations made for that fiscal year. The main reason why the state's appropriation limit covers less than half of the state's total expenditures is that a large proportion of total state expenditures represents funds passed on to local governments for a variety of public purposes. Under this ballot measure, these funds would be subject to the limits on local, rather than state, appropriations.

The *appropriation limit for a local government* in fiscal year 1980-81 would be equal to the sum of all appropriations initially available for expenditure during the period of July 1, 1978-June 30, 1979, that were financed from the "proceeds of taxes," plus state financial assistance received in that year, less amounts specifically excluded by the measure (discussed below); with the remainder adjusted for changes in the cost of living and population. The appropriations limit in each subsequent year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. For each school district, "population" is defined in this measure as the district's average daily attendance.

The following types of appropriations would not be subject to the local limit:

- (1) Refunds of taxes;
- (2) Appropriations required for payment of local costs incurred as a result of state mandates. (The initiative requires the state to reimburse local governments for such costs, and the appropriation of such funds would be subject to limitation at the state level.);
- (3) Payments for interest and redemption charges on debt existing on or before January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
- (4) Appropriations required to pay the local government's cost of complying with mandates imposed by federal laws and regulations or court orders.

Furthermore, any special district which was in existence on July 1, 1978, and which had a 1977-78 fiscal year property tax rate of 12½ cents per \$100 of assessed value or less, would never be subject to a limit on appropriations. Special districts which do not receive any funding from the "proceeds of taxes" would also be exempt from the limits.

Under the initiative, the limit on state or local government appropriations could be changed in one of four ways:

- (1) An appropriation limit *may* be changed temporarily if a majority of voters in the jurisdiction approve the change. Such a change could be made for one, two, three, or four years, but it could *not* be effective for more than four years

unless a majority of the voters again voted to change the limit.

- (2) In the event of an emergency, an appropriation limit *may* be exceeded for a single year by the governing body of a local government without voter approval. However, if the governing body provides for an emergency increase, the appropriation limits in the following three years would have to be reduced by an amount sufficient to recoup the excess appropriations. The initiative does not place any restrictions upon the types of circumstances which may be declared to constitute an emergency.
- (3) If the financial responsibility for providing a program or service is transferred from one entity of government to another *government* entity, the appropriation limits of both entities *must* be adjusted by a reasonable amount that is mutually agreed upon. Any increase in one entity's limit would have to be offset by an equal decrease in the other entity's limit.
- (4) If an entity of government transfers the financial responsibility for providing a program or service from itself to a *private* entity, or the source of funds used to support an existing program or service is shifted from the "proceeds of taxes" to regulatory license fees, user charges or use fees, the entity's appropriation limit *must* be decreased accordingly.

If, in any fiscal year, an entity of government were to receive or have on hand revenues in excess of the amount that it appropriates for that year, it would be required to return the excess to taxpayers within the next two fiscal years. The initiative specifies that these funds are to be returned by lowering tax rates or fee schedules. In addition, Legislative Counsel has advised us that direct refunds of taxes paid would also be permitted under the measure.

Because certain types of appropriations would not be directly subject to the limitations established by this ballot measure, it would be possible for the state or a local government with excess funds to spend these funds in the exempt categories rather than return the funds to the taxpayers. For example, the state could appropriate any excess revenues for additional financial assistance to local governments, because such assistance is excluded from the limit on state appropriations. (This, in turn, might result in the return of excess revenues to local taxpayers if a local government were unable to spend these funds within its limit.) Similarly, a local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal "indebtedness" under this ballot measure.

Finally, the initiative would establish a requirement that the state provide funds to reimburse local agencies

r the cost of complying with state mandates. The initiative specifies that the Legislature need not provide such reimbursements for mandates enacted or adopted prior to January 1, 1975, but does not require explicitly that reimbursement be provided for mandates enacted or adopted after that date. Legislative Counsel advises us that under this measure the state would only be required to provide reimbursements for costs incurred as a result of mandates enacted or adopted after July 1, 1980.

Fiscal Impact:

This proposition is primarily intended to limit the rate of growth in state and local spending by imposing a limit on certain categories of state and local appropriations. As noted above, approximately 60 percent of current state expenditures would be excluded from the limit on state appropriations, although nearly all of these expenditures would be subject to limitation at the local level. Also, some unknown percentage of local government expenditures would not be subject to the limits on either state or local appropriations. Thus, the fiscal impact of this ballot measure would depend on two factors:

- (1) What the rate of growth in state and local "appropriations subject to limitation" would be, in the absence of this limitation; and
- (2) The extent to which any reductions in "appropriations subject to limitation" required by the measure are offset by increases in those appropriations not subject to limitation.

Impact on State Government. During six of the past ten years, total state spending has increased more rapidly than the cost of living and population. Thus, it is likely that, had this measure been in effect during those years, it would have caused "appropriations subject to limitation" to be less than they actually were.

It is not possible to predict with any accuracy the future rate of growth in state "appropriations subject to limitation." Thus it is not possible to estimate with any reliability what effect the measure, if approved, would have on such appropriations in the future. However, based on the best information now available (July 1979), we estimate that passage of the initiative would cause state "appropriations subject to limitation" in fiscal year 1980-81 to be modestly lower than they probably would be if the initiative were not approved. This assumes that state reimbursement would only be required for state mandates enacted or adopted after July 1, 1980. If the courts ruled that reimbursement was re-

quired for mandates enacted or adopted after January 1, 1975, the impact of the measure on "appropriations subject to limitation" would be substantial. This is because the state would be required to provide significant reimbursements to local governments within this limitation. We have no basis for predicting the impact in subsequent years.

Whether this would result in a reduction in total state spending would depend on whether the state decided to use the funds that could not be spent under the limitation for (1) additional financial assistance to local governments (or for some other category of appropriations excluded from the limit), or (2) state tax relief. Thus, the effect of this ballot measure on state spending in 1980-81 could range from no change to a modest reduction.

Impact on Local Governments. Existing data do not permit us to make reliable estimates of either the appropriation limits that local governments would face in fiscal year 1980-81 if this ballot measure were approved, or what these governments would spend in that fiscal year if the initiative were not approved. Nonetheless, we estimate that those school districts experiencing significant declines in enrollment would have to reduce "appropriations subject to limitation" significantly below what these appropriations would be otherwise. We also estimate that most cities and counties, at least initially, would not be required to reduce the growth in these categories of appropriations by any significant amounts. However, some local governments, especially those with stable or declining populations, could be subject to more significant restrictions on their "appropriations subject to limitation."

Whether any reductions in "appropriations subject to limitation" caused by this measure would result in corresponding reductions in total local government expenditures and a return of excess revenues to the taxpayers would depend on whether increased spending resulted in those categories not subject to limitation. We have no basis for estimating the actions of local governments in this regard.

Conclusion. Thus, while a reduction in the rate of growth in state or local government expenditures may result from this ballot measure in fiscal year 1980-81, there may be instances in which no reduction in the rate of growth in an individual government's spending occurs. The impact of this measure in subsequent years cannot be estimated, although the measure could cause government spending to be significantly lower than it would be otherwise.

TEXT OF PROPOSITION 3

This amendment proposed by Senate Constitutional Amendment No. 60 (Statutes of 1978, Resolution Chapter 85) expressly adds a section to the Constitution; therefore, provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII

SEC. 3.5. In any year in which the assessment ratio is changed, the Legislature shall adjust the valuation of assessable property described in subdivisions (o), (p) and (q) of Section 3 of this article to maintain the same proportionate values of such property.

TEXT OF PROPOSITION 4—Continued from page 17

attendance as determined by a method prescribed by the Legislature;

(g) "Debt service" shall mean appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979 or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for such purpose.

(h) The "appropriations limit" of each entity of government for each fiscal year shall be that amount which total annual appropriations subject to limitation may not exceed under Section 1 and Section 3; provided, however, that the "appropriations limit" of each entity of government for fiscal year 1978-79 shall be the total of the appropriations subject to limitation of such entity for that fiscal year. For fiscal year 1978-79, state subventions to local governments, exclusive of federal grants, shall be deemed to have been derived from the proceeds of state taxes.

(i) Except as otherwise provided in Section 5, "appropriations subject to limitation" shall not include local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.

SEC. 9. "Appropriations subject to limitation" for each entity of government shall not include:

(a) Debt service.

(b) Appropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly.

(c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12½ cents per \$100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.

SEC. 10. This Article shall be effective commencing with the first day of the fiscal year following its adoption.

SEC. 11. If any appropriation category shall be added to or removed from appropriations subject to limitation, pursuant to final judgment of any court of competent jurisdiction and any appeal therefrom, the appropriations limit shall be adjusted accordingly. If any section, part, clause or phrase in this Article is for any reason held invalid or unconstitutional, the remaining portions of this Article shall not be affected but shall remain in full force and effect.

MARCH FONG EU

Secretary of State

1230 J STREET

SACRAMENTO, CA 95814

BULK RATE
U.S.
POSTAGE
PAID
Secretary of
State

In an effort to reduce election costs, the State Legislature has authorized counties having this capability to mail only one ballot pamphlet to addresses where more than one voter with the same surname resides. If you wish additional copies, you may obtain them by calling or writing to your county clerk or registrar of voters.

En un esfuerzo por reducir los costos electorales, la Legislatura Estatal ha autorizado a los condados que cuentan con la capacidad de hacerlo, enviar una sola balota a direcciones en que reside más de un votante del mismo apellido. Si usted desea copias adicionales, llame o escriba al secretario del condado o registrador de votantes que le corresponde y se las suministrarán.

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CERTIFICATE OF SECRETARY OF STATE

I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the SPECIAL ELECTION to be held throughout the State on November 6, 1979, and that the foregoing pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in
Sacramento, California, this first day of August 1979.



March Fong Eu

MARCH FONG EU
Secretary of State