

Parameters and Guidelines Drafted By:
Keith B. Petersen
SixTen and Associates

DATED 4/27/2011

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES

Statutes 1988, Chapter 973
Education Code Section 87102, subdivision (a) (b)
Title 5, California Code of Regulations, Sections: 53003, 53004, 53006, 53020, 53021,
53022, 53023, 53024, 53025, 53026, and 53034

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

CSM 02-TC-46

(Effective Beginning Fiscal Year 2002-03)

I. SUMMARY OF THE MANDATE

Per Statement of Decision

II. ELIGIBLE CLAIMANTS

Community college districts only.

III. PERIOD OF REIMBURSEMENT

Per Commission boilerplate language.

Reimbursement begins July 1, 2001. These parameters and guidelines are effective beginning Fiscal Year 2002-03.

IV. REIMBURSABLE ACTIVITIES

The preamble per Commission boilerplate language.

A. District Plan Contents and Review
Title 5, Sections 53003 and 53020

4. 1. Review the faculty and staff diversity plan/equal employment opportunity plans, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Title 5, CCR, § 53003, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53003, subdivision (b) (Register 2002, No. 35), beginning July 1, 2001.)

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- 5- 2. Include in the faculty and staff diversity plan/equal employment opportunity plan the following:
- a. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Title 5, CCR, § 53003, subdivision (c)(4) (Register 96, No. 23); Title 5, CCR, § 53003, subdivision (c)(4) (Register 2002, No. 35), beginning July 1, 2001.)
 - b. A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Title 5, CCR, § 53003, subdivision (c)(5) (Register 2002, No. 35), beginning August 11, 2002.)
 - c. An analysis of the number of ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of the following job categories: (1) executive/ administrative/ managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance (listed in Title 5, CCR, § 53004, subdivision (a) (Register 2002, No. 35)). (Title 5, CCR, § 53003, subdivision (c)(6) (Register 2002, No. 35), beginning August 11, 2002.)
 - d. An analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category and whether or not the underrepresentation is significant. (Title 5, CCR, § 53003, subdivision (c)(7) (Register 2002, No. 35), beginning August 11, 2002.)
 - e. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003, subdivision (c)(7). (Title 5, CCR, § 53003, subdivision (c)(8) (Register 2002, No. 35), beginning August 11, 2002.)

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- f. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Title 5, CCR, § 53003, subdivision (c)(9) (Register 2002, No. 35), beginning August 11, 2002.)
 - g. Any other measures necessary to further equal employment opportunity throughout the district. (Title 5, CCR, § 53003, subdivision (c)(10) (Register 2002, No. 35), beginning August 11, 2002.)
 - h. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Title 5, CCR, § 53003, subdivision (d) (Register 2002, No. 35), beginning August 11, 2002.)
- B. Delegation of Authority
Title 5, Section 53020
- ~~14~~-1. Be ultimately responsible for making measurable progress toward the goals established in the district's faculty and staff diversity plan or measurable progress toward equal employment opportunity by methods described in the district's equal employment opportunity plan. (Title 5, CCR, § 53020, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53020, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
 - ~~15~~-2. Design the administrative structure created by any delegation of authority to the affirmative action officer/equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Title 5, CCR, § 53000 et seq.) (Title 5, CCR, § 53020, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53020, subdivision (b) (Register 2002, No. 23) beginning July 1, 2001.)
 - ~~16~~-3. Designate in the faculty and staff diversity plan/equal employment opportunity plan a single officer, who may be the affirmative action officer/equal employment opportunity officer, for ensuring complaints of violations of the equal employment opportunity program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Title 5, CCR, § 53020, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53020, subdivision (b) (Register 2002, No. 23), beginning July 1, 2001.)

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C. Employee Survey
Title 5, Section 53004

7. 1. In the report to the Chancellor's Office of the results of the employee survey, report each employee so that they may be identified as belonging to one of the following seven job categories: (1) executive/administrative/managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance. (Title 5, CCR, § 53004, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53004, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
8. 2. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004, subdivision (a) (Register 96, No. 23; Register 2002, No. 35). (Title 5, CCR, § 53004, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53004, subdivision (b) (Register 2002, No. 35), beginning July 1, 2001.)
 - a. Count a person in only one ethnic group for reporting purposes if that person designates multiple ethnic groups with which he or she identifies. (Title 5, CCR, § 53004, subdivision (b) (Register 2002, No. 35), beginning August 11, 2002.)
 - b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Title 5, CCR, § 53004, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53004, subdivision (b) (Register 2002, No. 35), beginning July 1, 2001.)

D. Monitoring Recruitment
Title 5, Sections 53004 and 53006

6. 1. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing the faculty and staff diversity plan/equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Title 5, CCR, § 53004, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53004, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)

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- ~~13~~. 2. Take additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories, including at minimum:
- a. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Title 5, CCR, § 53006, subdivision (a)(1) (Register 2002, No. 35), beginning August 11, 2002.)
 - b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Title 5, CCR, § 53006, subdivision (a)(2) (Register 2002, No. 35), beginning August 11, 2002.)
 - c. Determine whether the group is still significantly underrepresented in the categories in question after the measures described in subdivisions (a)(1) and (2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Title 5, CCR, § 53006, subdivision (a)(3) (Register 2002, No. 35), beginning August 11, 2002.)
 - d. Monitor the staffing rate for the significantly underrepresented group in the specified job categories in question on an ongoing basis until the projected representation has been achieved for that group if significant underrepresentation persists. (Title 5, CCR, § 53006, subdivision (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

E. Recruitment Procedures
Title 5, Section 53021

- ~~17~~. 1. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021, subdivision (b). (Title 5, CCR, § 53021, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53021, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
- a. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Title 5, CCR, § 53021, subdivision (a) (Register 2002, No. 35), beginning August 11, 2002.)

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- b. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Title 5, CCR, § 53021, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53021, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
- ~~18~~. 2 Recruit at least statewide for full-time faculty and educational administrator positions, and at a minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry/Equal Employment Opportunity Registry. (Title 5, CCR, § 53021, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53021, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
- ~~19~~. 3 Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Title 5, CCR, § 53021, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53021, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
- ~~20~~. 4. Notify the Faculty and Staff Diversity Advisory Committee/Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021, subdivision (b). (Title 5, CCR, § 53021, subdivision (c) (Register 96, No. 23); Title 5, CCR, § 53021, subdivision (c) (Register 2002, No. 35), beginning July 1, 2001.)
- ~~21~~. 5. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005, subdivision (b). (Title 5, CCR, § 53021, subdivision (d) (Register 96, No. 23); Title 5, CCR, § 53021, subdivision (d) (Register 2002, No. 35), beginning July 1, 2001.)
- F. Job Announcements
Title 5, Section 53022
- ~~22~~. 1. Include sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Title 5, CCR, § 53022

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(Register 96, No. 23); Title 5, CCR, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

- ~~23~~.2. Review job specifications, excluding any “required,” “desired,” or “preferred” qualifications beyond the state minimum qualifications (set forth in Subchapter 4 of Title 5, CCR, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Title 5, CCR, § 53022 (Register 96, No. 23); Title 5, CCR, § 53022 (Register 2002, No. 35), beginning July 1, 2001.)

G. Applicant Pool
Title 5, Section 53023

24. 1. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district’s application for employment. (Title 5, CCR, § 53023, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53023, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
- ~~25~~. 2. Keep information regarding an applicant’s gender, ethnicity, and/or disability provided in an application for employment confidential. (Title 5, CCR, § 53023, subdivision (a) (Register 96, No. 23); Title 5, CCR, § 53023, subdivision (a) (Register 2002, No. 35), beginning July 1, 2001.)
- ~~27~~. 3. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Title 5, CCR, § 53023, subdivision (b) (Register 2002, No. 35), beginning August 11, 2002.)
29. 4. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Title 5, CCR, § 53023, subdivision (b) (Register 2002, No. 35), beginning August 11, 2002.)
- 34.5. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further

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recruitment efforts would be futile. (Title 5, CCR, § 53023, subdivision (b) (Register 2002, No. 35), beginning August 11, 2002.)

- ~~33~~ 6. Analyze the composition of the qualified applicant pool to ensure that no ethnic group is adversely impacted as defined by California Code of Regulations, title 5, section 53001, subdivision (a) (Register 2002, No. 35).

This analysis occurs after the analysis done to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures (see Title 5, CCR, § 53023, subdivision (b) (Register 2002, No. 35)) and before the selection process continues. (Title 5, CCR, § 53023, subdivision (c) (Register 2002, No. 35), beginning August 11, 2002.)

- ~~34~~-7. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Title 5, CCR, § 53023, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53023, subdivision (c) (Register 2002, No. 35), beginning July 1, 2001.)

H. Screening and Selection Procedures
Title 5, Section 53024

- ~~35~~.1. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Title 5, CCR, § 53024, subdivision (a)(1) (Register 96, No. 23); Title 5, CCR, § 53024, subdivision (a)(1) (Register 2002, No. 35), beginning July 1, 2001.)

- ~~36~~. 2. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Title 5, CCR, § 53024, subdivision (a)(2) (Register 96, No. 23); Title 5, CCR, § 53024, subdivision (a)(2) (Register 2002, No. 35), beginning July 1, 2001.)

- ~~38~~. 3. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001, subdivision (a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of

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ethnicity which does occur. (Title 5, CCR, § 53024, subdivision (a)(4) (Register 2002, No. 35), beginning August 11, 2002.)

- ~~39~~. 4. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024, subdivision (a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Title 5, CCR, § 53024, subdivision (b) (Register 96, No. 23); Title 5, CCR, § 53024, subdivision (b) (Register 2002, No. 35), beginning July 1, 2001.)

I. Persons with Disabilities
Title 5, Section 53025

- ~~40~~. 1. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Title 5, CCR, § 53025, subdivision (b) (Register 2002, No. 35), beginning August 11, 2002.)
- ~~41~~.2. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Title 5, CCR, § 53025, subdivision (c) (Register 2002, No. 35), beginning August 11, 2002.)
- ~~42~~.3. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Title 5, CCR, § 53025, subdivision (c) (Register 2002, No. 35), beginning August 11, 2002.)
- ~~48~~. 4. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Title 5, CCR, § 53034 (Register 96, No. 23); Title 5, CCR, § 53034 (Register 2002, No. 35), beginning July 1, 2001. ~~There is no evidence in the record indicating whether a data~~

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~~element to calculate the staffing rate of persons with disabilities has been integrated into the report required by title 5, section 53004. As a result, the Commission cannot determine an end date for this activity.)~~

J. Complaint Procedures (Nonemployees and Nonapplicants)
Title 5, Sections 53020 and 53026

- ~~43.~~ 1. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the affirmative action/equal employment opportunity program regulations (Title 5, CCR, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee to file a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e., failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Title 5, CCR, § 53020); failure to provide reasonable accommodations (see Title 5, CCR, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Title 5, CCR, § 53026 (Register 96, No. 23); Title 5, CCR, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
- ~~44.~~ 2. Forward immediately to the Chancellor a copy of the complaint. (Title 5, CCR, § 53026 (Register 96, No. 23); Title 5, CCR, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
- ~~45.~~ 3. Provide a written investigative report within 90 days if required by the Chancellor. (Title 5, CCR, § 53026 (Register 96, No. 23); Title 5, CCR, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)
- ~~46.~~ 4. Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Title 5, CCR, § 53026 (Register 96, No. 23); Title 5, CCR, § 53026 (Register 2002, No. 35), beginning July 1, 2001.) These activities are to be claimed pursuant to the parameters and guidelines for "Discrimination Complaint Procedures."

V. CLAIM PREPARATION AND SUBMISSION

The preamble per Commission boilerplate language.

A. Direct cost Reporting

Per Commission boilerplate (e.g., the Mandate Reimbursement Process 2 parameters

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and guidelines adopted May 26, 2011)

B. Indirect Cost Reporting

Community colleges have the option of using:

1. A federally approved rate, utilizing the cost accounting principles from the OMB Circular A-21.
2. The rate calculated using the Controller's Form FAM 29-C.
3. A 7% indirect cost rate.

VI. RECORD RETENTION

Per Commission boilerplate language.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Per Commission boilerplate language. The Statement of Decision identifies the following state funding:

~~In addition, for the reasons discussed above, [T]he Commission finds that any funds received from the Equal Employment Opportunity Fund or the Faculty and Staff Diversity Fund constitute offsetting revenues if used for the reimbursable state-mandated activities imposed by the test claim statute and title 5 regulations pled in the "equal employment opportunity" section of this analysis. In such instances, funds received from the Equal Employment Opportunity Fund would constitute offsetting revenue for the reimbursable state-mandated activities imposed by Title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as amended by Register 2002, number 35.~~

Funds received from the Faculty and Staff Diversity Fund would constitute offsetting revenue for the reimbursable state-mandated activities imposed by Education Code section 87102, as amended by Statutes 1988, chapter 973, and Title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53026, and 53034, as amended in Register 96, number 23.

In the Budget Act of 2003, \$1,747,000 was appropriated for the Equal Employment Opportunity Fund.446 in the Budget Act of 2001 and the Budget Act of 2002, \$1,859,000 was appropriated for the Faculty and Staff Diversity Fund.

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VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Per Commission boilerplate language.

IX. REMEDIES BEFORE THE COMMISSION

Per Commission boilerplate language.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

Per Commission boilerplate language.