

SixTen and Associates

Mandate Reimbursement Services

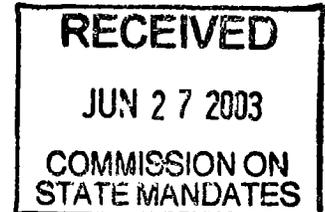
KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

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

June 25, 2003

CERTIFIED MAIL: 7000 1670 0000 0485 5315

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



Re: TEST CLAIM OF Santa Monica Community College District
Statutes of 2002/Chapter 1102
Discrimination Complaint Procedures (CCD)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Santa Monica 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:

Thomas J. Donner
Executive Vice President, Business and Administration
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

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

Paula Higashi, Executive Director,
Commission on State Mandates

June 25, 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,

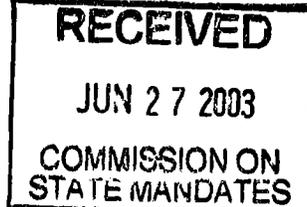


Keith B. Petersen

C: Thomas J. Donner,
Executive Vice President, Business and Administration
Santa Monica 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-46

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

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

Claimant Address

Santa Monica Community College District
1900 Pico Avenue
Santa Monica, California 90405-1628

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.

Discrimination Complaint Procedures (CCD)

Chapter	Government Code Sections	Title 5, California Code of Regulations
Chapter 1102, Statutes of 2002	Section 11135	Sections 59300, 59303, 59304, 59310,
Chapter 300, Statutes of 2002	Section 11136	59311, 59320, 59322, 59324, 59326,
Chapter 708, Statutes of 2001	Section 11136	59327, 59328, 59329, 59330, 59332,
Chapter 591, Statutes of 1999	Section 11137	59334, 59336, 59338, 59339, 59340,
Chapter 146, Statutes of 1994	Section 11138	59342, 59350, 59351, 59352, 59354
Chapter 913, Statutes of 1992	Section 11139	59356, 59358, 59360 and 59362
Chapter 972, Statutes of 1977		

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

Name and Title of Authorized Representative

Telephone No.

Thomas J. Donner
Executive Vice President -Business and Administration

Voice (310) 434-4221
Fax (310) 434-3607

Signature of Authorized Representative

Date

X

June 23, 2003

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, CA 92117
6 Voice: (858) 514-8605
7

8 BEFORE THE
9
10 COMMISSION ON STATE MANDATES
11
12 STATE OF CALIFORNIA
13

14)
15)
16) No. CSM _____
17)
18)
19) Chapter 1102, Statutes of 2002
20 Test Claim of:) Chapter 300, Statutes of 2002
21) Chapter 708, Statutes of 2001
22) Chapter 591, Statutes of 1999
23 Santa Monica) Chapter 146, Statutes of 1994
24 Community College District) Chapter 913, Statutes of 1992
25) Chapter 972, Statutes of 1977
26)
27 Test Claimant) Government Code Sections 11135,
28) 11136, 11137, 11138 and 11139
29)
30) Title 5, California Code of Regulations
31) Sections 59300, 59303, 59304, 59310,
32) 59311, 59320, 59322, 59324, 59326,
33) 59327, 59328, 59329, 59330, 59332,
34) 59334, 59336, 59338, 59339, 59340,
35) 59342, 59350, 59351, 59352, 59354,
36) 59356, 59358, 59360 and 59362
37)
38)
39) Discrimination Complaint Procedures (CCD)
40)
41 _____)

42 TEST CLAIM FILING
43
44

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...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." Santa Monica Community College District is a "school district" as defined in Government Code section 17519.¹

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for community colleges to establish and implement complaint resolution procedures as required by Title 5, California Code of Regulations governing "Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges".

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975, there was no statute or regulation which mandated any complaint resolution procedures.

SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

Government Code Sections

¹ Government Code Section 17519, as added by Chapter 1459/84:

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

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
2 11135² which provides that no person in the State of California shall be unlawfully
3 denied the benefits of any program or activity that is funded directly by the state or
4 receives any financial assistance from the state based on their ethnic group
5 identification, religion, age, sex, color, or physical or mental disability.

6 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
7 11136³ which provides that, whenever a state agency that administers a program or
8 activity funded directly by the state, or which receives financial assistance from the

²Government Code Section 11135, added by Chapter 972, Statutes of 1977,
Section 1:

“No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.”

³Government Code Section 11136, added by Chapter 972, Statutes of 1977,
Section 1:

“Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation occurred.”

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 state, has reasonable cause to believe that a local agency has violated the provisions of
2 11135 or any regulation adopted to implement the section, the head of the state agency
3 is required to notify the local agency of such violation and, after considering all relevant
4 evidence, determine whether there is probable cause to believe that a violation of
5 Section 11135 has occurred. If probable cause is established, the head of the state
6 agency shall cause a hearing to be conducted pursuant to the provisions of Chapter 5
7 (Government Code Sections 11500 through 11529) to determine whether a violation
8 occurred. (See: Section D, infra.)

9 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
10 11137⁴ which provides that, if it is determined that a local agency has violated the
11 provisions of the article, the state agency that administers the program or activity
12 involved shall take action to curtail state funding in whole or in part to such local agency.

13 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
14 11138⁵ which requires that each state agency that administers a program or activity that

⁴Government Code Section 11137, added by Chapter 972, Statutes of 1977,
Section 1:

“If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.”

⁵ Government Code Section 11138, added by Chapter 972, Statutes of 1977,
Section 1:

“Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 is funded directly by the state or receives any financial assistance from the state and
2 that enters into contracts for the performance of services to be provided to the public in
3 an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year
4 shall, in accordance with the provisions of Chapter 4.5 (commencing with Section
5 11371), adopt such rules and regulations as are necessary to carry out the purposes
6 and provisions of the article. Test claimant believes and thereon alleges that the
7 Chancellor's Office of the California Community Colleges is the only state agency to
8 adopt rules and regulations which require local government to implement duties
9 assigned by law to be preformed by the responsible state agency, in this case, the
10 Board of Governors of the California Community Colleges.

11 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
12 11139⁶ which provides that the prohibitions and sanctions imposed by this article shall
13 be in addition to any other prohibitions and sanctions imposed by law.

contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article."

⁶ Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1:

"The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities, and women."

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 Chapter 913, Statutes of 1992, Section 18, amended Government Code Section
2 11135⁷, subdivision (a), to delete "physical or mental" as modifiers of "disability".

3 Subdivision (b) was added to require that programs and activities, at a minimum, shall
4 meet the protections and prohibitions of the Americans with Disabilities Act of 1990.

5 Subdivision (c) was added to define "disability" as any of the following: (1) a physical or
6 mental impairment that substantially limits one or more of the major life activities of the
7 individual, (2) a record of an impairment, or (3) being regarded as having such an
8 impairment.

9 Chapter 146, Statutes of 1994, Section 66, amended Government Code Section
10 11135 to make non-substantive technical changes.

11 Chapter 591, Statutes of 1999, Section 3, amended Government Code Section

⁷ Government Code Section 11135, added by Chapter 972, Statutes of 1977,
Section 1, as amended by Chapter 913, Statutes of 1992, Section 18:

"(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or ~~physical or mental~~ disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment, (3) being regarded as having such an impairment."

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 11139⁸ to add a provision that allows enforcement of the article and regulations to be
2 enforced by a civil action for equitable relief.

3 Chapter 708, Statutes of 2001, Section 1, amended Government Code Section
4 11135⁹, subdivision (a), to clarify that no person shall be denied full and equal access to

⁸ Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 591, Statutes of 1999, Section 3:

“The prohibitions and sanctions imposed by this article ~~shall be~~ are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in ~~such a manner so as to~~ that would frustrate its purpose.

This article shall not be interpreted in ~~such a manner so as to~~ that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief.”

⁹ Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 708, Statutes of 2001, Section 1:

“(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, “disability” means ~~any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described~~

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 the benefits of any program or activity that is conducted, operated, or administered by
2 the state or by any state agency. Subdivision (c) was amended to redefine "disability"
3 by reference to Section 12926.

4 Chapter 708, Statutes of 2001, Section 2, amended Government Code Section
5 11139¹⁰ which clarified that enforcement by a civil action for equitable relief is
6 independent of any other rights and remedies.

7 Chapter 300, Statutes of 2002, Section 4, amended Government Code Section
8 11135¹¹, subdivision (a), to add "race" and "national origin" to the list of prohibited basis

~~in paragraph (1):~~ mental or physical disability as defined in Section 12926."

¹⁰ Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 708, Statutes of 2001, Section 2:

"The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies."

¹¹ Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 300, Statutes of 2002, Section 4:

"(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state."

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 for discrimination.

2 Chapter 1102, Statutes of 2002, Section 2.5, amended Government Code
3 Section 11135¹² by adding subdivision (d) which requires compliance with federal laws
4 regulating electronic or information technology for the blind and visually impaired and
5 deaf and hard-of-hearing persons.

6 California Code of Regulations

7 Subchapter 5 (Articles 1-4, Sections 59300-59362, not consecutive), initially
8 adopted in 1981, establishes Board of Governor regulations for "Nondiscrimination in
9 Programs Receiving State Financial Assistance Through the Chancellor or Board of
10 Governors of the California Community Colleges". These Title 5 Code of Regulations

¹² Government Code Section 11135, added by Chapter 972, Statutes of 1977,
Section 1, as amended by Chapter 1102, Statutes of 2002, Section 2.5:

"(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity."

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 Sections are attached hereto as Exhibit 2 and are incorporated herein by reference.

2 ARTICLE 1. GENERAL

3 Section 59300 [filed 1981 - last amended 2002] states the purpose of the
4 subchapter is to implement the provisions of California Government Code sections
5 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code Sec. 66250 et seq.),
6 Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000d), title IX of the Education
7 Amendments of 1972 (20 U.S.C. Sec. 1681), section 504 of the Rehabilitation Act of
8 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec.
9 12100 et seq.) and the Age Discrimination Act (42 U.S.C. Sec. 6101), to the end that no
10 person in the State of California be unlawfully denied full and equal access to the
11 benefits of, or be unlawfully subjected to discrimination under, any program or activity
12 that is administered by, funded directly by, or that receives any financial assistance
13 from, the Chancellor or Board of Governors of the California Community Colleges based
14 upon ethnic group identification, national origin, religion, age, sex, race, color, ancestry,
15 sexual orientation, or physical or mental disability.

16 Section 59303 [filed 1981 - last amended 2002] provides that the Board of
17 Governors delegates responsibility for implementing and enforcing the requirements of
18 Government Code Sections 11135 through 11137 to the Chancellor of the California
19 Community Colleges, except as specifically stated in this subchapter.

20 Section 59304 [filed 1981 - last amended 2002] provides that the Chancellor
21 assist community college districts in recognizing and eliminating unlawful discrimination

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 that may exist in their programs and activities and in meeting the requirements of the
2 subchapter.

3 ARTICLE 2. DEFINITIONS

4 Section 59310 [filed 1981 - last amended 2002] provides that, except as
5 otherwise provided in the subchapter, the definitions of activities prohibited and
6 protected by Title 22 of the California Code of Regulations (commencing with section
7 98100) be incorporated into and made applicable to the subchapter. Sections 98100
8 through 98111 of Title 22 are attached hereto as Exhibit 3 and are incorporated herein
9 by reference.

10 Section 59311 [filed 2001 - last amended 2002] provides definitions for the
11 subchapter.

12 ARTICLE 3. DISTRICT COMPLIANCE AND ENFORCEMENT

13 Section 59320 [filed 1981 - last amended 2002] provides that each community
14 college district has the primary responsibility to insure that its programs and activities
15 are available to all persons without regard to ethnic group identification, national origin,
16 religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental
17 disability. Each community college district is required to investigate complaints of
18 unlawful discrimination in its programs or activities, and seek to resolve these
19 complaints in accordance with the provisions of the subchapter.

20 Section 59322 [filed 1981 - last amended 2002] requires that each community
21 college district establish and adopt written policies consistent with this article and when

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 those policies are adopted or amended, they shall be submitted to the Chancellor for
2 review and approval within 90 days of the effective date of the adoption or
3 amendment(s).

4 Section 59324 [filed 1981 - last amended 2002] requires each community college
5 district to identify to the Chancellor and to the public a single person as the district
6 officer responsible for receiving complaints filed pursuant to section 59328 and
7 coordinating their investigation. The actual investigation of complaints may be assigned
8 to other staff or to outside persons or organizations under contract with the district, such
9 as when the officer designated to receive complaints is named in the complaint or is
10 implicated by the allegations in the complaint.

11 Section 59326 [filed 1981 - last amended 2002] requires that each community
12 college district notify students and employees of the provisions of the subchapter.

13 Section 59327 [filed 1996 - last amended 2002] provides, in subdivision (a), that
14 whenever any person brings charges of unlawful discrimination to the attention of the
15 responsible district officer designated pursuant to section 59324, that officer shall:

- 16 (1) Undertake efforts to informally resolve the charges;
- 17 (2) Advise the complainant that he or she need not participate in
18 informal resolution;
- 19 (3) Notify the person bringing the charges of his or her right to file a
20 complaint, as defined in section 59311, and of the procedure for
21 filing such a complaint pursuant to section 59328;

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 (4) Advise the complainant that he or she may file his or her
2 nonemployment-based complaint with the Office for Civil Rights of
3 the U.S. Department of Education (OCR) where such a complaint
4 is within that agency's jurisdiction; and

5 (5) Advise the complainant that he or she may file his or her
6 employment-based complaint with the U.S. Equal Employment
7 Opportunity Commission (EEOC) and/or the California Department
8 of Fair Employment and Housing (DFEH) where the complaint is
9 within the jurisdiction of those agencies.

10 Subdivision (b) provides that efforts at informal resolution pursuant to subsection (a)(1)
11 need not include any investigation unless the responsible district officer determines that
12 an investigation is warranted by the seriousness of the charges. Subdivision (c)
13 requires that efforts at informal resolution may continue after the filing of a formal written
14 complaint but, after a complaint is filed, an investigation is required to be conducted
15 pursuant to section 59334 and must be completed unless the matter is informally
16 resolved and the complainant dismisses the formal complaint. Any efforts at informal
17 resolution after the filing of a written complaint shall not exceed the ninety (90) day
18 period for rendering the administrative determination pursuant to section 59336.

19 Section 59328 [filed 1981 - last amended 2002] provides that an investigation of
20 alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a
21 complaint that meets the following requirements:

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 complaint with the U.S. Equal Employment Opportunity
2 Commission (EEOC) and/or Department of Fair Employment and
3 Housing (DFEH) where the complaint is within the jurisdiction of
4 those agencies, and (2) forward a copy of any filing by the
5 complainant with DFEH to the Chancellor's Office for a
6 determination of whether the issues presented require an
7 independent investigation of the matter under the provisions of this
8 subchapter.

9 Section 59329 [filed 1981 - last amended 2002] provides that, upon receiving a
10 complaint filed pursuant to section 59328, the Chancellor will immediately forward a
11 copy of the complaint to the appropriate community college district responsible officer
12 who shall respond pursuant to section 59332 or initiate the investigation required by
13 section 59334.

14 Section 59330 [filed 1981 - last amended 2002] requires that, immediately upon
15 receiving a complaint filed in accordance with section 59328, the district shall forward a
16 copy of the complaint to the Chancellor.

17 Section 59332 [filed 1981] provides that, when a district receives a complaint
18 which it finds does not meet the requirements of Section 59328, the district shall
19 immediately notify the complainant that the complaint does not meet the requirements of
20 Section 59328 and shall specify in what requirement the complaint is defective.

21 Section 59334 [filed 1981 - last amended 2002] provides that, upon receiving a

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 complaint that is properly filed in accordance with section 59328, the district will
2 commence an impartial fact-finding investigation of that complaint and notify the
3 complainant and Chancellor that it is doing so. The results of the investigation shall be
4 set forth in a written report that shall include at least all of the following:

- 5 (a) A description of the circumstances giving rise to the complaint;
- 6 (b) A summary of the testimony provided by each witness, including
7 the complainant and any viable witnesses identified by the
8 complainant in the complaint;
- 9 (c) An analysis of any relevant data or other evidence collected
10 during the course of the investigation;
- 11 (d) A specific finding as to whether there is probable cause to believe
12 that discrimination occurred with respect to each allegation in the
13 complaint; and
- 14 (e) Any other information deemed appropriate by the district.

15 Section 59336 [filed 1992 - last amended 2002] provides that, within ninety (90)
16 days of receiving a complaint, the district shall complete its investigation and forward a
17 copy of the investigative report required pursuant to section 59334 to the Chancellor, a
18 copy or summary of the report to the complainant, and written notice setting forth all of
19 the following to both the complainant and the Chancellor:

- 20 (a) The determination of the chief executive officer or his/her designee
21 as to whether there is probable cause to believe discrimination

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 occurred with respect to each allegation in the complaint;

2 (b) A description of actions taken, if any, to prevent similar problems
3 from occurring in the future;

4 (c) The proposed resolution of the complaint; and

5 (d) The complainant's right to appeal to the district governing board
6 and the Chancellor pursuant to sections 59338 and 59339.

7 Section 59338 [filed 1992 - last amended 2002] provides, in subdivision (a), that if
8 the complainant is not satisfied with the results of the administrative determination
9 rendered pursuant to section 59336, the complainant may submit a written appeal to the
10 district governing board within fifteen (15) days from the date of the administrative
11 determination. The governing board shall review the original complaint, the investigative
12 report, the administrative determination, and the appeal and issue a final district decision
13 in the matter within forty-five (45) days after receiving the appeal. Subdivision (b)
14 provides that a copy of the final district decision rendered by the governing board, that
15 includes complainant's right to appeal the district's decision to the Chancellor pursuant
16 to section 59339, shall be forwarded to the complainant and to the Chancellor.

17 Subdivision (c) provides that, if the governing board does not act within forty-five (45)
18 days, the administrative determination shall be deemed approved and shall become the
19 final district decision in the matter. The district shall notify the complainant and the
20 Chancellor that the board took no action and the administrative determination is deemed
21 approved pursuant to this section. The complainant shall also be notified of his or her

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 right to appeal the district's decision to the Chancellor pursuant to section 59339.

2 Section 59339 [filed 2001 - last amended 2002] provides, in subdivision (a), that
3 in any case not involving employment discrimination, the complainant shall have the
4 right to file a written appeal with the Chancellor within thirty (30) days from the date that
5 the governing board issues the final district decision or permits the administrative
6 determination to become final pursuant to section 59338. Such appeals shall be
7 processed pursuant to the provisions of Article 4 (commencing with section 59350) of
8 the subchapter. The appeal must be accompanied by a copy of the decision of the
9 governing board or evidence showing the date on which the complainant filed an appeal
10 with the governing board and a statement, under penalty of perjury, that no response
11 was received from the governing board within forty-five (45) days from that date.

12 Subdivision (b) provides that, in any case involving employment discrimination, the
13 complainant may, at any time before or after the final district decision is rendered, file a
14 complaint with the Department of Fair Employment and Housing (DFEH) where the
15 complaint is within the jurisdiction of that agency.

16 Section 59340 [filed 1981 - last amended 2002] provides that, within 150 days of
17 receiving a complaint, the district will forward to the Chancellor: (a) a copy of the final
18 district decision rendered by the governing board or a statement indicating the date on
19 which the administrative determination became final pursuant to section 59338(a); (b) a
20 copy of the notice to the complainant required pursuant to section 59338(a); and (c)
21 such other information as the Chancellor may require.

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 Section 59342 [filed 1992 - last amended 2002] provides, in subdivision (a), that if
2 a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day
3 deadline specified in sections 59336 or 59340 for submission of materials to the
4 Chancellor, the district may file a written request that the Chancellor grant an extension
5 of the deadline. Subdivision (b) requires that a copy of the request for an extension
6 shall be sent to the complainant who may file written objections with the Chancellor
7 within five (5) days of receipt. Subdivision (c) provides that the Chancellor may grant
8 the request unless delay would be prejudicial to the investigation. Subdivision (d)
9 provides that if a district fails to comply with the requirements of sections 59336 or
10 59340 by the required deadline, including any extension granted pursuant to this
11 section, the Chancellor may proceed to review the case as provided in Article 4
12 (commencing with section 59350) of the subchapter based on the original complaint and
13 any other relevant information then available.

14 **ARTICLE 4. CHANCELLOR'S PROCEDURE TO EFFECT COMPLIANCE**

15 Section 59350 [filed 1981 - last amended 2002] requires, in subdivision (a), that
16 the Chancellor review the materials submitted by the district pursuant to sections 59336
17 and 59340, together with the complainant's appeal, and determine whether there is
18 reasonable cause to believe the district has violated the requirements of the subchapter.
19 Subdivision (b) provides that a failure by the complainant to file an appeal pursuant to
20 section 59339 shall not preclude the Chancellor from finding reasonable cause to
21 believe the district has violated the requirements of the subchapter. Subdivision (c)

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 provides that, if the Chancellor finds there is no reasonable cause to believe a violation
2 has occurred, the Chancellor shall immediately notify both the complainant and the
3 district.

4 Section 59351 [filed 2001 - last amended 2002] provides that, if the Chancellor's
5 Office finds that issues or facts not included in the complaint have been raised for the
6 first time on appeal based upon review of the materials submitted by the complainant
7 pursuant to section 59339, the Chancellor's Office will provide the district a reasonable
8 opportunity to respond to the new issues or facts raised by complainant.

9 Section 59352 [filed 1981 - last amended 2002] provides that, if the Chancellor
10 finds there is reasonable cause to believe a violation has occurred, the Chancellor shall
11 investigate to determine whether there is probable cause to believe a violation has
12 occurred.

13 Section 59354 [filed 1981 - last amended 2002] provides that, during the course
14 of the investigation, the Chancellor shall seek to informally resolve the alleged violation,
15 and that such resolution shall be set forth in a written conciliation agreement with a copy
16 of the written agreement to be sent to the complainant.

17 Section 59356 [filed 1981 - last amended 2002] provides that, within 120 days of
18 initiating the investigation, the Chancellor shall notify the district and the complainant
19 either that there is probable cause to believe the district has violated the provisions of
20 this subchapter or that there is no probable cause to believe the district has violated the
21 provisions of this subchapter.

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 Section 59358 [filed 1981 - last amended 2002] provides that, if the Chancellor
2 finds the district has violated the provisions of this subchapter, and if the district does
3 not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant
4 to chapter 5 (commencing with section 11500) of Part I, Division 3, Title 2 of the
5 Government Code, to determine whether the violation did occur. Districts are then
6 required to submit and respond to the due process requirements set forth therein.

7 Section 59360 [filed 1981 - last amended 2002] provides, in subdivision (a), that
8 upon a determination that a district has violated the provisions of this subchapter, the
9 Chancellor shall notify the district of the action he or she will take to effect compliance.
10 The Chancellor may use any means authorized by law to effect compliance, including
11 the withholding of all or part of the district's state support, or making probationary
12 eligibility for future state support conditional on compliance with specified conditions, or
13 proceeding in a court of competent jurisdiction for an appropriate order compelling
14 compliance. Subdivision (b) provides that no decision to curtail state funding to a district
15 pursuant to this section shall be made until the Chancellor has determined that
16 compliance cannot be secured by voluntary means.

17 Section 59362 [filed 1981 - last amended 2002] provides that, a decision by the
18 Chancellor pursuant to section 59360 is subject to judicial review by the district, as
19 provided by Section 1094.5 of the Code of Civil Procedure.

20 **PART III. STATEMENT OF THE CLAIM**

21 **SECTION 1. COSTS MANDATED BY THE STATE**

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 The California Code of Regulations Sections cited in this test claim result in
2 community college districts incurring costs mandated by the state, as defined in
3 Government Code section 17514¹³, by creating new state-mandated duties related to
4 the uniquely governmental function of providing education and service to the public and
5 these regulations apply to community college districts and do not apply generally to all
6 residents and entities in the state.¹⁴

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

¹³ Government Code section 17514, as added by Chapter 1459/84:

"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.

¹⁴ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government 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."

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

- 1 A) Pursuant to Subchapter 5 of Title 5 of the California Code of Regulations
2 (Articles 1-4, Sections 59300-59362, not consecutive) for each community
3 college district to establish and implement policies and procedures, and to
4 periodically update those policies and procedures, to implement those
5 regulations, as defined in Sections 59310, 59311 and the Title 22, California
6 Code of Regulations attached hereto as Exhibit 3.
- 7 B) Pursuant to Section 59320 insuring that the district's programs and activities are
8 available to persons without discrimination based on ethnic group identification,
9 national origin, religion, age, race, sex, color, sexual orientation, ancestry, or
10 physical or mental disability. Investigating complaints of unlawful discrimination in
11 its programs or activities and seeking to resolve complaints in accordance with
12 the provisions of the subchapter.
- 13 C) Pursuant to Section 59322, establishing and adopting written policies consistent
14 with the article and submitting them to the Chancellor for review and approval
15 within 90 days of the effective date of the adoption or amendment(s).
- 16 D) Pursuant to Section 59324, identifying to the Chancellor and to the public a single
17 person as the district officer responsible for receiving complaints filed pursuant to
18 section 59328 and coordinating their investigation.
- 19 E) Pursuant to Section 59326, notifying students and employees of the provisions of
20 the subchapter.
- 21 F) Pursuant to Section 59327, whenever any person brings charges of unlawful

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 discrimination to the district's attention:

- 2 (1) Undertaking efforts to informally resolve the charges;
- 3 (2) Advising the complainant that he or she need not participate in informal
4 resolution;
- 5 (3) Notifying the person bringing the charges of his or her right to file a
6 complaint pursuant to section 59328;
- 7 (4) Advising the complainant that he or she may file his or her non-
8 employment-based complaint with the Office for Civil Rights of the U.S.
9 Department of Education (OCR) where such a complaint is within that
10 agency's jurisdiction; and
- 11 (5) Advising the complainant that he or she may file his or her employment-
12 based complaint with the U.S. Equal Employment Opportunity
13 Commission (EEOC) and/or the California Department of Fair
14 Employment and Housing (DFEH).

15 Pursuant to subdivision (b) commencing an investigation when the responsible
16 district officer determines that an investigation is warranted by the seriousness of
17 the charges. Pursuant to subdivision (c), completing any investigation within 90
18 days after a formal complaint is filed.

19 G) Pursuant to Section 59328, initiating an investigation of a charge of unlawful
20 discrimination upon the filing of a conforming complaint.

21 H) Pursuant to Section 59328, subdivision (f), (1) advising the complainant that he or

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 she may file the complaint with the U.S. Equal Employment Opportunity
2 Commission (EEOC) and/or Department of Fair Employment and Housing
3 (DFEH) where the complaint is within the jurisdiction of those agencies, and (2)
4 forwarding a copy of any filing by the complainant with DFEH to the Chancellor's
5 Office for a determination of whether the issues presented require an
6 independent investigation of the matter under the provisions of the subchapter.

7 I) Pursuant to Section 59329, responding to a complaint submitted to the
8 Chancellor pursuant to Section 59332, or initiating an impartial fact-finding
9 investigation pursuant to Section 59334.

10 J) Pursuant to Section 59330, upon receipt, forwarding a copy of any complaint to
11 the Chancellor.

12 K) Pursuant to Section 59332, when receiving a complaint which the district finds
13 does not meet the requirements of Section 59328, immediately notifying the
14 complainant that the complaint does not meet the requirements of Section 59328
15 and specifying in what requirement the complaint was defective.

16 L) Pursuant to Section 59334, upon receiving a complaint that is properly filed,
17 commencing an impartial fact-finding investigation of the complaint.

18 M) Pursuant to Section 59334, upon commencing an impartial fact-finding
19 investigation, notifying the complainant and Chancellor that it is conducting an
20 investigation and that the results of the investigation will be set forth in a written
21 report.

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

- 1 N) Pursuant to Section 59334, after conducting an impartial fact-finding
2 investigation, setting forth in a written report the results of the investigation which
3 shall include at least all of the following:
- 4 (1) A description of the circumstances giving rise to the complaint;
 - 5 (2) A summary of the testimony provided by each witness, including the
6 complaint and any viable witnesses identified by the complainant in the
7 complaint;
 - 8 (3) An analysis of any relevant data or other evidence collected during the
9 course of the investigation;
 - 10 (4) A specific finding as to whether there is probable cause to believe that
11 discrimination occurred with respect to each allegation in the complaint;
12 and
 - 13 (5) Any other information deemed appropriate by the district.
- 14 O) Pursuant to Section 59336, forwarding a copy of the completed investigative
15 report to the Chancellor and to the complainant within 90 days of receiving the
16 complaint, and a written notice setting forth all of the following:
- 17 (1) The determination of the chief executive officer or his/her designee as to
18 whether there is probable cause to believe discrimination occurred with
19 respect to each allegation in the complaint;
 - 20 (2) A description of actions taken, if any, to prevent similar problems from
21 occurring in the future;

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

- 1 (3) The proposed resolution of the complaint; and
- 2 (4) The complainant's right to appeal to the district governing board and the
- 3 Chancellor pursuant to sections 59338 and 59339.
- 4 P) Pursuant to Section 59338, notifying the complainant and the Chancellor when
- 5 the district governing board takes no action causing an administrative
- 6 determination to be deemed approved.
- 7 Q) Pursuant to Section 59340, forwarding the following documents to the Chancellor
- 8 within 150 days after receiving a complaint:
- 9 (1) A copy of the final district decision rendered by the governing board
- 10 or a statement indicating the date on which the administrative
- 11 determination became final pursuant to section 59338(a);
- 12 (2) A copy of the notice to the complainant required pursuant to section
- 13 59338(a); and
- 14 (3) Such other information as the Chancellor may require.
- 15 R) Pursuant to Section 59342, if, for reasons beyond its control, a district is unable
- 16 to comply with the deadlines in sections 59336 or 59340, filing a written request
- 17 with the Chancellor for an extension of the deadline and mailing a copy to the
- 18 complainant.
- 19 S) Pursuant to Section 59351, responding to new issues or facts raised by a
- 20 complainant on appeal to the Chancellor's office.
- 21 T) Pursuant to Section 59352, cooperating and complying with the Chancellor in any

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 investigation conducted to determine whether there is probable cause to believe
2 a violation has occurred.

3 U) Pursuant to Section 59354, cooperating with the Chancellor when seeking an
4 informal resolution of an alleged violation and joining in any written conciliation
5 agreement when resolution is achieved.

6 V) Pursuant to Section 59356, subdivision (a), acquiescing or contesting a finding by
7 the Chancellor that there is probable cause to believe the district has violated the
8 provisions of the subchapter. Pursuant to subdivision (b), closing the district's file
9 upon a finding by the Chancellor that there is no probable cause to believe the
10 district has violated the provisions of the subchapter.

11 W) Pursuant to Section 59358, submitting and responding to the hearing process
12 initiated by the Chancellor when the district does not acquiesce in a finding the
13 district has violated the provisions of the subchapter.

14 X) Pursuant to Section 59360, complying with actions taken by the Chancellor upon
15 a determination that the district has violated the provisions of the subchapter or,
16 in the alternative, appearing and defending in a court of competent jurisdiction
17 opposing an order seeking compliance.

18 Y) Pursuant to Section 59362, filing a petition as provided by Section 1094.5 of the
19 Code of Civil Procedure to review a decision of the Chancellor when necessary or
20 appropriate.

21 /

1 SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

2 None of the Government Code Section 17556¹⁵ statutory exceptions to a finding
3 of costs mandated by the state apply to this test claim. Note, that to the extent
4 community college districts may have previously performed functions similar to those
5 mandated by the referenced code section, such efforts did not establish a preexisting

¹⁵ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

“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, 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.”

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 duty that would relieve the state of its constitutional requirement to later reimburse
2 school districts when these activities became mandated.¹⁶

3 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

4 No funds are appropriated by the state for reimbursement of these costs
5 mandated by the state and there is no other provision of law for recovery of costs from
6 any other source.

7 PART IV. ADDITIONAL CLAIM REQUIREMENTS

8 The following elements of this claim are provided pursuant to Section 1183, Title
9 2, California Code of Regulations:

10 Exhibit 1: Declaration of Thomas J. Donner
11 Santa Monica Community College District

12
13 Exhibit 2: Copies of Statutes Cited
14
15 Chapter 1102, Statutes of 2002
16 Chapter 300, Statutes of 2002
17 Chapter 708, Statutes of 2001
18 Chapter 591, Statutes of 1999
19 Chapter 146, Statutes of 1994
20 Chapter 913, Statutes of 1992
21 Chapter 972, Statutes of 1977

22
23 Exhibit 3: Government Code Sections Cited
24
25 11135

¹⁶ Government Code section 17565, added by Chapter 879, Statutes of 1986:

“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.”

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1 11136
2 11137
3 11138
4 11139
5

6 Exhibit 4: Title 5, California Code of Regulation Sections cited:
7

8 Section 59300
9 Section 59303
10 Section 59304
11 Section 59310
12 Section 59311
13 Section 59320
14 Section 59322
15 Section 59324
16 Section 59326
17 Section 59327
18 Section 59328
19 Section 59329
20 Section 59330
21 Section 59332
22 Section 59334
23 Section 59336
24 Section 59338
25 Section 59339
26 Section 59340
27 Section 59342
28 Section 59350
29 Section 59351
30 Section 59352
31 Section 59354
32 Section 59356
33 Section 59358
34 Section 59360
35 Section 59362
36

37 Exhibit 5: Title 22, California Code of Regulations Referenced

38 Section 98100
39 Section 98101
40 Section 98102
41 Section 98110
42 Section 98111

Test Claim of Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 23, 2003, at Santa Monica, California by:



Thomas J. Donner
Executive Vice President
Santa Monica Community College District

Voice: (310) 434-4221
Fax: (310) 434-3607

PART VI. APPOINTMENT OF REPRESENTATIVE

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



Thomas J. Donner
Executive Vice President
Santa Monica Community College District

6-23-03

Date

**EXHIBIT 1
DECLARATION**

DECLARATION OF THOMAS J. DONNER

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Test Claim of Santa Monica Community College District

COSM No. _____

Discrimination Procedures (CCD)

Statutes

Title 5, California Code of Regulations

Chapter 1102, Statutes of 2002	Section 59300	Section 59334
Chapter 300, Statutes of 2002	Section 59303	Section 59336
Chapter 708, Statutes of 2001	Section 59304	Section 59338
Chapter 591, Statutes of 1999	Section 59310	Section 59339
Chapter 146, Statutes of 1994	Section 59311	Section 59340
Chapter 913, Statutes of 1992	Section 59320	Section 59342
Chapter 972, Statutes of 1977	Section 59322	Section 59350
	Section 59324	Section 59351
	Section 59326	Section 59352
	Section 59327	Section 59354
Government Code Sections	Section 59328	Section 59356
11135, 11136, 11137,	Section 59329	Section 59358
11138 and 11139	Section 59330	Section 59360
	Section 59332	Section 59362

Discrimination Complaint Procedures (CCD)

I, Thomas J. Donner, Executive Vice President, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President, I am responsible for implementation of the Title 5 Regulations governing discrimination complaint procedures. I am familiar with the provisions and requirements of the statutes, Government Code sections and Title 5 Regulations enumerated above.

These statutes, sections and regulations require the Santa Monica Community College District to implement the following activities:

A) Pursuant to Government Code Sections 11135 through 11139 and Subchapter 5

of Title 5 of the California Code of Regulations (Articles 1-4, Sections 59300-59362, not consecutive) for each community college district to establish and implement policies and procedures, and to periodically update those policies and procedures, to implement those regulations, as defined in Sections 59310, 59311 and the Title 22, California Code of Regulations attached to the test claim as Exhibit 5.

- B) Pursuant to Section 59320 insuring that the district's programs and activities are available to persons without discrimination based on ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Investigating complaints of unlawful discrimination in its programs or activities and seeking to resolve complaints in accordance with the provisions of the subchapter.
- C) Pursuant to Section 59322, establishing and adopting written policies consistent with the article and submitting them to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).
- D) Pursuant to Section 59324, identifying to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation.
- E) Pursuant to Section 59326, notifying students and employees of the provisions of the subchapter.
- F) Pursuant to Section 59327, whenever any person brings charges of unlawful discrimination to the district's attention:

Declaration of Thomas J. Donner
Discrimination Complaint Procedures (CCD)

- (1) Undertaking efforts to informally resolve the charges;
- (2) Advising the complainant that he or she need not participate in informal resolution;
- (3) Notifying the person bringing the charges of his or her right to file a complaint pursuant to section 59328;
- (4) Advising the complainant that he or she may file his or her non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction, and
- (5) Advising the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH).

Pursuant to subdivision (b) commencing an investigation when the responsible district officer determines that an investigation is warranted by the seriousness of the charges. Pursuant to subdivision (c), completing any investigation within 90 days after a formal complaint is filed.

- G) Pursuant to Section 59328, initiating an investigation of a charge of unlawful discrimination upon the filing of a conforming complaint.
- (H) Pursuant to Section 59328, subdivision (f), (1) advising the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity

Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and (2) forwarding a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of the subchapter.

- (I) Pursuant to Section 59329, responding to a complaint submitted to the Chancellor pursuant to Section 59332, or initiating an impartial fact-finding investigation pursuant to Section 59334.
- (J) Pursuant to Section 59330, upon receipt, forwarding a copy of any complaint to the Chancellor.
- (K) Pursuant to Section 59332, when receiving a complaint which the district finds does not meet the requirements of Section 59328, immediately notifying the complainant that the complaint does not meet the requirements of Section 59328 and specifying in what requirement the complaint was defective.
- (L) Pursuant to Section 59334, upon receiving a complaint that is properly filed, commencing an impartial fact-finding investigation of the complaint.
- (M) Pursuant to Section 59334, upon commencing an impartial fact-finding investigation, notifying the complainant and Chancellor that it is conducting an investigation and that the results of the investigation will be set forth in a written report.
- (N) Pursuant to Section 59334, after conducting an impartial fact-finding

investigation, setting forth in a written report the results of the investigation which shall include at least all of the following:

- (1) A description of the circumstances giving rise to the complaint;
 - (2) A summary of the testimony provided by each witness, including the complaint and any viable witnesses identified by the complainant in the complaint;
 - (3) An analysis of any relevant data or other evidence collected during the course of the investigation;
 - (4) A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint;
and
 - (5) Any other information deemed appropriate by the district.
- (O) Pursuant to Section 59336, forwarding a copy of the completed investigative report to the Chancellor and to the complainant within 90 days of receiving the complaint, and a written notice setting forth all of the following:
- (1) The determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;
 - (2) A description of actions taken, if any, to prevent similar problems from occurring in the future;
 - (3) The proposed resolution of the complaint; and

Declaration of Thomas J. Donner
Discrimination Complaint Procedures (CCD)

- (4) The complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.
- (P) Pursuant to Section 59338, notifying the complainant and the Chancellor when the district governing board takes no action causing an administrative determination to be deemed approved.
- (Q) Pursuant to Section 59340, forwarding the following documents to the Chancellor within 150 days after receiving a complaint:
 - (1) A copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);
 - (2) A copy of the notice to the complainant required pursuant to section 59338(a); and
 - (3) Such other information as the Chancellor may require.
- (R) Pursuant to Section 59342, if for reasons beyond its control a district is unable to comply with the deadlines in sections 59336 or 59340, filing a written request with the Chancellor for an extension of the deadline and mailing a copy to the complainant.
- (S) Pursuant to Section 59351, responding to new issues or facts raised by a complainant on appeal to the Chancellor's office.
- (T) Pursuant to Section 59352, cooperating and complying with the Chancellor in any investigation conducted to determine whether there is probable cause to believe

a violation has occurred.

- (U) Pursuant to Section 59354, cooperating with the Chancellor when seeking an informal resolution of an alleged violation and joining in any written conciliation agreement when resolution is achieved.
- (V) Pursuant to Section 59356, subdivision (a), acquiescing or contesting a finding by the Chancellor that there is probable cause to believe the district has violated the provisions of the subchapter. Pursuant to subdivision (b), closing the district's file upon a finding by the Chancellor that there is no probable cause to believe the district has violated the provisions of the subchapter.
- (W) Pursuant to Section 59358, submitting and responding to the hearing process initiated by the Chancellor when the district does not acquiesce in a finding the district has violated the provisions of the subchapter.
- (X) Pursuant to Section 59360, complying with actions taken by the Chancellor upon a determination that the district has violated the provisions of the subchapter or, in the alternative, appearing and defending in a court of competent jurisdiction opposing an order seeking compliance.
- (Y) Pursuant to Section 59362, filing a petition as provided by Section 1094.5 of the Code of Civil Procedure to review a decision of the Chancellor when necessary or appropriate.

It is estimated that the Santa Monica Community College District, to the extent Title 5 complaints are filed with the district, incurred more than \$ 1,000 in staffing and

Declaration of Thomas J. Donner
Discrimination Complaint Procedures (CCD)

other costs in excess of any funding provided to school districts and the state for the period from July 1, 2000 through June 30, 2002 to implement these new 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 23 day of June, 2003, at Santa Monica, California.



Thomas J. Donner
Executive Vice President
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 972

An act to add Article 9.5 (commencing with Section 11135) to Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to discrimination.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

The people of the State of California do enact as follows:

SECTION 1. Article 9.5 (commencing with Section 11135) is added to Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 9.5. Discrimination

11135. No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

11136. Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of

Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

11137. If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

11138. Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

11139. The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities and women.

11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment Practices Commission, shall establish standards for determining which persons are protected by this article and guidelines for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment Practices Commission, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

CHAPTER 913

An act to amend Section 125.6 of the Business and Professions Code, to amend Sections 51, 51.5, 51.8, 52, 53, 54, 54:1, 54.2, 54.3, and 54.8 of the Civil Code, to amend Section 224 of the Code of Civil Procedure, to amend Sections 44100, 44101, 44337, and 44338 of the Education Code, to amend Sections 754 and 754.5 of the Evidence Code, to amend Sections 4450, 4500, 11135, 12920, 12921, 12926, 12931, 12940, 12944, 12993, 19230, 19231, 19232, 19233, 19234, 19235, 19237, and 19702 of, to add Section 12940.3 to, and to repeal Section 12994 of, the Government Code, to amend Section 19952 of the Health and Safety Code, to amend Section 1735 of the Labor Code, to amend Section 365.5 of the Penal Code, to amend Sections 2881 and 99155.5 of, and to add Section 2881.2 to, the Public Utilities Code, to amend Section 2557 of the Streets and Highways Code, and to amend Section 336 of the Vehicle Code, relating to disabled persons.

[Approved by Governor September 24, 1992. Filed with Secretary of State September 25, 1992.]

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this act to strengthen California law in areas where it is weaker than the Americans with Disabilities Act of 1990 (Public Law 101-336) and to retain California law when it provides more protection for individuals with disabilities than the Americans with Disabilities Act of 1990.

SEC. 2. Section 125.6 of the Business and Professions Code is amended to read:

125.6. Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the

138360

standards than the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, then those public transit facilities and operations shall meet the higher standards.

SEC. 18. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, (3) being regarded as having such an impairment.

SEC. 19. Section 12920 of the Government Code is amended to read:

12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons foments 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.

Further, the practice of discrimination because of race, color, religion, sex, marital status, national origin, , ancestry, familial status, or disability in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies which will eliminate such discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

SEC. 20. Section 12921 of the Government Code is amended to read:

in which case Sections 25, 25.1, and 25.3 of this bill shall not become operative.

(c) Section 25.3 of this bill incorporates amendments to Section 12993 of the Government Code proposed by this bill, AB 311, and AB 1178. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) all three bills amend Section 12993 of the Government Code, and (3) this bill is enacted after AB 311 and AB 1178, in which case Sections 25, 25.1, and 25.2 of this bill shall not become operative.

BILL NUMBER: AB 3601 CHAPTERED 07/11/94

CHAPTER 146

FILED WITH SECRETARY OF STATE JULY 11, 1994

APPROVED BY GOVERNOR JULY 9, 1994

PASSED THE SENATE JUNE 23, 1994

PASSED THE ASSEMBLY MAY 12, 1994

AMENDED IN ASSEMBLY APRIL 14, 1994

INTRODUCED BY Committee on Judiciary as presented by Assembly Member Weggeland on behalf of the committee (Archie-Hudson, Caldera, Connolly, Epple, Terry Friedman, Goldsmith, Horcher, Isenberg, Morrow, Snyder, Speier, and Statham)

FEBRUARY 25, 1994

An act to amend Sections 166, 729, 3502, 3521.5, 4980.45, 6157.5, 6403, 8025.1, and 10145 of, and to amend and renumber Section 6086.13 of, the Business and Professions Code, to amend Sections 1785.11, 1785.13, 1950.5, 2982, 2984.3, 2986.2, and 3482.6 of, and to repeal Section 4722.5 of, the Civil Code, to amend Sections 405.21, 472b, and 695.220 of, to amend and renumber Section 383 of, to amend and renumber the heading of Article 3 (commencing with Section 405.30), Article 4 (commencing with Section 405.50), and Article 5 (commencing with Section 405.60) of Chapter 2 of Title 4.5 of Part 2 of, and to repeal Title 1 (commencing with Section 1823) of Part 3.5 of, the Code of Civil Procedure, to amend Sections 1981, 41305, 42238, 44277, 48911, 48918, 56034, 56155.5, 56366.1, 56775, and 60240 of the Education Code, to amend Sections 2552, 2601, and 6005 of the Elections Code, to amend Section 2110 of, and to add Section 4071.5 to, the Family Code, to amend Sections 857, 8051.2, 8598, and 12157 of the Fish and Game Code, to amend Sections 232, 235, 4104, 77417, and 77442 of, to amend and renumber Sections 239, 240, 241, 242, 243, 77501, 77502, 77503, 77504, and 77505 of, and to repeal Article 2 (commencing with Section 56732) of Chapter 7.5 of Division 20 of, the Food and Agricultural Code, to amend Sections 6159, 9020, 10207, 11135, 12811, 12945.2, 13960, 14669.8, 16367.5, 20013.7, 20013.75, 56375, 68059, and 95004 of, to amend and renumber Sections 6516.5 and 15819.32 of, to amend and renumber the heading of Chapter 11 (commencing with Section 15399.50) of Part 6.7 of Division 3 of Title 2 of, to repeal, amend, and renumber the heading of Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of, and to repeal Sections 12955.9, 26751, 41612, 53115.1, 54925.1, and 54952.2 of, the Government Code, to amend Sections 658.3, 1126, and 1171.5 of the Harbors and Navigation Code, to amend Sections 429.16, 1259.5, 1266, 1357, 1418.8, 1562.5, 1569.694, 10284, 10325, 11366.8, 25159.18, 25187, 25200.1.5, 25201.5, 25355.7, 26569.29, 33334.20, 33607.7, 33676, 42400.4, and 50406 of, to amend and renumber Sections 429.13, 429.14, 429.15, 1250.1, 1367.5, 17922.1, 25201.10, 25359.3, 33492.50, 33492.51, 33492.53, and 33492.69 of, to add the heading of Article 4 (commencing with Section 33492.70) to Chapter 4.5 of Part 1 of Division 24 of, to repeal Sections 1596.803, 33492.55, 33681.6, and 33682.1 of, to repeal Article 7.5 (commencing with Section 1389.1) of Chapter 2.2 of Division 2 of, to repeal Article 1 (commencing with Section 33492) of Chapter 4.5 of Part 1 of Division 24 of, and to repeal the heading of Article 2

with respect to communications between the member and the Legislative Counsel except as otherwise provided by the rules of the Legislature. All materials arising out of this relationship, including, but not limited to, proposed bills and amendments, analyses, opinions, and memoranda prepared by the Legislative Counsel, are not public records, except as otherwise provided by the rules of the Legislature or when released by the member for whom the material was prepared. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Member of the Legislature who is not available to execute a release.

(b) (1) The Legislative Counsel shall maintain the attorney-client relationship with the Governor with respect to communications between the Governor and the Legislative Counsel.

All materials arising out of this relationship, including, but not limited to, legal services concerning any bill in the Governor's hands for rejection, approval, or other action, legal services concerning any legal opinion provided to the Governor, and legal services concerning any matter as the circumstances permit and the Governor requests, prepared by the Legislative Counsel, are not public records, except when released by the Governor. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Governor who is not available to execute a release.

(2) Whenever the Legislative Counsel issues an opinion to the Governor analyzing the constitutionality, operation, or effect of a bill or other legislative measure that is then pending before the Legislature, or of any amendment made or proposed to be made to that bill or measure, the Legislative Counsel shall deliver two copies of the opinion to the first-named author of the bill or measure as promptly as feasible after delivery of the original opinion, and shall also deliver a copy to any other author of the bill or measure who requests a copy.

SEC. 66. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1).

SEC. 67. Section 12811 of the Government Code is amended to read:

Sec. 7. Section 11110 of the Penal Code shall be funded from moneys appropriated by the Legislature in the Budget Act of 1994 or from existing resources of the Department of Justice other than fees collected pursuant to subdivision (e) of Section 11105 of the Penal Code.

SEC. 240. Any section of any act enacted by the Legislature during the 1994 calendar year that takes effect on or before January 1, 1995, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

BILL NUMBER: AB 1670 CHAPTERED 10/10/99

CHAPTER 591
 FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
 APPROVED BY GOVERNOR OCTOBER 2, 1999
 PASSED THE ASSEMBLY SEPTEMBER 9, 1999
 PASSED THE SENATE SEPTEMBER 8, 1999
 AMENDED IN SENATE SEPTEMBER 3, 1999
 AMENDED IN SENATE AUGUST 26, 1999
 AMENDED IN SENATE AUGUST 25, 1999
 AMENDED IN ASSEMBLY JUNE 1, 1999
 AMENDED IN ASSEMBLY MAY 6, 1999

INTRODUCED BY Committee on Judiciary (Kuehl (Chair), Aroner, Bock,
 Corbett, Jackson, Knox, Longville, Shelley, Steinberg, and Wiggins)

MARCH 15, 1999

An act to amend Section 51.5 of the Civil Code, and to amend Sections 11139, 12921, 12926, 12927, 12930, 12940, 12945, 12948, 12955, 12965, 12970, 12989.2, and 12989.3 of, and to add Section 12955 to, the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, Committee on Judiciary. California Civil Rights Amendments of 1999.

Existing law prohibits business establishments from discriminating against, boycotting or blacklisting, or refusing to buy from, sell to, or trade with any person because of the race, creed, religion, color, national origin, sex, or disability of any person or the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

This bill would additionally prohibit these forms of discrimination (1) because of a perception that any of those persons have one or more of the above characteristics or (2) because the person is associated with a person who has, or is perceived to have, any of those characteristics.

Existing law prohibits denial of benefits under, or discrimination against any person in, any program or activity funded or financially assisted by the state on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability. Existing law specifies a hearing procedure for determining violations and requires curtailing state funding for any contractor, grantee, or local agency found to be in violation.

This bill would make these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

Existing provisions of the California Fair Employment and Housing Act declare as a civil right the opportunity to seek, obtain, and hold employment without discrimination on specified bases.

This bill would declare as a civil right the opportunity to seek, obtain, and hold housing without discrimination on specified bases or any arbitrary basis prohibited by the Unruh Civil Rights Act. The bill would also revise the definition of discrimination for the purposes of these provisions to include harassment in connection with housing accommodations.

Existing provisions of the California Fair Employment and Housing

Employment and Housing Act, are declaratory of existing law.

This bill would incorporate the changes in Section 12926 of the Government Code proposed by Senate Bill 1185, if that bill is enacted and this bill is enacted last.

This bill would incorporate the changes in Section 12955 of the Government Code proposed by Senate Bill 1098, Senate Bill 1148, or both, if either or both of those bills are enacted and this bill is enacted last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the California Civil Rights Amendments of 1999.

SEC. 2. Section 51.5 of the Civil Code is amended to read:

51.5. No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

SEC. 3. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief.

SEC. 4. Section 12921 of the Government Code is amended to read:

12921. (a) The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby

responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title.

(2) Other relief as the court deems appropriate, including monetary damages to persons aggrieved.

(3) A civil penalty in an amount not exceeding fifty thousand dollars (\$50,000), for a first violation, and in an amount not exceeding one hundred thousand dollars (\$100,000), for any subsequent violation.

(g) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the state, reasonable attorney's fees and costs, including expert witness fees, against any party other than the state.

(h) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under this section that involves an alleged discriminatory housing practice with respect to which that person is an aggrieved person or a conciliation agreement to which that person is a party. The court may grant appropriate relief to any intervening party as is authorized to be granted to a plaintiff in a civil action under Section 12989.2.

SEC. 16. The amendments made by this act to Section 51.5 of the Civil Code and to Sections 12926, 12927, and 12955 of the Government Code do not constitute a change in, but are declaratory of existing law.

SEC. 17. Section 5.1 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and SB 1185. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12926 of the Government Code, and (3) this bill is enacted after AB 1185, in which case Section 5 of this bill shall not become operative.

SEC. 18. (a) Sections 11.1 and 11.2 of this bill incorporate amendments to Section 12955 of the Government Code proposed by both this bill and SB 1098. Sections 11.1 and 11.2 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12955 of the Government Code, (3) SB 1148 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1098, in which case Sections 11, 11.3, 11.4, and 11.5, of this bill shall not become operative.

(b) Section 11.3 of this bill incorporates amendments to Section 12955 of the Government Code proposed by both this bill and SB 1148. Section 11.3 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12955 of the Government Code, (3) AB 1670 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1148, in which case Sections 11, 11.1, 11.2, 11.4, and 11.5 of this bill shall not become operative.

(c) Sections 11.4 and 11.5 of this bill incorporate amendments to Section 12955 of the Government Code proposed by this bill, SB 1098, and SB 1148. Sections 11.4 and 11.5 only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) all three bill amend Section 12955 of the Government Code, and (3) this bill is enacted after SB 1148 and AB 1670, in which case Sections 11, 11.1, 11.2, and 11.3, and of this bill shall not become operative.

2001-2002 REGULAR SESSION

Ch. 708

DISABLED PERSONS—DISCRIMINATION—PARKING PLACARDS

CHAPTER 708

A.B. No. 677

AN ACT to amend Sections 11135 and 11139 of the Government Code, and to amend Sections 22511.55 and 22511.59 of the Vehicle Code, relating to discrimination.

[Filed with Secretary of State October 11, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 677, Steinberg. Persons with disabilities.

(1) Existing law provides that no person in the state shall be unlawfully denied the benefits of, or unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state, on the basis of ethnic

Additions or changes indicated by underline; deletions by asterisks * * *

4375

group identification, religion, age, sex, color, or disability, and defines the term "disability" for these purposes.

This bill instead would provide that no person in the state shall, on any of those bases, be unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. It would also revise the definition of "disability" for these purposes.

Existing law also specifies a hearing procedure for determining violations of the above provisions, requires curtailing state funding for any contractor, grantee, or local agency found to be in violation, and makes these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

This bill would provide that any civil action for equitable relief shall be independent of any other rights and remedies.

(2) Existing law authorizes a disabled person, any temporarily disabled person, and any disabled veteran, including those temporarily traveling in the state, to apply to the Department of Motor Vehicles for the issuance of a distinguishing placard for specified parking purposes. The placard is required to be the size and color determined by the department and to have a fixed expiration date of June 30 every 2 years. The fee for an original application, a renewal application, or the issuance of a new or substitute placard is fixed at \$6.

This bill would provide that the placard shall also be in the shape determined by the department, and would require that a portion of the placard be printed in a contrasting color that shall be changed every 2 years. It would also repeal the fees, except for a temporary placard for a person who is temporarily disabled.

The people of the State of California do enact as follows:

SECTION 1. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any * * * mental or physical disability as defined in Section 12926.

SEC. 2. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

SEC. 3. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a)(1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to

encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size, shape, and color determined by the department and shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the "wheelchair symbol." The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2)(A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. * * * A portion of the placard shall be printed in a contrasting color that shall be changed every two years. The size and color of this contrasting portion of the placard shall be large and distinctive enough to be readily identifiable by a law enforcement officer in a passing vehicle.

(B) As used in this section, "year" means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placard holders identified as deceased.

(3) * * * Except as provided in paragraph (4), no person is eligible for more than one placard at any time.

(4) Organizations and agencies involved in the transportation of disabled persons or disabled veterans may apply for a placard for each vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b)(1) Prior to issuing any disabled person or disabled veteran an original distinguishing placard, the department shall require the submission of a certificate, in accordance with paragraph (2), signed by the physician or surgeon substantiating the disability, unless the applicant's disability is readily observable and uncontested. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist. The physician or person certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician or other person who signs a certificate submitted under this subdivision shall retain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(3) The department shall maintain in its records all information on an applicant's certification of permanent disability and shall make that information available to eligible law enforcement or parking control agencies upon a request pursuant to Section 22511.58.

(c) * * * Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

* * *

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom the placard was issued.

SEC. 4. Section 22511.59 of the Vehicle Code is amended to read:

22511.59. (a) Upon receipt of the applications and documents required by subdivisions (b), (c), or (d), the department shall issue a temporary distinguishing placard bearing the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the "wheelchair symbol." During the period for which it is valid, the temporary distinguishing placard may be used for the parking purposes described in Section 22511.5 in the same manner as a distinguishing placard issued pursuant to Section 22511.55.

Additions or changes indicated by underline; deletions by asterisks * * *

4377

(b)(1) Any person who is temporarily disabled for a period of not more than six months may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the submission of a certificate signed by a physician or surgeon, as described in subdivision (b) of Section 22511.55, substantiating the temporary disability and stating the date upon which the disability is expected to terminate.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 180 days from the date of issuance or upon the expected termination date of the disability, as stated on the certificate required by paragraph (2), whichever is less.

(5) The fee for a temporary placard issued pursuant to this subdivision shall be six dollars (\$6).

(c)(1) Any disabled person or disabled veteran who is not a resident of this state and plans to travel within the state may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require certification of the disability, as described in subdivision (b) of Section 22511.55.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(d)(1) Any disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special identification license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard for the purpose of travel described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit either the number identifying the distinguishing placard issued pursuant to Section 22511.55 or the number on the special identification license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

* * *

**LOCAL AGENCIES—PUBLIC MEETING NOTICES
AND AGENDAS—DISCRIMINATION**

CHAPTER 300

A.B. No. 3035

AN ACT to amend Sections 11125, 11125.1, 11135, 54954.1, 54954.2, and 54957.5 of, and to add Sections 11123.1 and 54953.2 to, the Government Code, relating to access to government programs.

[Filed with Secretary of State August 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3035, Committee on Judiciary. Access to government programs.

(1) The Bagley-Keene Open Meeting Act generally requires that all meetings of a state body be open and public. Writings that are public records and are distributed to members of the state body prior to or during a public meeting, pertaining to any item to be considered during the public meeting, are required to be made available for public inspection, and any person may attend any public meeting of a state body. The act also requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

This bill would require that the notices and agendas of these public meetings and closed sessions and the public records distributed at these public meetings and closed sessions be made available in appropriate alternative formats upon request by any person with a disability consistent with the federal Americans with Disabilities Act of 1990. The bill would also require that the notice include information on the availability of disability-related aids or services to enable the person to participate in a public meeting consistent with the federal Americans with Disabilities Act of 1990.

(2) Existing law provides that no person in this state shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would extend the prohibited basis of discrimination under this provision to include race and national origin consistent with the federal Americans with Disabilities Act of 1990.

(3) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public. All persons may attend these meetings except as otherwise provided by the act. The act also requires that the agenda be posted and include a general description of items to be discussed in closed session. All the documents constituting the agenda packet of a public meeting, including any other writings distributed to all or a majority of all of the members of a legislative body of a local agency by any person in connection with a matter to be discussed at the public meeting, are required to be made available to any person upon request.

This bill would require that these agendas, agenda packets, and other writings distributed to members of a legislative body be made available in appropriate alternative formats to persons with a disability and that the agendas include information on the availability of disability-related aids or services to enable the person to participate in the public meeting consistent with the federal Americans with Disabilities Act of 1990.

(4) This bill would incorporate changes in Section 11125.1 of the Government Code proposed by AB 1752 that would become operative if both bills are enacted and this bill is enacted last.

The people of the State of California do enact as follows:

948

Additions or changes indicated by underline; deletions by asterisks * * *

SECTION 1. Section 11123.1 is added to the Government Code, to read:

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 2. Section 11125 of the Government Code is amended to read:

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

SEC. 3. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

Additions or changes indicated by underline; deletions by asterisks * * *

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be: (1) made available for public inspection at that meeting, (2) distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125, and (3) made available on the Internet.

(d) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(e) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 3.5. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125 * * * .

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and

regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 4. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

SEC. 5. Section 54953.2 is added to the Government Code, to read:

54953.2. All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 6. Section 54954.1 of the Government Code is amended to read:

54954.1. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

SEC. 7. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or

accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

SEC. 8. Section 54957.5 of the Government Code is amended to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 11125. 1 of the Government Code proposed by both this bill and AB 1752. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill

2001-2002 REGULAR SESSION

Ch. 301

amends Section 11125.1 of the Government Code, and (3) this bill is enacted after AB 1752, in which case Section 3 of this bill shall not become operative.

Additions or changes indicated by underline; deletions by asterisks * * *

953

**DISABLED PERSONS—BLIND AND VISUALLY IMPAIRED AND DEAF
AND HARD OF HEARING—EMPLOYMENT-RELATED SERVICES**

CHAPTER 1102

S.B. No. 105

AN ACT to amend Section 11135 of the Government Code, to amend Sections 19050 and 19050.5 of, to add Section 19054 to, and to add Chapter 3 (commencing with Section 19095) to Part 1 of Division 10 of, the Welfare and Institutions Code, relating to human services.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 105, Burton. Services: blind: visually impaired: deaf: hard of hearing.

Existing law provides for the Department of Rehabilitation, which administers various programs and services for disabled persons, including the blind and visually impaired.

This bill would establish the Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing, would establish the responsibilities of the division, would require the director of the division to report to the Legislature and the Governor on programs administered by the division, would require the director to appoint a Blind Advisory Committee and a Deaf Advisory Committee to advise the director on certain issues, and would make related and conforming changes.

This bill would incorporate additional changes in Section 11135 of the Government Code, proposed by AB 3035, to be operative only if AB 3035 and this bill are both chaptered and become effective January 1, 2003, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Approximately 70 percent of employable blind and visually impaired individuals are unemployed.

(2) Due to the lack of employment, most of these individuals receive public assistance payments, as well as Medi-Cal and other public benefits, thereby costing the state millions of dollars in benefit payments and lost income tax revenue.

(3) It is the primary function of the Department of Rehabilitation to prepare and place persons with disabilities, including the blind and visually impaired, in meaningful jobs.

(4) The department needs to implement policy and procedural changes in order to improve its ability to increase the numbers of blind and visually impaired consumers placed in competitive employment.

(5) The blind and visually impaired have a long history of success with separate specialized training that takes into account their unique needs and the need to have experienced, trained staff, and contracting organizations.

(6) The establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the Department of Rehabilitation will, through the focus of state and federal resources and without diverting resources that would otherwise be used to assist

5470

Additions or changes indicated by underline; deletions by asterisks * * *

those with other disabilities, dramatically improve employment-related services provided to persons who are blind or visually impaired or deaf or hard of hearing.

(7) The purpose of the establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the department is to streamline, and make more efficient and effective, the department's delivery of services to Californians who are blind or visually impaired, and that this streamlined organization of those services into a single division within the department will result in no greater than minor, absorbable costs, if any.

(b) It is, therefore, the intent of the Legislature to establish a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing to improve the lives of blind and visually impaired and deaf and hard of hearing persons.

SEC. 2. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 2.5. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

Additions or changes indicated by underline; deletions by asterisks * * *

Ch. 1102, § 2.5

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 3. Section 19050 of the Welfare and Institutions Code is amended to read:

19050. There is in the department a program manager for the blind and * * * visually impaired and a program manager for the deaf and * * * hard of hearing. The program managers shall, as determined by the director, * * * report to the deputy director of the division established pursuant to Section 19095, and shall assist in the development and coordination of policy with respect to programs for * * * persons who are blind and * * * visually impaired and persons who are deaf and hard of hearing.

SEC. 4. Section 19050.5 of the Welfare and Institutions Code is amended to read:

19050.5. The program manager for the blind and * * * visually impaired programs and the program manager for the deaf and * * * hard-of-hearing programs shall have demonstrated experience and sensitivity in working with these disabilities.

SEC. 5. Section 19054 is added to the Welfare and Institutions Code, to read:

19054. The director shall appoint a Deaf Advisory Committee to advise the director on means to increase employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services to persons who are deaf or hard of hearing. A majority of the committee members shall be deaf or hard of hearing, and other members shall have experience relating to services to the deaf or hard of hearing. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the department to persons who are deaf or hard of hearing.

SEC. 6. Chapter 3 (commencing with Section 19095) is added to Part 1 of Division 10 of the Welfare and Institutions Code, to read:

Chapter 3. Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing

19095. (a)(1) There is hereby established in the Department of Rehabilitation a Division of Specialized Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing.

(2) For purposes of this chapter "division" means the division established pursuant to paragraph (1).

(b) The purposes of the division shall be as follows:

(1) To assist persons who are blind and visually impaired and deaf and hard of hearing in gaining competitive employment.

(2) To enlarge economic opportunities for persons who are blind or visually impaired and deaf and hard of hearing.

(3) To enhance the independence and self-sufficiency of blind and visually impaired and deaf and hard-of-hearing persons.

19095.5. (a) The division shall be under the direction of a deputy director, who shall be appointed by the Governor.

(b) The deputy director shall have extensive background in, or knowledge of, services to the blind and visually impaired and the deaf and hard of hearing.

(c) The deputy director shall report directly to the directorate of the Department of Rehabilitation and shall be a member of the department's executive management, taking part in all departmental planning and decisionmaking.

19096. (a) Commencing July 1, 2003, the division shall be charged with the administration of the following programs and services:

(1) All staff within the division, including rehabilitation counselors, rehabilitation counselors for the blind, staff of the orientation center, and staff of the business enterprises program.

(2) Orientation centers for the blind, provided for pursuant to Article 1 (commencing with Section 19500) of Chapter 6 of Part 2.

(3) The Business Enterprise Program for the Blind, provided pursuant to Article 5 (commencing with Section 19625) of Chapter 6 of Part 2.

(4) Contracts for services with organizations serving the blind and visually impaired and the deaf and hard of hearing.

(5) Programs for the blind under Subchapter 7 (commencing with Section 796) of Chapter 16 of Title 29 of the United States Code.

(b) The division shall also provide additional rehabilitation services to its blind and visually impaired and deaf and hard-of-hearing clients, to the extent that funds are available.

(c) The program managers shall report to the deputy director of the division established pursuant to this chapter.

(d) The division shall be responsible for administrative functions, including, but not limited to, the following:

(1) Develop, implement, and oversee policies related to blind and visually impaired and deaf and hard-of-hearing consumers, including timely provision of assistive technology services.

(2) Develop and implement mandatory orientation training programs for new rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(3) Develop and implement ongoing mandatory training for rehabilitation supervisors of blind-designated units.

(4) Establish minimum professional competencies for rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers, and provide continuing in-service education to rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(5) Provide support and assistance to field staff on issues related to the cases of blind and visually impaired and deaf and hard-of-hearing consumers.

(6) Provide technical assistance to the department related to the assistive technology needs of blind and visually impaired and deaf and hard-of-hearing employees and consumers.

(7) Establish and maintain within the department's Internet Web site, a communications system for staff serving blind and visually impaired and deaf and hard-of-hearing consumers for the purpose of sharing resource information, effective practices, and problem solving.

(e) Any program administered in whole or in part by the State Department of Education relative to the transition from school to work for blind and visually impaired and deaf and hard-of-hearing secondary education students shall be conducted in partnership with the division.

19097. (a) Subject to the control of the director, all employees of the department providing services to persons who are blind and visually impaired administered by the division pursuant to this chapter shall be under the exclusive direction and supervision of the deputy director of the division.

(b) The division shall establish criteria and train counselors and supervisors working with persons who are blind and visually impaired and deaf and hard of hearing to ensure they have the specialized knowledge and skills to meet the needs of these persons.

19097.5. The department shall report annually in the fourth quarter of each calendar year to the Blind Advisory Committee on the amount of state and federal funds allocated to direct services governed by this chapter.

Additions or changes indicated by underline; deletions by asterisks * * *

5473

Ch. 1102, § 6

STATUTES OF 2002

19098. The Director of Rehabilitation shall, on or before July 1, 2005, and every other year thereafter, report to the Legislature and the Governor on the programs administered by the division. The report shall include statistics on competitive employment placements of persons who are blind or visually impaired.

19098.5. The Director of Rehabilitation shall establish the Blind Advisory Committee to advise the Director of Rehabilitation on means to increase competitive employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services for persons who are blind and visually impaired. A majority of the members shall be blind or visually impaired. Members of the committee who are not blind or visually impaired shall have experience in services to the blind. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the division to persons who are blind and visually impaired.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 11135 of the Government Code proposed by both this bill and AB 3035. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 11135 of the Government Code, and (3) this bill is enacted after AB 3035, in which case Section 2 of this bill shall not become operative.

5474

Additions or changes indicated by underline; deletions by asterisks * * *

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 11135. Programs or activities funded by state; discrimination on basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability; federal act; definition; legislative findings and declarations regarding electronic or information technology

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

(Amended by Stats.1992, c. 913 (A.B.1077), § 18; Stats.1994, c. 146 (A.B.3601), § 66; Stats.2001, c. 708 (A.B.677), § 1; Stats.2002, c. 300 (A.B.3035), § 4; Stats.2002, c. 1102 (S.B.105), § 2.5.)

**§ 11136. Notice to contractor, grantee or local agency by state agency;
probable cause to believe violation of statute or regulation;
hearing**

Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

(Added by Stats.1977, c. 972, p. 2942, § 1.)

§ 11137. Action to curtail state funding upon determination of violation

If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

(Added by Stats.1977, c. 972, p. 2943, § 1.)

§ 11138. Rules and regulations

Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

(Added by Stats.1977, c. 972, p. 2943, § 1.)

§ 11139. Prohibitions and sanctions; construction and enforcement of article

The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

(Amended by Stats.1999, c. 591 (A.B.1670), § 3; Stats.2001, c. 708 (A.B.677), § 2.)

Exhibit 4
Copies of Regulations Cited

in this chapter and district implementing regulations, any written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(c) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Article 3. Board of Governors and Chancellor's Office Responsibilities

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall have the authority to prescribe the reporting and auditing procedures for auxiliary organizations. Such procedures are contained in the document, *California Community Colleges Auxiliary-Organization Accounting and Reporting System*, which shall be maintained by the Chancellor. Districts and auxiliary organizations shall apply and comply with the provisions of this document.

NOTE: Authority cited: Sections 66700, 70901, 72672, 72675, Education Code. Reference: Sections 72672 and 72675, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected.

NOTE: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Section 72672, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59274. Retention of Documentation.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59276. Annual Report to Legislature.

NOTE: Authority cited: Sections 71020 and 72672, Education Code. Reference: Section 72681, Education Code.

HISTORY

1. Repealer filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Sub-

mitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 29).

Subchapter 5. Nondiscrimination in Programs Receiving State Financial Assistance Through the Chancellor or Board of Governors of the California Community Colleges

Article 1. General

§ 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

NOTE: Authority cited: Section 70901 Education Code; and Section 11138, Government Code. Reference: Sections 11135-11139.5, Government Code; Section 66250 et seq., Education Code; title 20, United States Codes, Section 1681; title 29, United States Code, Section 794; and title 42, United States Code, Sections 2000d, 6101 and 12100, et seq.

HISTORY

1. New Chapter 5 (Articles 1-4, Sections 59300-59362, not consecutive) filed 4-17-81; effective thirtieth day thereafter (Register 81, No. 16). For prior history, see Registers 79, No. 46; and 78, No. 39).
2. Amendment of section and NOTE filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59301. Prohibited Discrimination.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

§ 59302. Academic Requirements.

Nothing in this subchapter shall be interpreted to prohibit bona fide academic requirements for a specific community college program, course or activity.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59303. Delegation of Authority.

The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code sections 11135 through 11137 to the Chancellor of the California Community Colleges, except as specifically stated in this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Sections 70901 and 71090, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59304. Intent.

It is the intent of the Board of Governors that the Chancellor assist community college districts in recognizing and eliminating unlawful discrimination that may exist in their programs and activities and in meeting the requirements of this subchapter. Punitive action authorized by this subchapter will be taken only when remedial action has failed to eliminate unlawful discrimination from the programs and activities of a community college district.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11137, 11138 and 11139, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59305. Operative Date.

NOTE: Authority cited: Section 11138, Government Code; and Sections 71020 and 71025, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Repealer filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59306. Visitor Parking for Persons with Disabilities.

(a) Each community college district shall, consistent with the requirements of Education Code section 67301 provide visitor parking at each of its colleges or centers at no charge to persons with disabilities or those providing transportation for such persons.

(b) For purposes of this section only, "persons with disabilities" are those who:

(1) qualify as disabled persons pursuant to section 22511.5 of the Vehicle Code; or

(2) if they were students, would be entitled to special parking provided to students with disabilities pursuant to subchapter 1 (commencing with section 56000) of chapter 7 of this division.

(c) Parking at no charge shall be available to persons with disabilities who are visitors, and those providing transportation to such persons, in those parking facilities which are most accessible to administrative offices, libraries, and other facilities which the district finds are most used by visitors.

(d) Each community college district shall post in conspicuous places notice that parking is available without charge to persons with disabilities who are visitors and those providing transportation for such persons.

(e) When parking provided pursuant to this section is located in an area where access is controlled by a mechanical gate, the district shall ensure that accommodations are made for persons with disabilities who are unable to operate the gate controls. Accommodations may be provided by an attendant assigned to assist in operation of the gate or by any other effective means deemed appropriate by the district.

(f) Parking fees collected pursuant to Education Code section 76360 shall be used to offset any costs resulting from compliance with the requirements of this section.

NOTE: Authority cited: Sections 67301 and 70901, Education Code; and Section 11135, Government Code. Reference: Section 76360, Education Code; and Section 22511.5, Vehicle Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of subsections (a)-(b)(2) and (f) and amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59307. Sexual Harassment and Sex Discrimination.

NOTE: Authority cited: Sections 232 and 70901, Education Code; and Section 11135, Government Code. Reference: Sections 200 et seq., Education Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

2. Repealer filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).

Article 2. Definitions**§ 59310. Incorporation by Reference.**

Except as otherwise provided by this subchapter those definitions of activities prohibited by and persons protected by title 22 of the California Code of Regulations (commencing with section 98100) are incorporated into and made applicable to this subchapter as if fully set forth here.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59311. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(a) "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) "Complaint" means a written and signed statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) "Days" means calendar days.

(d) Except for purposes of section 59306, "disability" means any mental or physical disability as defined in Government Code section 12926.

(e) "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

NOTE: Authority cited: Sections 11135 and 11138, Government Code; and Sections 66250 et seq., 70901 and 12926, Education Code. Reference: Sections 11135 and 11138, Government Code; and Section 66250 et seq., Education Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6). For prior history, see Register 92, No. 17.
2. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
3. New subsection (c) and subsection relettering filed 4-15-2002; operative 5-15-2002. Submitted to OAL for printing only (Register 2002, No. 23).

Article 3. District Compliance and Enforcement**§ 59320. District Responsibility.**

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 66250, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59322. District Regulations.

Each community college district shall establish and adopt written policies consistent with this article. When the policies are adopted or amended, they shall be submitted to the Chancellor for review and approval within 90 days of the effective date of the adoption or amendment(s).

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59324. Responsible District Officer.

Each community college district shall identify to the Chancellor and to the public a single person as the district officer responsible for receiving complaints filed pursuant to section 59328 and coordinating their investigation. The actual investigation of complaints may be assigned to other staff or to outside persons or organizations under contract with the district. Such procedures shall be used whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59326. Notice to Students and Employees.

Each community college district shall notify students and employees of the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59327. Informal Resolution.

(a) Whenever any person brings charges of unlawful discrimination to the attention of the responsible district officer designated pursuant to section 59324, that officer shall:

- (1) undertake efforts to informally resolve the charges;
- (2) advise the complainant that he or she need not participate in informal resolution;
- (3) notify the person bringing the charges of his or her right to file a complaint, as defined in section 59311, and of the procedure for filing such a complaint pursuant to section 59328; and
- (4) advise the complainant that he or she may file his or her nonemployment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction.

(5) advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies.

(b) Efforts at informal resolution pursuant to subsection (a)(1) need not include any investigation unless the responsible district officer determines that an investigation is warranted by the seriousness of the charges.

(c) Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant to section 59334 and must be completed unless the matter is informally resolved and the complainant dismisses the formal complaint or the complainant files with the Department of Fair Employment and Housing and the Chancellor elects not to require further investigation pursuant to section 59328(f)(2). Any efforts at informal resolution after the filing of a written complaint shall not exceed the ninety (90) day period for rendering the administrative determination pursuant to section 59336.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsections (a)(3) and (c) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59328. Formal Investigation Upon Filing of Written Complaint.

An investigation of alleged unlawful discrimination prohibited by this subchapter will be initiated by filing a complaint that meets the following requirements:

(a) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination or by one who has learned of such unlawful discrimination in his or her official capacity as a faculty member or administrator.

(b) The complaint shall be filed with the Chancellor of the California Community Colleges or with the officer designated pursuant to section 59324 by the appropriate community college district.

(c) The complaint shall be in a form prescribed by the Chancellor.

(d) In any complaint not involving employment the complaint shall be filed within one year of the date of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts underlying the allegation of unlawful discrimination.

(e) In any complaint alleging discrimination in employment the complaint shall be filed within 180 days of the date the alleged unlawful discrimination occurred, except that this period should be extended by no more than 90 days following the expiration of the 180 days if the complainant first obtained knowledge of the facts of the alleged violation after the expiration of the 180 days.

(f) In any complaint alleging discrimination in employment, the district shall:

(1) advise the complainant that he or she may file the complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies, and;

(2) forward a copy of any filing by the complainant with DFEH to the Chancellor's Office for a determination of whether the issues presented require an independent investigation of the matter under the provisions of this subchapter.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsection (b) and subsection relettering filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
3. Amendment of section heading and subsection (a) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
4. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
5. Amendment of subsection (e) filed 4-15-2002; operative 5-15-2002. Submitted to OAL for printing only (Register 2002, No. 23).

§ 59329. Complaints Filed with Chancellor.

Upon receiving a complaint filed pursuant to section 59328, the Chancellor will immediately forward a copy of the complaint to the appropriate community college district responsible officer who shall respond pursuant to section 59332 or initiate the investigation required by section 59334. In any complaint alleging employment discrimination the Chancellor shall notify the complainant that he or she has the right to file with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59330. Notice to Chancellor.

Immediately upon receiving a complaint filed in accordance with section 59328 the district shall forward a copy of the complaint to the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59332. Defective Complaint.

When a district receives a complaint which it finds does not meet the requirements of Section 59328 the district shall immediately notify the complainant that the complaint does not meet the requirements of Section 59328 and shall specify in what requirement the complaint is defective.

NOTE: Authority cited: Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

§ 59333. Office for Civil Rights.

(a) Whenever a complaint is filed with the Chancellor pursuant to section 59329 and whenever the Chancellor renders a decision pursuant to article 4 (commencing with section 59350) of this subchapter, the Chancellor shall notify the complainant that he or she may file a complaint regarding the same matter with the Office For Civil Rights of the U.S. Department of Education (OCR) where the complaint is within the jurisdiction of that agency.

(b) In such cases, OCR will normally accept compliance with these regulations as satisfying the due process requirements of federal law.

(c) OCR shall have no jurisdiction to rule on any finding regarding violation of state law.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 5-31-96; operative 6-30-96. Submitted to OAL for printing only (Register 96, No. 23).
2. Amendment of subsection (a) filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59334. District Investigation.

Upon receiving a complaint that is properly filed in accordance with section 59328, the district will commence an impartial fact-finding investigation of that complaint and notify the complainant and Chancellor that it is doing so. The results of the investigation shall be set forth in a written report that shall include at least all of the following:

(a) a description of the circumstances giving rise to the complaint;

(b) a summary of the testimony provided by each witness, including the complainant and any viable witnesses identified by the complainant in the complaint;

(c) an analysis of any relevant data or other evidence collected during the course of the investigation;

(d) a specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint; and

(e) any other information deemed appropriate by the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of existing paragraph and NOTE and adoption of subsections (a)-(e) filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59336. Administrative Determination.

Within ninety (90) days of receiving a complaint, the district shall complete its investigation and forward a copy of the investigative report

required pursuant to section 59334 to the Chancellor, a copy or summary of the report to the complainant, and written notice setting forth all of the following to both the complainant and the Chancellor:

(a) the determination of the chief executive officer or his/her designee as to whether there is probable cause to believe discrimination occurred with respect to each allegation in the complaint;

(b) a description of actions taken, if any, to prevent similar problems from occurring in the future;

(c) the proposed resolution of the complaint; and

(d) the complainant's right to appeal to the district governing board and the Chancellor pursuant to sections 59338 and 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59338. Final District Decision; Appeals to Local Governing Board.

(a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant may submit a written appeal to the district governing board within fifteen (15) days from the date of the administrative determination. The governing board shall review the original complaint, the investigative report, the administrative determination, and the appeal and issue a final district decision in the matter within forty-five (45) days after receiving the appeal.

(b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339 shall be forwarded to the complainant and to the Chancellor.

(c) If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this section. The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to section 59339.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Repealer and new section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Amendment of section heading and section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59339. Appeal to Chancellor.

(a) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date.

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. In addition, in such cases, the complainant may file an appeal with the Chancellor within thirty (30) days from the date that the governing board

issues the final district decision or permits the administrative determination to become final pursuant to section 59338. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date. The Chancellor shall have discretion to accept or reject any such appeal in employment discrimination cases. If the Chancellor agrees to accept the appeal, he/she may:

- (1) attempt to informally resolve the matter pursuant to section 59354;
- (2) where applicable, treat the complaint as an allegation that the district has violated the provisions of subchapter 1 (commencing with section 53000) of chapter 4 of this division; or
- (3) take any other action deemed appropriate by the Chancellor.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59340. Forward to Chancellor.

Within 150 days of receiving a complaint, the district will forward the following to the Chancellor:

- (a) a copy of the final district decision rendered by the governing board or a statement indicating the date on which the administrative determination became final pursuant to section 59338(a);
- (b) a copy of the notice to the complainant required pursuant to section 59338(a); and
- (c) such other information as the Chancellor may require.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment filed 3-26-92; operative 4-24-92 (Register 92, No. 17).
2. Repealer of subsections (a)-(c) and subsection relettering filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline specified in sections 59336 or 59340 for submission of materials to the Chancellor, the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to sections 59336 or 59340 and shall set the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant who may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the investigation. If the Chancellor grants an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

(d) If a district fails to comply with the requirements of sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in article 4 (commencing with section 59350) of the subchapter based on the original complaint and any other relevant information then available.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

2. Amendment of subsections (a), (c) and (d) filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
3. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).
4. Amendment of subsection (c) filed 4-15-2002; operative 5-15-2002. Submitted to OAL for printing only (Register 2002, No. 23).

Article 4. Chancellor's Procedure to Effect Compliance

§ 59350. Review for Reasonable Cause.

(a) The Chancellor shall review the materials submitted by the district pursuant to sections 59336 and 59340, together with the complainant's appeal, and determine whether there is reasonable cause to believe the district has violated the requirements of this subchapter.

(b) Failure by the complainant to file an appeal pursuant to section 59339 shall not preclude the Chancellor from finding reasonable cause to believe the district has violated the requirements of this subchapter.

(c) If the Chancellor finds there is no reasonable cause to believe a violation has occurred, the Chancellor shall immediately notify both the complainant and the district.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59351. New Issues Raised on Appeal.

If, upon review of the materials submitted by the complainant pursuant to section 59339, the Chancellor's Office finds that issues or facts not included in the complaint have been raised for the first time on appeal, the Chancellor's Office will provide the district a reasonable opportunity to respond to the new issues or facts raised by complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. New section filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment of section heading and section filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59352. Investigation.

If the Chancellor finds there is reasonable cause to believe a violation has occurred, the Chancellor shall investigate to determine whether there is probable cause to believe a violation has occurred.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59354. Informal Resolution.

During the course of the investigation, the Chancellor shall seek to informally resolve the alleged violation. Such resolution shall be set forth in a written conciliation agreement. A copy of the written agreement shall be sent to the complainant.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall:

- (a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this subchapter. The

Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter. NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59358. Hearing.

If the Chancellor finds the district has violated the provisions of this subchapter, and if the district does not acquiesce in that finding, the Chancellor shall initiate the hearing process pursuant to chapter 5 (commencing with section 11500) of part I, division 3, title 2 of the Government Code, to determine whether the violation did occur.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

- (1) Withhold all or part of the district's state support;
- (2) Make probationary eligibility for future state support, conditional on compliance with specified conditions;
- (3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

NOTE: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135, 11136 and 11138, Government Code.

HISTORY

1. Amendment of subsections (a), (a)(2) and (b) and amendment of NOTE filed 2-7-2001; operative 3-9-2001. Submitted to OAL for printing only (Register 2001, No. 6).
2. Amendment filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

§ 59362. Judicial Review.

A decision by the Chancellor pursuant to section 59360 is subject to judicial review by the district, as provided by section 1094.5 of the Code of Civil Procedure.

NOTE: Authority cited: Section 11138, Government Code; and Section 71020, Education Code. Reference: Sections 11135 and 11138, Government Code.

HISTORY

1. Amendment of section and NOTE filed 3-20-2002; operative 4-19-2002. Submitted to OAL for printing only (Register 2002, No. 13).

Subchapter 6. Waiver of Part-Time Instructor Limit

NOTE: Authority cited: Sections 71020 and 87613, Education Code. Reference: Section 87613, Education Code.

HISTORY

1. New Chapter 6 (Sections 59380-59388, not consecutive) filed 6-1-82; effective thirtieth day thereafter (Register 82, No. 23).
2. Repealer of Chapter 6 (Sections 59380-59388, not consecutive) filed 3-7-85; effective thirtieth day thereafter (Register 85, No. 10).

Subchapter 7. Instructional and Other Materials

§ 59400. Required Instructional and Other Materials.

(a) The governing board of a district may, consistent with the provisions of this Subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.

(b) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. New chapter 7 (sections 59400-59408, not consecutive) filed 5-16-85; effective thirtieth day thereafter (Register 85, No. 20).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of subsection (a) and NOTE 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).
4. Editorial correction of HISTORY 2 (Register 95, No. 29).

§ 59402. Definitions.

For the purposes of this Subchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

- (1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or
- (2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

NOTE: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of opening statement, subsections (a) and (c)-(c)(2) and NOTE 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).
3. Editorial correction of HISTORY 1 (Register 95, No. 29).

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course

EXHIBIT 5
COPIES OF REGULATIONS REFERENCED

22 CCR 98100

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Copyright © 2003 by Barclays Law Publishers
All rights reserved

* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2003, NO. 13, MARCH 28, 2003 *

TITLE 22. SOCIAL SECURITY
DIVISION 8. NONDISCRIMINATION IN STATE-SUPPORTED PROGRAMS AND ACTIVITIES
CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY
ARTICLE 9.5
ARTICLE 1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

22 CCR **98100** (2003)

§ **98100**. General Prohibition

No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under any program or activity funded directly by the State or receiving any financial assistance from the State.

AUTHORITY:

Note: Authority cited: Section 11139.5, Government Code. Reference: Section 11135, Government Code.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Copyright © 2003 by Barclays Law Publishers
All rights reserved

* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2003, NO. 13, MARCH 28, 2003 *

TITLE 22. SOCIAL SECURITY
DIVISION 8. NONDISCRIMINATION IN STATE-SUPPORTED PROGRAMS AND ACTIVITIES
CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY
ARTICLE 9.5
ARTICLE 1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

22 CCR **98101** (2003)

§ **98101**. Discriminatory Practices Applicable to All Persons

It is a discriminatory practice for a recipient, in carrying out any program or activity directly, or through contractual, licensing or other arrangements, on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability:

- (a) to deny a person the opportunity to participate in, or benefit from an aid, benefit or service;
- (b) to afford a person the opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded others;
- (c) to provide a person with an aid, benefit or service that is not as effective in affording an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. In some situations, identical treatment may be discriminatory;
- (d) to provide different or separate aid, benefits or services to a person, or to any class of persons, than is provided to others, or to provide aid, benefits or services at a different time, unless such action is clearly necessary to provide such persons with an equal opportunity to receive as truly effective aid, benefits or services as those provided to others;
- (e) to aid or perpetuate discrimination by transferring State support to another recipient that discriminates in providing any aid, benefit or service;
- (f) to exclude a person from participation as a member of a planning or advisory board. Under this requirement, it is a discriminatory practice for a recipient to fail to make reasonable efforts to achieve a representative board. However, such requirement is not deemed to impose adherence to a quota system;

22 CCR 98102

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Copyright © 2003 by Barclays Law Publishers
All rights reserved

* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2003, NO. 13, MARCH 28, 2003 *

TITLE 22. SOCIAL SECURITY
DIVISION 8. NONDISCRIMINATION IN STATE-SUPPORTED PROGRAMS AND ACTIVITIES
CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY
ARTICLE 9.5
ARTICLE 1. GENERAL PROHIBITIONS AGAINST DISCRIMINATION

22 CCR 98102 (2003)

§ 98102. Interpretation of Section **98101**

The provisions of Section **98101** are not intended:

(a) to limit, by the enumeration of specific forms of prohibited discrimination, the general prohibition against discrimination set forth in Section 98100;

(b) to adversely affect lawful programs which benefit persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability to overcome the effects of conditions that result or have resulted in limited participation in, or receipt of benefits from, any State supported program or activity; or

(c) to prohibit or require actions or practices otherwise allowed or not required under Chapter 3 of this Division.

AUTHORITY:

Note: Authority cited: Sections 11135, 11139, 11139.5, Government Code. Reference: Sections 11135, 11139, 11139.5, Government Code.

(g) to otherwise limit a person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving any aid, benefit or service resulting from the program or activity;

(h) to deny a person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities;

(i) to utilize criteria or methods of administration that:

(1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability;

(2) have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the recipient's program with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability; or

(3) perpetuate discrimination by another recipient on the basis of ethnic group identification, religion, age, sex, color, or a physical or mental disability.

(j) to make or permit selections of sites or locations of facilities:

(1) that have the purpose or effect of excluding persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity;

(2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to a person of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental

22 CCR 98110

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Copyright © 2003 by Barclays Law Publishers
All rights reserved

* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2003, NO. 13, MARCH 28, 2003 *

TITLE 22. SOCIAL SECURITY
DIVISION 8. NONDISCRIMINATION IN STATE-SUPPORTED PROGRAMS AND ACTIVITIES
CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY
ARTICLE 9.5
ARTICLE 2. MANDATORY AND PERMISSIVE REMEDIAL ACTION

22 CCR **98110** (2003)

§ **98110**. Mandatory Remedial Action

(a) If the responsible State agency finds a recipient has violated this Division or other implementing regulations the recipient shall take such remedial action as the responsible State agency deems necessary to overcome the effects of such violation.

(b) Where a recipient is found to have violated this Division or implementing regulations and where another recipient exercises control over such recipient, either or both recipients shall be required to take such remedial action as deemed appropriate by the responsible State agency.

AUTHORITY:

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
Copyright © 2003 by Barclays Law Publishers
All rights reserved

* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2003, NO. 13, MARCH 28, 2003 *

TITLE 22. SOCIAL SECURITY
DIVISION 8. NONDISCRIMINATION IN STATE-SUPPORTED PROGRAMS AND ACTIVITIES
CHAPTER 2. DISCRIMINATORY PRACTICES RELATING TO ALL GROUPS PROTECTED BY
ARTICLE 9.5
ARTICLE 2. MANDATORY AND PERMISSIVE REMEDIAL ACTION

22 CCR **98111** (2003)

§ **98111**. Permissive Remedial Action

(a) A State agency may, where necessary to overcome the effects of discrimination in violation of this Division or implementing regulations:

(1) require a recipient to take remedial action with respect to persons who are no longer participants in the recipient's program or activity but who were participants in the program when such discrimination occurred; and

(2) require a recipient to take remedial action with respect to persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Even in the absence of a finding of discrimination, a recipient may be permitted by a State agency to take voluntary steps in addition to any action that is required by this Division or implementing regulations to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by persons of a particular ethnic group identification, religion, age, sex, color, or with a physical or mental disability.

AUTHORITY:

Note: Authority cited: Sections 11135, 11137, 11139, 11139.5, Government Code.
Reference: Sections 11135, 11137, 11139, Government Code.