STATE OF CALIFORNIA

CALIFORNIA COMMUNITY COLLEGES
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MAR 11 2004

COMMISSION ON
STATE MANDATES

March 11, 2004

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

Re: Discrimination Complaint Procedures; 02-TC-46
Santa Monica Community College District, Claimant
Government Code Sections 11135-11139
California Code of Regulations, title 5, sections 59300 et seq.

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above test claim in light of the following questions addressing key issues before the Commission:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?

- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

Claimant alleges that Government Code sections 11135-11139, regarding unlawful discrimination and the implementing regulations found in the California Code of Regulations, title 5, sections 59300 et seq. create a reimbursable state mandate. We agree.

Assembly Bill 803 added Government Code sections 11135-11139 by Statutes 1977, chapter 972, section 1. The statute prohibits unlawful discrimination in programs receiving state assistance, charges state agencies that administer state funded programs with enforcement of its provisions and requires them to adopt regulations to that end. The Board of Governors of the California Community Colleges adopted regulations pursuant to this charge on December 5, 1980, set forth in California Code of Regulations, title 5, sections 59300[1] et seq. These regulations were filed on April 17, 1981.

[1] All citations to the 50000 series are to the California Code of Regulations, title 5 unless otherwise indicated.

Documentation on file from that time indicates that the Chancellor's Office notified the Department of Finance (DOF) in a memo dated September 19, 1980, that the proposed regulations imposed a mandate on community college districts and that the Chancellor's Office intended to request funds from the Governors Budget. (Attachment 1.) The reimbursable costs were estimated to be $157,975 for the year of implementation and $243,322 annually. (Attachments 1 and 2.) The DOF responded to the Chancellor's Office on October 20, 1980, and, among other points, suggested that the proposed regulations might not constitute a state mandate and if they did, requested that the Chancellor's Office pursue reimbursement funding via an independent legislative bill rather than the through the Governor's Budget. (Attachment 3.) As nearly as we can determine, despite the efforts of the Chancellor's Office, no funds were provided at that time or at any time thereafter.

Federal law prohibits discrimination on the basis of most of the protected categories enumerated in section 59300; however many of the procedural obligations of title 5 are not required by federal law.

The Chancellor's Office does not collect information on district expenditures for processing unlawful discrimination complaints. Currently, the Chancellor's Office receives about 200 unlawful discrimination complaints from districts statewide per year; however, this figure does not include any informal complaints, which are handled locally. Our records indicate that during the test mandate time period of July 1, 2000, through June 30, 2002, 14 formal unlawful discrimination complaints were filed against the Santa Monica Community College District.

For the reasons stated above, we believe there is a basis for reimbursement.

Sincerely,

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning