



March 23, 2004

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MAR 26 2004

**COMMISSION ON  
STATE MANDATES**

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

Dear Ms. Higashi:

This letter is to inform you that the Department of Finance (Department) has performed a review of the test claim submitted by the Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under various statutes and regulations are reimbursable state mandated costs (Claim No. CSM-02-TC-46 "Discrimination Complaint Procedures"). Specifically, the claim specifies alleged mandated reimbursable costs for establishment and implementation of complaint resolution procedures specified in Title 5, California Code of Regulations governing Nondiscrimination in Programs Receiving State Financial Assistance.

We conclude this claim should be denied in its entirety. The claim proceeds to list numerous state statutes and regulations, without explaining which activities are either a higher level of service than required under federal law or the California Constitution, or which activities result in new costs to the claimant. We do not believe the claimant has made a case for any defined reimbursable activities.

The regulations governing test claim filing, Title 2, California Code of Regulations, section 1183, subdivision (d)(3)(A), require the claimant to include a written narrative that contains a detailed description of the activities required under prior law or executive order. The claimant inaccurately asserts on page 29 of the test claim that "None of the Government Code Section 17556 statutory exceptions to a finding of costs mandated by the state apply to this test claim." In fact, Government Code (GC) Section 17556(c) states that statutes or executive orders implementing a federal law or regulation are not reimbursable. Furthermore, GC Section 17556(f) states a statute or executive order imposed by a ballot measure is not reimbursable. The claimant fails to distinguish any State statutory or regulatory requirements from those requirements existing at the federal level, as well as those requirements enacted by California's voters.

Several federal laws require compliance with regulations regarding unlawful discrimination and complaint resolution procedures. Given that all community colleges receive some form of federal funds, laws regarding prohibited forms of discrimination are not new requirements. Additionally, Section 31 of Article I of the California Constitution, enacted by the voters in 1996, prohibits discrimination against anyone on the basis of race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting. While the claimant mentions Section 31 of Article 1 of the California Constitution (adopted by initiative measure in 1996) in its claim, the

claimant failed to discuss how State statutes and regulations included in the test claim relate to this Section.

Several federal laws require specified procedures for handling unlawful discrimination complaints. Given that all community colleges receive some form of federal funds, state laws regarding prohibited discrimination are not new requirements. Because these prior federal laws already prohibited several forms of discrimination and required investigations of complaints, these activities would not therefore be reimbursable pursuant to Government Code Section 17556(c):

- Title IV of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color, sex, religion, or national origin in public schools.
- Title VI of the Civil Rights Act of 1964 prohibits exclusion of participation, denial of benefits, or other discrimination by any federally funded program or activity to any person based on race, color, or national origin.
- The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in federally funded programs or activities.
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any federally funded program or activity.
- The Americans with Disabilities Act of 1990 prohibits discrimination of qualified individuals with disabilities in all employment practices.
- Section 106.8 of Title 34 CFR Part 106 authorized by Title IX of the Education Amendments of 1972 states that each federal funds recipient shall designate at least one responsible employee to coordinate and investigate complaints of discrimination based on sex and adopt and publish grievance procedures.
- In addition, Section 104.7 of Title 34 CFR Part 104 of Section 504 of the Rehabilitation Act of 1973, states that recipients of federal funds who employ fifteen or more persons shall designate at least one person to coordinate compliance and adopt grievance procedures and resolutions of complaints of discrimination based on disability.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 11, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pete Cervinka, Principal Program Budget Analyst, at (916) 445-0328 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza  
Program Budget Manager

Attachments

Attachment A

DECLARATION OF PETE CERVINKA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-02-TC-46

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutory sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge, except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

3/23/04

\_\_\_\_\_  
at Sacramento, CA



\_\_\_\_\_  
Pete Cervinka

## PROOF OF SERVICE

Test Claim Name: Discrimination Complaint Procedures  
Test Claim Number: CSM-02-TC-46

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On March 23, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-08

Mr. Michael Havey  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

B-29

Legislative Analyst's Office  
Attention: Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

Dr. Carol Berg  
Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Ms. Beth Hunter

Centration, Inc.  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

Ms. Sandy Reynolds  
Reynolds Consulting Group, Inc.  
P.O. Box 987  
Sun City, CA 92586

Mr. Keith B. Peterson

SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Mr. Steve Smith  
Mandated Cost Systems, Inc.  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

Mr. Thomas J. Donner

Santa Monica Community College District  
1900 Pico Blvd.  
Santa Monica, CA 90405-1628

Ms. Harmeet Barkschat  
Mandate Resource Services  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Mr. Paul Minney

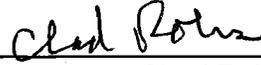
Spector, Middleton, Young & Minney, LLP  
7 Park Center Drive  
Sacramento, CA 95825

Mr. Mark Drummond  
California Community Colleges  
1102 Q Street, Suite 300  
Sacramento, CA 95814-6549

Mr. Steve Shields  
Shields Consulting Group, Inc.  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

Mr. Thomas J. Nussbaum  
California Community Colleges  
1102 Q Street, Suite 300  
Sacramento, CA 95814-6549

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 23, 2004, at Sacramento, California.



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Chad Rohrs