

SixTen and Associates

Mandate Reimbursement Services

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April 30, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

MAY 04 2004

COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-46
Santa Monica Community College District
Discrimination Complaint Procedures (CCD)

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated March 23, 2004 and the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of DOF are Incompetent and Should be Excluded

Test claimant objects to the comments of DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response since DOF has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

In addition, DOF has cited numerous federal statutes and regulations without attaching a copy thereof and without identifying specific chapters, articles, sections or page numbers in violation of Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), which requires that written responses, opposition or recommendations on the test claim shall contain:

"A copy of relevant portions of...federal statutes, and executive orders that may impact the alleged mandate...unless such authorities are also cited in the test claim. The specific chapters, articles, sections, or page numbers must be identified..."

The comments of DOF do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of DOF not be included in the Staff's analysis.

Part I
Reply to DOF

B. DOF Misstates Government Code Section 17556(c)

DOF argues that Government Code Section 17556(c) "states that statutes or executive orders implementing a federal law or regulations are not reimbursable." This is a misstatement of the law. Subdivision (c) of Government Code Section provides:

"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:...

(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.” (Emphasis supplied)

DOF omits that very important exception to the statute, i.e., “unless the statute of executive order mandates costs which exceed the mandate in that federal law or regulation.”

C. DOF’s Shotgun Approach to Federal Law Must Be Disregarded

DOF then couples its incorrect statement of the law with eight (8) bulleted references to federal laws and regulations without attaching copies or without identifying specific chapters, articles, sections, or page numbers as required by Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2). As such, this shotgun approach must be disregarded.

D. DOF Misstates the Contents of the Test Claim

DOF complains that the test claim does not explain which activities are either a higher level of service or which activities result in new costs. Test claimant refers DOF to the test claim at pages 22-28.

DOF also complains that the test claim does not contain a written narrative that contains a detailed description of the activities required under prior law or executive order. As for the written narrative, test claimant refers DOF to the test claim at pages 2-21. As for the activities required under prior law, test claimant refers DOF to the test claim at page 2 where the test claimant declared there was no statute or regulation which mandated any complaint resolution procedures prior to January 1, 1975.

Part II
Reply to CCC

E. CCC Affirms the Validity of the Test Claim

CCC adds historical perspective by furnishing documents from 1980 and disclosing that CCC advised DOF then that the proposed regulations imposed a mandate on community college district. At that time, CCC estimated annual costs of implementation to be \$243,322. Currently, CCC states it receives about 200 unlawful discrimination complaints statewide per year. That figure does not include informal complaints, which

Ms. Paula Higashi
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are handled locally.

CCC concludes "we believe there is a basis for reimbursement."

CERTIFICATION

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

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Petersen". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping underline.

Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Discrimination Complaint Procedures (CCD) 02-TC-46
CLAIMANT: Santa Monica Community College District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of April 30, 2004, addressed as follows:

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

AND per mailing list attached

FAX: (916) 445-0278

- | | |
|--|--|
| <input type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business. | <input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error. |
| <input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

_____(Describe) | <input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

<input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s). |

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 4/30/04, at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 7/8/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 07/11/2003

Mailing List

Claim Number: 02-TC-46

Issue: Discrimination Complaint Procedures (CCD)

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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