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**DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES**

Education Code Sections 66010.2, 66010.7, and 87102

Statutes 1988, Chapter 973 and Statutes 1991, Chapter 1198

California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022,
53023, 53024, 53025, 53026, and 53034

Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35

(Consolidated With)

Government Code Section 11135

Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; Statutes 2001, Chapter 708;
Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328,
59330 , 59332, 59334, 59336, 59338, 59340, and 59342

Register 81, Number 16; Register 92, Number 17; Register 96, Number 23;
Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35

Discrimination Complaint Procedures

02-TC-46

(And a Portion of 02-TC-25 and 02-TC-31)

Santa Monica Community College District
Los Rios Community College District, and
West Kern Community College District, Co-Claimant

EXECUTIVE SUMMARY

The Executive Summary will be provided with the final staff analysis.

STAFF ANALYSIS

Claimants

Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District

Chronology

- 06/25/2003 Claimant, Santa Monica Community College District, filed test claim *Discrimination Complaint Procedures* (02-TC-46) with the Commission on State Mandates (Commission)
- 06/22/2010 Commission staff issued a notice severing statutes and administrative regulations from consolidated test claim *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) originally filed June 5, 2003 and June 13, 2003, and consolidating them with *Discrimination Complaint Procedures* (02-TC-46)
- 03/24/2011 Commission adopted statement of decision
- 03/29/2011 Commission issued statement of decision and timeline for submitting parameters and guidelines
- 04/27/2011 Claimants filed proposed parameters and guidelines

I. Background

Summary of the Mandate

The *Discrimination Complaint Procedures* (02-TC-46) test claim addresses state antidiscrimination laws as they apply to community college districts.¹ On March 24, 2011, the Commission adopted a statement of decision finding that the test claim statutes and regulations impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission separated the activities found to be reimbursable into the following three program areas: (1) student equity; (2) equal employment opportunity; and (3) discrimination complaint procedures, which includes the state's requirement to comply with section 202 of the federal Americans with Disabilities Act (ADA) for employment programs and the accessibility requirements of section 508 of the Rehabilitation Act for information technology.

The Commission approved this test claim for the reimbursable activities associated with equal employment opportunity, student equity, and discrimination complaints procedures for

¹ On June 22, 2010, the Commission severed a portion of the consolidated test claim, *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31), and consolidated the severed portion with this test claim, *Discrimination Complaint Procedures* (02-TC-46). The portions of the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim that were severed and consolidated with the *Discrimination Complaint Procedures* test claim consist of the "Student Equity Guidelines" and the Education Code sections and title 5 regulations that are discussed in the "minimum conditions," "equal employment opportunity," and "student equity" sections of the Commission's statement of decision.

community college districts identified on pages 238-255 of the Commission's statement of decision and included in the proposed parameters and guidelines.

Background for Parameters and Guidelines

Pursuant to Government Code section 17557 and Section 1183.11 of the Commission's regulations, the claimants submitted proposed parameters and guidelines to the Commission on April 27, 2011. The claimants propose separating the parameters and guidelines into the following four separate single subject parameters and guidelines in order to reduce confusion in the claiming process for districts and for ease in case of amendments required by future legislation or litigation: (1) student equity; (2) equal employment opportunity program; (3) Americans with Disabilities Act; and (4) discrimination complaint procedures.

In addition, the claimants propose that the "equal employment opportunity program," "Americans with Disabilities Act," and "discrimination complaint procedures" subject areas have two sets of parameters and guidelines, one for costs resulting from activities reimbursable only in the 2001-2002 fiscal year, and another for all subsequent fiscal years. The claimants suggest that this will aid the State Controller's Office's preparation of claiming instructions by removing obsolete code and regulation sections as of the 2002-2003 fiscal year.

Neither the Department of Finance nor the State Controller's Office filed comments on the claimants' proposed parameters and guidelines.

II. Discussion

Staff reviewed the claimants' proposed parameters and guidelines. Based on the number of activities approved in this test claim and the varying subjects that the reimbursable activities address, staff generally agrees with the claimants' proposals regarding the adoption of separate parameters and guidelines based on subject matter and on the period of reimbursement in order to reduce confusion in the claiming process. Neither the Department of Finance nor the State Controller's Office has filed an objection to the separation recommended for these parameters and guidelines. However, staff recommends severing the student equity activities from these parameters and guidelines and including them with parameters and guidelines for the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim.

In addition, staff makes non-substantive, technical changes for purposes of clarification, consistency, and conformity to the statement of decision and statutory language. The following analysis addresses some of the non-substantive changes, and all of the substantive changes that staff recommends to each of the proposed single-subject parameters and guidelines.

A. Student Equity - Effective Beginning July 1, 2001 (Ed. Code, §§ 66010.2(b) and 66010.7(b) and (c), Stats. 1991, Ch. 1198)

The claimants' proposed parameters and guidelines for the *Discrimination Complaint Procedures* test claim include the activities approved by the Commission to provide "student equity" in the programs and services to students. The "student equity" activities address requirements associated with the duty to provide educational programs and services free from discrimination harassment to students. Staff recommends severing the "student equity" activities from the parameters and guidelines for this test claim and including those activities with the reimbursable state-mandated activities found in the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim. The purpose of this recommendation is for ease of claiming and to reduce the number of single-subject parameters and guidelines adopted.

In addition, the student equity activities fit programmatically within the activities approved in the *Minimum Conditions for State Aid* test claim. Thus, the student equity activities will be analyzed in that claim. The proposed parameters and guidelines for *Minimum Conditions for State Aid* are tentatively set for hearing on September 28, 2012.

B. Equal Employment Opportunity Program - Fiscal Year 2001-2002 Only (Ed. Code, § 87102(a) and (b); and Cal. Code Regs., tit. 5, §§ 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034)

The activities approved by the Commission in the Equal Employment Opportunity section of the statement of decision address steps to achieve diversity or equal employment opportunity in a community college district's workforce, including, establishing hiring goals, monitoring the district workforce, reporting workforce data to the Chancellor's Office, and establishing a process to address complaints of violations of the equal employment opportunity program regulations.

The code sections and title 5 regulations that impose the reimbursable mandates approved by the Commission initially provided for "affirmative action" in employment. On September 4, 2001, after the beginning of the 2001-2002 fiscal year, the court in *Connerly v. State Personnel Bd.* found the code sections to be unconstitutional, and therefore void.² In addition, the court provided dicta suggesting that parts of the title 5 regulations were also unconstitutional. However, the title 5 regulations remained in place and in effect after the court's decision.

On August 11, 2002, one month into the 2002-2003 fiscal year, the Board of Governors amended the title 5 regulations to remove all reference to "affirmative action" and language that could be interpreted as providing an improper preference or authorizing discrimination on an impermissible basis. For example, the title 5 regulations were amended to remove the use of goals and timetables for the hiring of minorities and women. Instead, the language of the regulations focused on "equal employment opportunity" and activities to achieve "equal employment opportunity," many of which were already part of the "affirmative action" regulations. In addition, a "equal employment opportunity plan" replaced a district's "faculty and staff diversity plan."

For purposes of reimbursement, the effect of the court's decision in *Connerly v. State Personnel Bd.* on the code sections is the shortening of the reimbursement period for the activities imposed by the code sections to only two months and 4 days in the 2001-2002 fiscal year. After which, the activities imposed by the code sections are no longer mandated. The title 5 regulations were not changed until the 2002-2003 fiscal year.

Section I. Summary of Mandate

Staff revised this section to detail the separation of the parameters and guidelines based on subject matter and period of reimbursement, and clarified that the parameters and guidelines are for approved equal employment opportunity program activities for the 2001-2002 fiscal year only.

In light of the changes made to the code sections and regulations after the beginning of the reimbursement period for this test claim (July 1, 2001), in order to reduce confusion for districts in the claiming process, staff recommends approval of the split.

² *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16.

Section III. Period of Reimbursement

Staff revised this section to detail the separation of the parameters and guidelines based on reimbursement period, and clarified that the parameters and guidelines are for the 2001-2002 fiscal year only.

Section IV. Reimbursable Activities

1. Removal of Activities that Begin After the 2002-2003 Fiscal Year

The period of reimbursement for the “equal employment opportunity program” activities approved by the Commission for only the 2001-2002 fiscal year, begins on July 1, 2001 and ends on June 30, 2002. As a result, staff removed the activities that begin after June 30, 2002 from the Fiscal Year 2001-2002 parameters and guidelines. Activities that begin after June 30, 2002, may be claimed under the 2002-2003 fiscal year parameters and guidelines for the “equal employment opportunity program” activities.

Staff also removed all reference to the term “equal employment opportunity program” and the “equal employment opportunity plan” from the activities in the 2001-2002 fiscal year parameters and guidelines. As discussed above, many of the activities that originated as “affirmative action” activities were carried over as “equal employment opportunity” activities after the Board of Governors’ amendment of the title 5 regulations in the 2002-2003 fiscal year. As a result, the statement of decision combined the activities as continuous activities. However, because of the proposed split in parameters and guidelines based on fiscal year, for purposes of clarity it is necessary to remove all reference to the term “equal employment opportunity program” and the “equal employment opportunity plan,” which did not replace the term “affirmative action” and the “faculty and staff diversity plan” until the 2002-2003 fiscal year.

2. Clarifying Changes to the Approved Activity Imposed by Education Code Section 87102(a)

In addition, staff amended the activity imposed by Education Code section 87102(a) as indicated by the strike-out below:

~~Include steps in the faculty and staff diversity plan that the district will take in meeting and improving hiring goals for both full-time faculty and part-time faculty pursuant to Education Code section 87482.6 (Statutes 1988, Chapter 973), and the development of the plan shall be a condition for receipt of allowances pursuant to Education Code section 87482.6. (Ed. Code, § 87102(a) (Statutes 1988, Chapter 973).) *This activity is reimbursable from July 1, 2001 through September 3, 2001.*~~

This removal is non-substantive and is done to avoid confusion regarding the possible misperception that it imposes a condition for purposes of reimbursement for the activity. Specifically, allowances received under Education Code section 87482.6 are not for the development of a district’s faculty and staff diversity plan, and a district’s decision to forgo allowances under Education Code section 87482.6 does not remove the requirement for a district to have a faculty and staff diversity plan. Nor does it make the reimbursable state-mandated activity found by the Commission, to include steps in the faculty and staff diversity plan to meet and improve hiring goals for full-time faculty and part-time faculty, optional.

Education Code section 87482.6 sets forth how a portion of the program improvement funds received pursuant to Education Code section 84755 should be used in order to achieve a goal that

75 percent of the hours of credit instruction be taught by full-time instructors. The code section and its implementing regulations imposed specific requirements to achieve this goal. Districts that had less than 75 percent of their hours of credit instruction taught by full-time instructors were required to expend a specific amount of program improvement funds to meet this goal. If a district chose not to improve its percentage the district would forgo the amount of its program improvement funds that were to be used toward achieving the 75 percent goal.

Education Code section 87482.6 and its implementing regulations were analyzed in the in the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim. Based on *Kern High School Dist.* the Commission found that the code section and regulations did not impose state-mandated activities on community college districts. Specifically, districts had the discretion to choose not to comply with the activities imposed by the code section and regulations and therefore were not legally compelled to comply. In addition, districts would only face a loss of the program improvement funds set aside specifically for compliance with the code section and regulations, and as a result, did not face practical compulsion to comply with the code section and its implementing regulations.³

In contrast, even if a district chooses to forgo funding under Education Code section 87482.6 and to not comply with the specific requirements set forth in section 87482.6 and its implementing regulations, the district is still mandated to include steps in its faculty and staff diversity plan that it will take to meet the 75 percent hiring goals set forth in section 87482.6. Thus, the language that is removed does not add anything to the activity found to be mandated by the Commission, and as a result, its removal is non-substantive.

3. Clarifying Changes to the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53003(b)-(c)

For purposes of clarification, staff recommends making the changes indicated by the underlined language to the following activity imposed by California Code of Regulations, title 5, section 53003, listed under the “A. District Plan Contents and Review” section of the parameters and guidelines:

3. Include in the faculty and staff diversity plan the following information:
 - a. Goals and timetables, as appropriate, for hiring and promotion of persons with disabilities developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003(b) (Register 96, No. 23).)
 - b. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003(c)(4) (Register 96, No. 23).)

³ Statement of decision for the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-35) test claim, adopted May 26, 2011, at <<http://www.csm.ca.gov/sodscan/060111c.pdf>> as of April 23, 2012.

- c. An analysis of the number of persons with disabilities who are employed in the district's work force and the number of historically underrepresented groups (including persons with disabilities) who have applied for employment in the following job categories: (1) executive/ administrative/ managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance (listed in Cal. Code Regs., tit. 5, § 53004(a) (Register 96, No. 23)). (Cal. Code Regs., tit. 5, § 53003(c)(6) (Register 96, No. 23).)
- d. An analysis of the degree to which persons with disabilities are underrepresented in comparison to the numbers of disabled persons whom the Chancellor determines to be available and qualified to perform the work required for each job category, ~~and~~ (Cal. Code Regs., tit. 5, § 53003(c)(7) (Register 96, No. 23).)
- e. The determination of whether or not the underrepresentation for women, ethnic minorities, or persons with disabilities is significant. *This activity does not include reimbursement for the inclusion of an analysis of the degree to which any group is underrepresented. This activity only requires the inclusion of the determination of whether any underrepresentation is significant.* (Cal. Code Regs., tit. 5, § 53003(c)(7) (Register 96, No. 23).)
- f. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003(c)(8) (Register 96, No. 23).)
- g. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003(c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003(c)(9) (Register 96, No. 23).)
- h. A plan for corrective action consistent with California Code of Regulations, title 5, section 53006 (Register 96, No. 23), including goals and timetables for hiring and promotion, if necessary, to remedy any significant underrepresentation identified in the faculty and staff diversity plan by achieving expected representation for all historically underrepresented groups in all job categories listed in California Code of Regulations, title 5, section 53004(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003(c)(10) (Register 96, No. 23).)

Staff's proposed language clarifies that the above activity is only reimbursable for the inclusion of the information above. Implementation or the development of the content of a district's plan is the subject of many of the test claim regulations pled and analyzed in the Commission's statement of decision, some of which were approved and are included in the proposed parameters and guidelines, others of which were found not to impose a new program or higher level of service and so are excluded from the proposed parameters and guidelines.

In addition, for purposes of clarification the information required to be provided by section 53003(c)(7) is separated into two requirements (d. and e.). Under "d." *only* the inclusion in the plan of an analysis of the degree to which *persons with disabilities* are underrepresented is a reimbursable state-mandated new program or higher level of service. In its statement of decision, the Commission found that *only* the inclusion of the analysis of the degree to which *persons with disabilities* are underrepresented constituted a new program. The Commission expressly found that the inclusion of the analysis of the degree to which women and ethnic

minorities are underrepresented *was not* new, and thus not reimbursable. However, the inclusion of the determination of whether any underrepresentation is *significant* for individuals with disabilities *and* women and ethnic minorities was found to constitute a new program or higher level of service.

Therefore, the italicized language in “e.” clarifies that the activity of including in the plan the determination of whether underrepresentation for women, ethnic minorities, or persons with disabilities is *significant* does not include the analysis of whether or not underrepresentation exists in the first place.

4. Clarifying Changes to the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53020(a)

For purposes of clarification, staff recommends combining the mandate imposed by title 5, section 53020(a), with the other activities approved by the Commission.

The Commission approved the following activity imposed by section 53020(a):

Be ultimately responsible for making measurable progress toward the goals established in the district’s faculty and staff diversity plan. (Cal. Code Regs., tit. 5, § 53020, subd. (a) (Register 96, No. 23).)

This activity, however, has to be read in the context of the regulatory scheme within which section 53020(a) was adopted to understand what the requirement entails. Read on its own, it is unclear what “being ultimately responsible for making measurable progress” toward the goals in a district’s faculty and staff diversity plan means.

The goals established in a district’s faculty and staff diversity plan refer to the goals established for the hiring and promotion of members of historically underrepresented individuals. As noted above, these goals and the activities taken to achieve them are the subject of the activities approved by the Commission. For example, the Commission approved activities imposed by title 5, sections 53004 and 53006, which require monitoring applicants for employment to evaluate the progress in implementing the goals in the faculty and staff diversity plan and establishing hiring goals for significantly underrepresented groups and timetables to meet those goals. Also, the Commission approved activities imposed by title 5, sections 53021, 53022, 53023, 53024, and 53026, which require specific recruitment procedures, specific information to be included in job announcements that have a sensitivity to diverse backgrounds, an analysis of applicant pools to ensure expected representation of historically underrepresented groups, specific screening and selection procedures to ensure no adverse impact, and the establishment of a complaint process alleging violations of the requirements of the affirmative action regulations. Thus, “[being] ultimately responsible in making measurable progress” toward the goals for hiring and promotion of members of historically underrepresented individuals, must be read as the implementation, or the doing, of the other activities already approved by the Commission.

Thus, staff recommends combining the mandate of section 53020(a), such that it is an additional citation to the other activities approved by the Commission.

5. Clarifying Changes to the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53022

For purposes of clarification, staff amended the activity mandated by California Code of Regulations, title 5, section 53022, which requires the inclusion of a sensitivity to and

understanding of various backgrounds in the job requirements of faculty and administrators in district job announcements. The Commission found title 5, section 53022, to impose a reimbursable state mandate within the context of the whole section which addresses job announcements. Staff amended the activity as indicated below to clarify that the job requirements are part of a district job announcement:

Include in the job requirements in announcements for faculty and administrative positions a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students in job requirements for faculty and administrative positions. (Cal. Code Regs., tit. 5, § 53022 (Register 96, No. 23).)

6. Removal of the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53026 to the “Discrimination Complaint Procedures” Parameters and Guidelines for the 2001-2002 Fiscal Year

In addition, staff recommends removing the following activity related to the complaint process for alleged violations of the equal employment opportunity program from the parameters and guidelines for the 2001-2002 fiscal year and combining the activity with the “discrimination complaint procedures” parameters and guidelines for the 2001-2002 fiscal year:

Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

Read in context with the other state-mandated activities found in the statement of decision, the above activity requires community college districts to use the discrimination complaint process instead of the equal employment opportunity complaint process if the equal employment opportunity complaint also alleges discrimination.

Government Code section 11135 and title 5, section 59300 et seq., which set forth the process to handle complaints of violations of the discrimination, were analyzed in the “discrimination complaint procedures” portion of the Commission’s statement of decision. The Commission only approved a portion of the process in title 5, section 59300 et seq. Because of this partial approval, the removal of the above activity from the “equal employment opportunity program” parameters and guidelines and inclusion with the “discrimination complaint procedures” parameters and guidelines clarifies the scope of the mandated activity and is consistent with the Commission’s statement of decision.

Section VII. Offsetting Revenues and Reimbursement

The period of reimbursement for the 2001-2002 fiscal year “equal employment opportunity program” parameters and guidelines is July 1, 2001 through June 30, 2002. The claimants identified as offsetting revenue the funds appropriated and received from the Equal Employment Opportunity Fund in the Budget Act of 2003, and funds appropriated and received from the Faculty and Staff Diversity Fund in the Budget Act of 2002. These amounts were appropriated for the 2002-2003 and 2003-2004 fiscal years. As a result, these amounts are not relevant for purposes of offsetting revenue for the 2001-2002 fiscal year “equal employment opportunity

program” parameters and guidelines. Staff removed reference to the amounts appropriated in the Budget Acts of 2002 and 2003 from the 2001-2002 parameters and guidelines.

C. Equal Employment Opportunity Program - Effective Beginning Fiscal Year 2002-2003 (Cal. Code Regs., tit. 5, §§ 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034)

Section I. Summary of Mandate

Staff revised this section to detail the separation of the parameters and guidelines based on subject matter and period of reimbursement, and clarified that the parameters and guidelines are for costs incurred as a result of approved equal employment opportunity program activities on or after the 2002-2003 fiscal year.

As discussed above, some activities approved by the Commission end before the beginning of the 2002-2003 fiscal year, and some of the approved activities begin after the fiscal year. In order to avoid confusion in the claiming process, staff recommends approval of the split of parameters and guidelines. Neither the State Controller’s Office nor the Department of Finance has objected to the proposed split of the parameters and guidelines for this test claim.

Section III. Period of Reimbursement

Staff revised this section to detail the separation of the parameters and guidelines based on reimbursement period, and clarified that the parameters and guidelines are for costs incurred on or after the 2002-2003 fiscal year.

Section IV. Reimbursable Activities

1. Inclusion of Activities that end 41 Days into the 2002-2003 Fiscal Year

The 2002-2003 fiscal year begins on July 1, 2002 and ends on June 30, 2003. The claimants have mistakenly removed activities that end on August 10, 2002, 41 days into the 2002-2003 fiscal year. Although the costs incurred must have occurred during the 41-day period, eligible claimants meeting all claiming requirements are still entitled to reimbursement for the cost of the activities during that period of time. As a result, staff adds the “equal employment opportunity program” activities that end on August 10, 2002 to the parameters and guidelines for costs incurred on or after the 2002-2003 fiscal year.

2. Separation of the “Affirmative Action” Activities and the “Equal Employment” Activities

Staff also separated some of the “affirmative action” activities and “equal employment” activities that were combined as continuous activities in the Commission’s statement of decision. As discussed above, many of the activities that originated as “affirmative action” activities were carried over as “equal employment opportunity” activities after the Board of Governors’ amendment of the title 5 regulations in the 2002-2003 fiscal year. As a result, the statement of decision combined the activities as continuous activities. However, because of the proposed split in parameters and guidelines and because some of the “affirmative action” activities end in the 2002-2003 fiscal year, it is necessary to separate all of the “affirmative action” activities that end in the 2002-2003 fiscal year from their “equal employment” counterparts that continue after the 2002-2003 fiscal year.

3. Clarifying Changes to the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53003

For the same reasons discussed for the “Equal Employment Opportunity Program” parameters and guidelines for the 2001-2002 fiscal year, staff recommends making the changes indicated by the underlined language to the following activities imposed by the version of California Code of Regulations, title 5, section 53003, operative until August 10, 2002, and the version of the section operative beginning August 11, 2002, which are listed under the “A. District Plan Contents and Review” section of the parameters and guidelines:

3. Include in the faculty and staff diversity plan the following information only until August 10, 2002:
 - a. Goals and timetables, as appropriate, for hiring and promotion of persons with disabilities developed pursuant to California Code of Regulations, title 5, section 53006 for each college in the district and for the district as a whole. (Cal. Code Regs., tit. 5, § 53003(b) (Register 96, No. 23).)
 - b. A process for ensuring that district employees who are to participate on screening or selection committees shall receive appropriate training on the requirements of California Code of Regulations, title 5, section 53000 et seq., which addresses affirmative action/equal employment opportunity programs (Register 96, No. 23; Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003(c)(4) (Register 96, No. 23).)
 - c. An analysis of the number of persons with disabilities who are employed in the district’s work force and the number of historically underrepresented groups (including persons with disabilities) who have applied for employment in the following job categories: (1) executive/ administrative/ managerial; (2) faculty and other instructional staff; (3) professional nonfaculty; (4) secretarial/clerical; (5) technical and paraprofessional; (6) skilled crafts; and (7) service and maintenance (listed in Cal. Code Regs., tit. 5, § 53004(a) (Register 96, No. 23)). (Cal. Code Regs., tit. 5, § 53003(c)(6) (Register 96, No. 23).)
 - d. An analysis of the degree to which persons with disabilities are underrepresented in comparison to the numbers of disabled persons whom the Chancellor determines to be available and qualified to perform the work required for each job category, ~~and~~ (Cal. Code Regs., tit. 5, § 53003(c)(7) (Register 96, No. 23).)
 - e. The determination of whether or not the underrepresentation for women, ethnic minorities, or persons with disabilities is significant. This activity does not include reimbursement for the inclusion of an analysis of the degree to which any group is underrepresented. This activity only requires the inclusion of the determination of whether any underrepresentation is significant. (Cal. Code Regs., tit. 5, § 53003(c)(7) (Register 96, No. 23).)
 - f. The steps the district will take to achieve diversity in its workforce. (Cal. Code Regs., tit. 5, § 53003(c)(8) (Register 96, No. 23).)
 - g. Goals for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003(c)(7) (Register 96, No. 23). (Cal. Code Regs., tit. 5, § 53003(c)(9) (Register 96, No. 23).)

- g. Additional steps consistent with California Code of Regulations, title 5, section 53006, to remedy any significant underrepresentation identified in the plan. (Cal. Code Regs., tit. 5, § 53003(c)(9) (Register 2002, No. 35).)
 - h. Any other measures necessary to further equal employment opportunity throughout the district. (Cal. Code Regs., tit. 5, § 53003(c)(10) (Register 2002, No. 35).)
 - i. Any goals for hiring persons with disabilities that are required by California Code of Regulations, title 5, section 53025. (Cal. Code Regs., tit. 5, § 53003(d) (Register 2002, No. 35).)
4. Clarifying Changes to the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53020(a)

For the same reasons discussed for the 2001-2002 fiscal year parameters and guidelines, staff recommends combining the mandate imposed by title 5, section 53020(a), with the other activities approved by the Commission, such that it is one of the citations listed as imposing the other activities approved by the Commission.

5. Clarifying Changes to the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53022

Also, for the same reasons discussed for the 2001-2002 fiscal year parameters and guidelines, staff made the same non-substantive changes to the activity mandated by California Code of Regulations, title 5, section 53022, addressing the inclusion of a sensitivity to and understanding of various backgrounds in the job requirements of faculty and administrators in district job announcements.

6. Removal of the Approved Activity Imposed by California Code of Regulations, Title 5, Section 53026 to the “Discrimination Complaint Procedures” Parameters and Guidelines for the 2001-2002 Fiscal Year

In addition, for the same reasons discussed for the 2001-2002 fiscal year parameters and guidelines, staff recommends removing the following activity related to the complaint process for alleged violations of the equal employment opportunity program from the parameters and guidelines for the 2002-2003 fiscal year, and combining the activity with the “discrimination complaint procedures” parameters and guidelines for the 2002-2003 fiscal year:

Process complaints which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

Section VII. Offsetting Revenues and Reimbursement

Because the activities imposed by Education Code section 87102 end before the 2002-2003 fiscal year, staff revised this section to remove reference to the use of funds from the Faculty and Staff Diversity Fund as offsetting revenue for reimbursable state-mandated activities imposed by Education Code section 87102.

D. Americans With Disabilities Act - Fiscal Year 2001-2002 Only (Gov. Code, § 11135(b), Stats. 2001, Ch. 708)

The activity approved by the Commission requires a community college district to meet the protections contained in federal law for purposes of providing access to employment and employment related activities within the district to individuals with disabilities.

Caption

Staff revised the caption of the parameters and guidelines to “Federal Rights for Individuals with Disabilities for Employment (Fiscal Year 2001-2002 only).” This caption more accurately describes the reimbursable activity contained in the 2001-2002 fiscal year parameters and guidelines *and* the reimbursable activities contained in the 2002-2003 fiscal year parameters and guidelines.

Section I. Summary of Mandate

Staff revised this section to detail the separation of the parameters and guidelines based on subject matter and period of reimbursement, and clarified that the parameters and guidelines are for costs incurred during the 2001-2002 fiscal year only.

Section III. Period of Reimbursement

Staff revised this section to detail the separation of the parameters and guidelines based on reimbursement period, and clarified that the parameters and guidelines are for costs incurred only during the 2001-2002 fiscal year.

Section IV. Reimbursable Activities

The claimants proposed parameters and guidelines revise the activity approved in the Commission’s statement of decision to provide:

Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts. Activities required by state law in excess of federal law are not reimbursable. ~~where state law does not provide stronger protections and prohibitions.~~ (Government Code Section 11135(b) (Statutes 2001, Chapter 708, beginning July 1, 2001.)

The claimants’ proposed language is not consistent with the Commission’s statement of decision. The plain language of the section 11135 requires community college districts to meet the protections of Section 202 of the Americans with Disabilities Act (ADA) and its implementing regulations with respect to employment, “*except* if the laws of this state prescribe stronger protections.” In such instances, districts are subject to the stronger protections prescribed by the state, and *not* the requirements of Section 202 of the ADA or its implementing regulations. In contrast, the claimants’ language assumes there are extra activities required by state law in excess of federal law for employment within community college districts. In addition, the claimants’ language suggests districts are required to comply with both federal law and state law, but are not entitled to reimbursement for the state law requirements. As a result, staff recommends denying the claimants’ proposed amendments to the activity approved by the Commission.

At the time of the adoption of the Commission's statement of decision, and currently, there were and are no state laws imposing protections and prohibitions stronger than those imposed by section 202 of the ADA and its implementing regulations. As a result, consistent with the Commission's statement of decision, community college districts are mandated to meet the protections of section 202 of the ADA and its implementing regulations for employment within community college districts, and are entitled to reimbursement for this activity.⁴ In order to end reimbursement for this activity based on a subsequent change in law, a request to amend the parameters and guidelines or a request for redetermination of the test claim decision would be required.⁵

For purposes of clarification staff recommends the following language for the reimbursable activity imposed by Government Code section 11135(b):

Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts. (Gov. Code, § 11135(b) (Stats. 2001, ch. 708).) *This activity is reimbursable beginning July 1, 2001.*

In addition, the claimants propose including the language of Section 202 of the ADA and 28 Code of Federal Regulations part 35.140, which is one of the regulations implementing Section 202 of the ADA, in a footnote. Specifically, claimants footnote the following:

SEC. 202. DISCRIMINATION. 42 USC 12132. Adopted July 26, 1990

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

⁴ Note that the majority of circuits in the United States Courts of Appeal and the United States Department of Justice and its implementing regulations take the position that that Title II applies to employment discrimination, which would make title II a non-reimbursable federal mandate. (*Filush v. Town of Weston* (D.Conn. 2003) 266 F.Supp.2d 322, 326-327, noting the split of authority and the majority view). However, the 9th Circuit, which is the controlling circuit in California, has declined to follow this view (*Zimmerman v Oregon Dept. of Justice* (9th Cir. 1999) 170 F.3d 1169). (See also *Hart v. Massanari* (9th Cir. 2001) 266 F.3d 1155, 1171. Stating, "Circuit law ... binds all courts within a particular circuit, including the court of appeals itself." and the dissent in *Zimmerman v. Oregon Dept. of Justice* (9th Cir. 1999) 183 F.3d 1161, 1162, which denied petition for rehearing en banc. "The Ninth Circuit now stands alone in adopting an interpretation of the ADA that deprives disabled persons of a right expressly granted them by Congress—the right to bring an action for employment discrimination under Title II of the ADA.") Therefore, based on the current state of the law in the Ninth Circuit, the Commission found compliance with title II to be a reimbursable state-mandated new program.

⁵ See Government Code sections 17557 and 17570.

28 C.F.R. § [35]

35.140 Employment discrimination prohibited. Last revision: July 26, 1991

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

(b) (1) For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I.

Staff recommends that the parameters and guidelines do not include the above language proposed by the claimants. Section 202 of the ADA and 28 C.F.R. part 35.140 sets forth prohibitory language that does not clarify what is mandated of community college districts. In addition, because community college districts are subject to title I of the ADA, 28 C.F.R. part 35.140 (b)(2) is not applicable to community college districts. Also, as discussed in the Commission's statement of decision, the requirements of title I of the ADA and its implementing regulations constitute federal mandates on community college districts, and as a result, are not reimbursable. Because the language proposed by the claimants does not provide clarity to the mandated activities and could lead to confusion as to what is reimbursable, staff recommends that the Commission not include the language proposed by the claimants in the parameters and guidelines.

For clarification purposes, staff notes that pages 211-212 of the Commission's statement of decision summarizes some of the requirements of Section 202 of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.). Specifically the statement of decision provides:

As relevant to this discussion, Title II of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) impose the following activities on community college districts:

1. Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 28 Code of Federal Regulations part 35 et seq., including any investigation of any [non-employment related] complaint communicated to it alleging non compliance with part 35 or alleging any actions that would be prohibited by part 35. (28 C.F.R. § 35.107(a) (July 26, 1991).)
2. Make available to all interested individuals the name, office address, and telephone number of the employee or employees responsible for the community college districts efforts to comply with and carry out the

responsibilities under 28 Code of Federal Regulations part 35 et seq. (28 C.F.R. § 35.107(a) (July 26, 1991).)

3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 Code of Federal Regulations part 35 et seq., if employing 50 or more persons. (28 C.F.R. § 35.107(b) (July 26, 1991).)⁶

This summary was done for purposes of analyzing whether state-mandated activities associated with a community college district's *discrimination complaint process* constitute federal mandates. However, the activity mandated by Government Code section 11135 is not limited to a district's discrimination complaint process. Rather, as discussed in the Commission's statement of decision the activity requires districts to meet all of the protections contained in section 202 of the ADA and its implementing regulations in *employment within the district*.⁷ Thus, for purposes of clarification, the reimbursable activity imposed by Government Code section 11135(b) is not limited to the federal requirements summarized on pages 211-212 of the Commission's Statement of Decision. The language of the approved activity clearly states that community college districts must meet all the protections contained in Section 202 of the ADA and its implementing regulations for employment within community college districts.

E. Americans With Disabilities Act - Beginning Fiscal Year 2002-2003 (Gov. Code, § 11135(b), Stats. 2001, Ch. 708; Stats. 2002, Ch. 1102)

The activities approved by the Commission require a community college district to meet the protections contained in federal law for purposes of: (1) providing access to employment and employment related activities within the district to individuals with disabilities; and (2) accessibility for individuals with disabilities when developing, procuring, maintaining, or using electronic or information technology.

Caption

Staff revised the caption of the parameters and guidelines to "Federal Rights for Individuals with Disabilities for Employment and Information Technology (Beginning Fiscal Year 2002-2003)." This caption more accurately describes the reimbursable activities contained in the 2002-2003 fiscal year parameters and guidelines.

Section I. Summary of Mandate

Staff revised this section to detail the separation of the parameters and guidelines based on subject matter and period of reimbursement, and clarified that the parameters and guidelines are for costs incurred on or after the 2002-2003 fiscal year.

⁶ Statement of decision for *Discrimination Complaint Procedures* (02-TC-46, and a portion of 02-TC-25 and 02-TC-31), pgs. 211-213, at < <http://www.csm.ca.gov/sodscan/033011b.pdf> > [as of March 29, 2012].

⁷ *Id.* at pgs. 196-201, and 211-213.

Section III. Period of Reimbursement

Staff revised this section to detail the separation of the parameters and guidelines based on reimbursement period, and clarified that the parameters and guidelines are for costs incurred on or after the 2002-2003 fiscal year.

Section IV. Reimbursable Activities

The claimants' proposed parameters and guidelines revise the activity imposed by Government Code section 11135(b) as approved in the Commission's statement of decision to provide:

Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts. Activities required by state law in excess of federal law are not reimbursable. ~~where state law does not provide stronger protections and prohibitions.~~ (Gov. Code, § 11135(b) (Statutes 2001, Chapter 708, beginning July 1, 2001))

For the same reasons discussed above for the parameters and guidelines for the 2001-2002 fiscal year, staff recommends not including the language proposed by the claimants in the parameters and guidelines.

Thus, the proposed parameters and guidelines includes the following language for the reimbursable activity imposed by Government Code section 11135(b):

Meet the protections contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and its implementing regulations (28 C.F.R. § 35 et seq.) in employment within community college districts. (Gov. Code, § 11135(b) (Stats. 2001, ch. 708).) *This activity is reimbursable beginning July 1, 2001.*

The claimants proposed parameters and guidelines also contains language from Title II of the ADA (42 U.S.C. 12132) and 28 C.F.R. part 35.140. For the same reasons discussed for the parameters and guidelines for the 2001-2002 fiscal year, this language is not relevant to the reimbursable activity. Staff recommends that the proposed footnote not be included in this set of parameters and guidelines.

In regard to the activity imposed by Government Code section 11135(d)(2), the claimants propose including some of the language of section 508 of the Rehabilitation Act (29 U.S.C. § 794d) and all of 36 C.F.R. part 1194.1, which is one of the regulations implementing section 508 of the Rehabilitation Act. Specifically the claimants propose including the following in footnotes:

Section 508 of the Rehabilitation Act (29 U.S.C. § 794d)

Section 794d. Electronic and information technology As of August 21, 2002

(a) Requirements for Federal departments and agencies

(1) Accessibility

(A) Development, procurement, maintenance, or use of electronic and information technology

When developing, procuring, maintaining, or using electronic and information technology, each Federal department or agency, including the United States

Postal Service, shall ensure, unless an undue burden would be imposed on the department or agency, that the electronic and information technology allows, regardless of the type of medium of the technology,

(i) individuals with disabilities who are Federal employees to have access to and use of information and data that is comparable to the access to and use of the information and data by Federal employees who are not individuals with disabilities; and

(ii) individuals with disabilities who are members of the public seeking information or services from a Federal department or agency to have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.

36 C.F.R. § 1194

Section 1194.1 Purpose.

As of December 21, 2000

The purpose of this part is to implement section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d). Section 508 requires that when Federal agencies develop, procure, maintain, or use electronic and information technology, Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

Staff recommends that the Commission not include the above language proposed by the claimants. The claimants proposed language is unnecessary, because the reimbursable activity specifically cites to the federal code section (29 U.S.C. § 794d) and the regulations (36 C.F.R. § 1194 et seq.) that community college districts are required to comply with in developing, procuring, maintaining, or using electronic or information technology. In addition, claimants' proposal only includes part of 29 U.S.C. § 794d (i.e. subdivision (a)(1)(A)(i) and (ii)), and all of 36 C.F.R. § 1194.1. However, the reimbursable activity is not limited to the specific subdivision of 29 U.S.C. § 794d cited to by the claimants, nor is it limited to the specific regulation cited to by the claimants. As a result, inclusion of the footnotes could lead to an improper limitation of the reimbursable activity. Thus, the claimants' language is not included in the proposed parameters and guidelines.

F. Discrimination Complaint Procedures - Fiscal Year 2001-2002 Only (Cal. Code Regs., tit. 5, §§ 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, 59342, 59351, 59352, 59354, 59356, 59358, 59360, and 59362)

The discrimination complaint procedures activities approved by the Commission include activities such as the investigation of complaints of unlawful discrimination, the establishment of polices for investigating discrimination complaints, engaging in informal resolution of

discrimination complaints, and forwarding copies of information regarding discrimination complaints to the Chancellor's Office.

Section I. Summary of Mandate

Staff revised this section to detail the separation of the parameters and guidelines based on subject matter and period of reimbursement, and clarified that the parameters and guidelines are for the approved discrimination complaint procedures activities for the 2001-2002 fiscal year only.

Section III. Period of Reimbursement

Staff revised this section to detail the separation of the parameters and guidelines based on reimbursement period, and clarified that the parameters and guidelines are for the 2001-2002 fiscal year only.

Section IV. Reimbursable Activities

The claimants proposed parameters and guidelines modifies the below activity approved in the Commission's statement of decision by adding the underlined language:

Immediately notify the complainant and the Chancellor that his or her formal complaint does not meet the requirements of California Code of Regulations, title 5, section 59328, and specify in what way the complaint is defective, if the district receives a complaint that does not meet the requirements of section 59328. (Cal. Code Regs., tit. 5, § 59332 (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

Staff recommends that the Commission not include the claimants' proposed change. The activity as approved by the Commission *does not* include notifying the Chancellor's Office when a complainant's formal complaint does not meet requirements. Nor does the plain language of the regulation impose this requirement. In addition, Government Code section 17557(a) and section 1183.1(a)(4) of the Commission's regulations authorize the Commission to include the "most reasonable methods of complying with the mandate" in the parameters and guidelines. The "most reasonable methods of complying with the mandate" are "those methods not specified in statute or executive order that are necessary to carry out the mandated program." A finding that an activity is necessary to carry out the mandated program must be supported by evidence in the record.⁸ There is no explanation or evidence in the record explaining why immediately notifying the Chancellor is reasonably necessary to comply with the mandate to immediately notify the complainant that his or her formal complaint does not meet specific requirements.

The claimants proposed parameters and guidelines include the following activities associated with a community college district's administrative determination of a complaint alleging discrimination:

(1) Forward the following to the Chancellor within 150 days of receiving a formal complaint:

[¶] . . . [¶]

⁸ Government Code section 17559; California Code of Regulations, title 2, sections 1183.14 and 1187.5.

(C) A copy of the complainant’s appeal filed pursuant to California Code of Regulations, title 5, section 59338(a), or notice that the complainant has not filed an appeal and the district has closed the file. (Title 5, CCR, § 59340(b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

(2) Maintain and make available to the Chancellor upon request the original complaint, the documents referenced in sections 59336, 59338, and 59340 for a period of at least three years after closing a case. (Title 5, CCR, § 59340(b) (Register 2001, No. 6; and Register 2002, No. 13), beginning July 1, 2001.)

These activities were not imposed by California Code of Regulations, title 5, section 59340, as amended by Register 2002, number 13, which was pled by the claimants. Rather, these activities were added in 2008 in Register 2008, number 34, which was not pled by the claimants. No mandate determination was made in regard to section 59340 as amended in 2008, and the Commission has no jurisdiction over the 2008 version of section 59340. As a result, these activities cannot be included in the parameters and guidelines for California Code of Regulations, title 5, section 59340, as amended by Register 2002, number 13. Staff recommends that the Commission not include these activities in the parameters and guidelines for “discrimination complaint procedures” for the 2001-2002 fiscal year.

In addition, staff removed all activities and references associated with California Code of Regulations, title 5, sections 59352, 59354, 59356, 59358, 59360, and 59362. The claimants proposed parameters and guidelines include reimbursement for the activities associated with the “Chancellor’s Office Compliance Action.” However, the Commission specifically found that these regulations do not impose state-mandated activities, stating:

The claimants disagree with the finding that the appeal process on the Chancellor’s Office level (as set forth in Cal. Code Regs., tit. 5, §§ 59350-59362) does not impose any activities on community college districts. The claimants argue that districts have no control over an appeal to the Chancellor’s Office, and as a result, the Chancellor’s Office investigation requires community college districts to engage in the Chancellor’s Office process. [Fn. omitted.] However, there is no language in sections 59350-59362 that requires community college districts to engage in any activity. Absent language requiring specific action to be taken by community college districts, the Commission cannot read activities into sections 59350-59362. [Fn. omitted.] Thus, based on the plain language of title 5, sections 59350-59362, do not impose any state-mandated activities on community college districts.⁹

Upon petition by any party, the Commission may reconsider or amend a test claim decision within 30 days after the statement of decision is delivered or mailed to the claimant for an alleged error of law.¹⁰ The statement of decision for the *Discrimination Complaint Procedures*

⁹ Statement of decision for *Discrimination Complaint Procedures* (02-TC-46, and a portion of 02-TC-25 and 02-TC-31), pgs. 203-204, at < <http://www.csm.ca.gov/sodscan/033011b.pdf> > [as of March 29, 2012].

¹⁰ Government Code section 17559(a) and California Code of Regulations, title 5, section 1188.4.

test claim was mailed on March 29, 2011. The Commission has not received a petition for reconsideration within 30 days of this date, and as a result, the Commission's statement of decision is final. Thus, staff recommends the Commission deny the claimant's request to include reference to, and to authorize reimbursement for, the proposed activities associated with California Code of Regulations, title 5, sections 59352, 59354, 59356, 59358, 59360, and 59362.

In addition, for the reasons discussed for the 2001-2002 fiscal year "equal employment opportunity program" parameters and guidelines, staff included the following activity from the "equal employment opportunity" section of the statement of decision with the "discrimination complaint procedures" parameters and guidelines:

Process complaints of violation of the equal employment opportunity regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

G. Discrimination Complaint Procedures - Beginning Fiscal Year 2002-2003 (Cal. Code Regs., tit. 5, §§ 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, 59342, 59351, 59352, 59354, 59356, 59358, 59360, and 59362)

Section I. Summary of Mandate

Staff revised this section to detail the separation of the parameters and guidelines based on subject matter and period of reimbursement, and clarified that the parameters and guidelines are for costs incurred as a result of approved discrimination complaint procedures activities on or after the 2002-2003 fiscal year.

Section III. Period of Reimbursement

Staff revised this section to detail the separation of the parameters and guidelines based on reimbursement period, and clarified that the parameters and guidelines are for costs incurred on or after the 2002-2003 fiscal year.

Section IV. Reimbursable Activities

The claimants proposed parameters and guidelines for costs incurred on or after the 2002-2003 fiscal year include all of the proposed amendments and additions discussed above in the 2001-2002 fiscal year discrimination complaint procedures parameters and guidelines. For the same reasons discussed in that section, staff recommends denying the claimants' proposed amendments and additions.

In addition, staff recommends the inclusion of the following activity within the parameters and guidelines for costs incurred in or after the 2002-2003 fiscal year:

Process complaints of violation of the equal employment opportunity regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) which also allege discrimination prohibited by Government Code Section 11135 et seq. according to the procedures set forth in California Code of Regulations, title 5, section 59300 et seq. (Cal. Code Regs., tit. 5, § 53026 (Register 96, No. 23); Cal. Code Regs., tit. 5, § 53026 (Register 2002, No. 35), beginning July 1, 2001.)

Staff Recommendation

Staff recommends that the Commission adopt this analysis as its statement of decision and the following proposed parameters and guidelines as amended by staff, beginning on page 24:

Parameters and Guidelines 1: Equal Employment Opportunity Program (Fiscal Year 2001-2002 only)

Parameters and Guidelines 2: Equal Employment Opportunity Program (Beginning Fiscal Year 2002-2003)

Parameters and Guidelines 3: Federal Rights for Individuals with Disabilities for Employment (Fiscal Year 2001-2002 only)

Parameters and Guidelines 4: Federal Rights for Individuals with Disabilities for Employment and Information Technology (Beginning Fiscal Year 2002-2003)

Parameters and Guidelines 5: Discrimination Complaint Procedures (Fiscal Year 2001-2002 only)

Parameters and Guidelines 6: Discrimination Complaint Procedures (Beginning Fiscal Year 2002-2003)

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.