

PROPOSED PARAMETERS AND GUIDELINES

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 (Set Two)

02-TC-46

(and a portion of 02-TC-25 and 02-TC-31)

(Beginning Fiscal Year 2002-2003)

I. SUMMARY OF THE MANDATE

On March 24, 2011, the Commission on State Mandates (Commission) adopted a statement of decision for the *Discrimination Complaint Procedures* test claim finding that the test claim 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 has adopted separate parameters and guidelines for the *Discrimination Complaint Procedures* (02-TC-46) statement of decision as follows: (1) equal employment opportunity program; (2) federal rights for individuals with disabilities; and (3) discrimination complaint procedures. This set of parameters and guidelines addresses the Commission's findings regarding costs incurred to comply with the discrimination complaint procedures beginning in fiscal year 2002-2003.

Because some of the activities approved in the statement of decision are not reimbursable beyond the 2001-2002 fiscal year, and the period of reimbursement for some of the activities begins during the 2002-2003 fiscal year, the Commission has adopted two sets of parameters and guidelines for the discrimination complaint procedures: (1) for costs incurred during the 2001-2002 fiscal year only; and (2) for costs incurred in fiscal year 2002-2003 and in subsequent fiscal years.

For costs incurred in fiscal year 2002-2003 and in subsequent fiscal years, the approved activities related to discrimination complaint procedures are contained in California Code of Regulations, title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342; as amended by 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. The approved activities include 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.

II. ELIGIBLE CLAIMANTS

Any community college district, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim in the 2002-2003 fiscal year, establishing eligibility for reimbursement on or after July 1, 2001. Two sets of parameters and guidelines have been adopted, one for costs incurred *only* during the 2001-2002 fiscal year, and one for costs incurred in the 2002-2003 fiscal year and in subsequent fiscal years. These parameters and guidelines are for the period beginning in the 2002-2003 fiscal year. Therefore, costs incurred pursuant to California Code of Regulations, title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342 are reimbursable on or after July 1, 2002.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a)
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,"

and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activity is reimbursable:

1. Investigate and Process Complaints

Title 5, Sections 53026 and 59320

- a. The district shall investigate complaints of unlawful discrimination (i.e., discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and seek to resolve those complaints. This does not include complaints of gender discrimination, including complaints of sexual harassment on the basis of sexual orientation, by employees and students, and complaints of non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59320 (Register 2001, No. 6; and Register 2002, No. 13).)
- b. 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).)

2. District Policies and Procedures

Title 5, Section 59322

- a. Establish, and adopt written policies consistent with the regulations addressing district discrimination complaint procedures for complaints of discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (Cal. Code Regs., tit. 5, §§ 59320-59342).

This does not include complaint procedures for: (1) employees and students alleging gender discrimination (including sexual harassment) and disability discrimination; (2) employees and students alleging sexual harassment on the basis of sexual orientation; and (3) for individuals alleging non-employment discrimination on the basis of disability. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13).)

- b. Submit district policies, which address community college district discrimination complaint and enforcement procedures (adopted pursuant to Title 5, CCR, ' 59322) to the Chancellor for review and approval within 90 days of the effective date of adopting or amending the policies. (Cal. Code Regs., tit. 5, § 59322 (Register 2001, No. 6; and Register 2002, No. 13).)

3. Responsible District Officer

Title 5, Section 59324

Identify to the Chancellor and to the public a single person as the district officer responsible for receiving discrimination complaints based on ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation (filed pursuant to Title 5, CCR, § 59328) and coordinating their investigation and overseeing the informal resolution process pursuant to Section 59327. This does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of gender to students, employees, student applicants, and applicants for employment. This also does not include the identification of the district officer responsible for receiving complaints of discrimination on the basis of disability to participants, beneficiaries, applicants, and employees of the district's programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the community college district. In addition, this does not include the identification of the district officer for receiving complaints of non-employment discrimination on the basis of disability to the Chancellor and the public. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13).)

Use other staff or outside persons or organizations under contract with the district whenever the officer designated to receive complaints is named in the complaint or is implicated by the allegations in the complaint. (Cal. Code Regs., tit. 5, § 59324 (Register 2001, No. 6; and Register 2002, No. 13).)

4. Notice to Students and Employees

Title 5, Section 59326

Notify students and employees of the provisions of California Code of Regulations, title 5, sections 59300 et seq., which address the two levels of discrimination complaint procedures for community college districts (beginning at the community college district level and ending at the state level). (Cal. Code Regs., tit. 5, § 59326 (Register 2001, No. 6; and Register 2002, No. 13).)

5. Informal Complaint Resolution

Title 5, Section 59327

- a. The district officer or his or her designee shall undertake efforts to informally resolve the charges whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327(a)(1) (Register 2001, No. 6; and Register 2002, No. 13).)
- b. Include investigation in efforts at informal resolution if the responsible district officer determines that an investigation is warranted by the seriousness of the charges. (Cal. Code Regs., tit. 5, § 59327(b) (Register 2001, No. 6; and Register 2002, No. 13).)

- c. The district officer or his or her designee shall advise the complainant that he or she need not participate in informal resolution whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327(a)(2) (Register 2001, No. 6; and Register 2002, No. 13).)
- d. As part of the informal resolution process, the district officer or his or her designee shall notify the person bringing the charges of the right to file a formal complaint, as defined by California Code of Regulations, title 5, section 59311, and the procedure for filing a formal complaint pursuant to California Code of Regulations, title 5, section 59328 whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327(a)(3) (Register 2001, No. 6; and Register 2002, No. 13).)
- e. As part of the informal resolution process, the district officer or his or her designee shall advise the complainant that he or she may file his or her non-employment based complaint with the Office of Civil Rights of the U.S. Department of Education (OCR) where such a complaint is within that agency's jurisdiction whenever any person brings charges of unlawful discrimination to the attention of the district officer. (Cal. Code Regs., tit. 5, § 59327(a)(4) (Register 2001, No. 6; and Register 2002, No. 13).)
- f. As part of the informal resolution process, the district officer or his or her designee shall advise the complainant that he or she may file his or her employment-based complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59327(a)(5) (Register 2002, No. 13).)

6. Formal Complaint Process

a. District Response

Title 5, Sections 59328, 59330, and 59332

- (1) Forward a copy of the formal complaint to the Chancellor immediately upon receiving a formal complaint filed in accordance with California Code of Regulations, title 5, section 59328. (Cal. Code Regs., tit. 5, § 59330 (Register 2001, No. 6; and Register 2002, No. 13).)
- (2) Immediately notify the complainant 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).)
- (3) As part of the formal complaint process, advise any complainant alleging discrimination in employment that he or she may file his or her complaint with the U.S. Equal Employment Opportunity Commission (EEOC) or Department of Fair Employment and Housing where the complaint is within the jurisdiction of those agencies. (Cal. Code Regs., tit. 5, § 59328(f)(1) (Register 2002, No. 13).)
- (4) As part of the formal complaint process, for any complaint alleging discrimination in employment, forward a copy of any filing by the complainant with the

Department of Fair Employment and Housing 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 discrimination complaint procedure regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, § 59328(f)(2) (Register 2002, No. 13).)

b. District Investigation

Title 5, Sections 59327 and 59334

- (1) Notify the complainant and the Chancellor that the district has commenced an investigation of a properly filed formal complaint. (Cal. Code Regs., tit. 5, § 59334 (Register 2001, No. 6; and Register 2002, No. 13).)
- (2) Set forth the results of the investigation conducted in the formal complaint process in a written report that includes at least all of the following:
 - (A) A description of the circumstances giving rise to the complaint. (Cal. Code Regs., tit. 5, § 59334(a) (Register 2001, No. 6; and Register 2002, No. 13).)
 - (B) A summary of the testimony provided by each viable witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334(b) (Register 2002, No. 13).)
 - (C) An analysis of any relevant data or other evidence collected during the course of the investigation. (Cal. Code Regs., tit. 5, § 59334(c) (Register 2001, No. 6; and Register 2002, No. 13).)
 - (D) A specific finding as to whether there is probable cause to believe that discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334(d) (Register 2002, No. 13).)
 - (E) Any other information deemed appropriate by the district. (Cal. Code Regs., tit. 5, § 59334(e) (Register 2001, No. 6; and Register 2002, No. 13).)
- (3) After a complaint is filed the formal investigation conducted pursuant to California Code of Regulations, title 5, section 59334 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 California Code of Regulations, title 5, section 59328(f)(2). (Cal. Code Regs., tit. 5, § 59327(c) (Register 2002, No. 13).)

c. Administrative Determination

Title 5, Section 59336

Complete the district investigation conducted during the formal complaint process and forward a copy of the investigative report required pursuant to California Code of Regulations, title 5, 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:

- (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. (Cal. Code Regs., tit. 5, § 59336(a) (Register 2002, No. 13).)
- (2) A description of the actions taken, if any, to prevent similar problems from occurring in the future. (Cal. Code Regs., tit. 5, § 59336(b) (Register 2001, No. 6; and Register 2002, No. 13).)
- (3) The proposed resolution of the complaint. (Cal. Code Regs., tit. 5, § 59336, (c) (Register 2001, No. 6; and Register 2002, No. 13).)
- (4) The complainant's right to appeal to the district governing board and the Chancellor pursuant to California Code of Regulations, title 5, sections 59338 and 59339. (Cal. Code Regs., tit. 5, § 59336(d) (Register 2001, No. 6; and Register 2002, No. 13).)

d. Formal Complaint-District Decision

Title 5, Section 59338

- (1) Upon appeal by the complainant of the administrative determination rendered pursuant to section 59336, 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. (Cal. Code Regs., tit. 5, § 59338(a) (Register 2001, No. 6; and Register 2002, No. 13).)
- (2) Forward to the complainant and the Chancellor a copy of the final district decision rendered by the governing board that includes a complainant's right to appeal the district's decision to the Chancellor pursuant to California Code of Regulations, title 5, section 59339. Administrative determinations are made final by the district issuing a decision or by taking no action 45 days after an appeal to the district governing board by complainant not satisfied by the administrative determination (Cal. Code Regs., tit. 5, § 59338(a) and (c). (Cal. Code Regs., tit. 5, § 59338 (Register 2001, No. 6; and Register 2002, No. 13).)

e. Providing Information to the Chancellor

Title 5, Sections 59340 and 59342

- (1) Forward the following to the Chancellor within 150 days of receiving a formal complaint:
 - (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 California Code of Regulations, title 5, section 59338(a). (Cal. Code Regs., tit. 5, § 59340(a) (Register 2001, No. 6; and Register 2002, No. 13).)
 - (B) A copy of the notice to the complainant required pursuant to California Code of Regulations, title 5, section 59338(a). (Cal. Code Regs., tit. 5, § 59340(b) (Register 2001, No. 6; and Register 2002, No. 13).)

(C) Such other information as the Chancellor may require. (Cal. Code Regs., tit. 5, § 59340(c) (Register 2001, No. 6; and Register 2002, No. 13).)

- (2) File a written request that the Chancellor grant an extension of the 90-day or 150-day deadline to forward the investigative report to the Chancellor or to forward the final district decision to the Chancellor (specified in Cal. Code Regs., tit. 5, § 59336 or 59340), 10 days before the expiration of the deadline, if for reasons beyond the districts control the district is unable to comply with the deadline. (Cal. Code Regs., tit. 5, § 59342(a) (Register 2001, No. 6; and Register 2002, No. 13).)

Provide the reasons for the request for an extension of the 90-day or 150-day deadline to forward the investigative report to the Chancellor or to forward the final district decision to the Chancellor, and the date by which the district expects to be able to submit the required materials in the request. (Cal. Code Regs., tit. 5, § 59342(a) (Register 2001, No. 6; and Register 2002, No. 13).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.