

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, President
P.O. Box 340430
Sacramento, CA 95834-0430
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

July 3, 2012

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

Re: CSM 02-TC-46
Los Rios Community College District
Santa Monica Community College District
Discrimination Complaint Procedures

Dear Ms. Halsey:

I have received the Revised Draft Staff Analysis (DSA) and Proposed Parameters and Guidelines dated June 14, 2012, to which I respond on behalf of the test claimants.

A. ORGANIZATION OF SUBJECT MATTER

We concur with the adoption of three separate parameters and guidelines based on subject matter and the captions for each program. Separate single-subject parameters and guidelines will reduce confusion when the districts collect documentation for the annual claims and facilitate amendments required by any future legislation or litigation.

We concur with the severance of the student equity activities and transferring those activities to the *Minimum Conditions for State Aid* parameters and guidelines that are still pending. This will align those activities with similar activities and help to avoid potential duplicate claiming of the subject matter.

We concur with multiple sets of parameters and guidelines for each subject area based on fiscal years. This will facilitate the Controller's claiming instructions by removing obsolete code and regulation sections as they expire.

B. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM (EEOP)

Section 53020(a): "Ultimately Responsible"

Section 53020, subdivision (a), states that the districts shall be "ultimately responsible for making measurable progress toward the goals" of the plan. The DSA (9) states that this "must be read as the implementation, or the doing, of the other activities already approved by the Commission." To the contrary, the other sections approved by the Commission do not impose a distinct duty to make progress on the goals, but are the methods to implement the plan. It is potentially possible for a district to implement the "how to" activities and still not make "measurable progress." It is an independent standard that could be potentially actionable within the scope of the administrative regulations or perhaps elsewhere. The responsibility to make progress is a separate duty and should remain as stated in the test claim findings and the test claimant's proposed parameters and guidelines.

C. FEDERAL RIGHTS FOR INDIVIDUALS WITH DISABILITIES FOR EMPLOYMENT (FRIDE)

Electronic and Information Technology Access-Section 508

The test claim determined that districts must comply with Section 508 of the Rehabilitation Act and its implementing regulations (36 C.F.R., sections 1194, et seq.). The test claimants have previously proposed that Section 508 and section 1194.1 be cited in the parameters and guidelines. The DSA (23) states that the scope of the activities is not limited to these two citations. It would then appear that, by reference, all of Section 794d and 36 C.F.R. sections 1194.1 through 1194.41, comprise the scope of reimbursable activities. Just as the DSA extracted and stated the reimbursable activities for Section 202, the same type of enumeration should be provided for Section 508 in order to specify the scope of reimbursable activities derived from Section 794d and Sections 1194.1 through 1194.41. This will facilitate the claimants' preparation and the Controller's audit of the annual reimbursement claims.

D. DISCRIMINATION COMPLAINT PROCEDURES (DCP)

Chancellor's Office Compliance Action-Sections 59350-362

The discrimination complaint process approved for reimbursement by the Commission is located in Title 5, Division 6, Chapter 10 (Community College Administration), Subchapter 5, Sections 59300 through 59362. The test claimants have proposed including Sections 59350-362 (Article 4 of Subchapter 5) as a reasonable and necessary method of implementing the mandate. The Commission determined that those sections alone included no language requiring the districts to engage in any activity. This however, does not disqualify the language as an articulation of a

reasonable method of implementing the complete mandate. The following sections approved for reimbursement by the Commission incorporate subchapter 5, and thus Article 4, by reference:

Section 53026 requires districts to process combined EEOP and DCP complaints according to "the procedures set forth in subchapter 5 (commencing with section 59300) of chapter 10 of this division."

Section 59320 requires districts to "resolve those complaints in accordance with the provisions of this subchapter."

Section 59322 requires that each district "shall establish and adopt written policies consistent with this subchapter."

Section 59326 requires that each district "shall notify students and employees of the provisions of this subchapter."

Sections 59338 and 59340 require that the final district DCP decision include a notice of the complainant's right to appeal to the Chancellor's Office pursuant to the Article 4 process.

The discrimination complaint process is incomplete as to the complainant's rights without Article 4. The fact that the last administrative remedy, Article 4, is utilized at the sole discretion of the complainant is not relevant, since the complaint process is also unilaterally initiated by the complainant. Subchapter 5 anticipates this entire spectrum of remedies by requiring districts to prepare policies and procedures and to provide notice to students and employees regarding the entire spectrum of remedies. Some complaints will not be "resolved" without Article 4, and districts are required to resolve these complaints.

Certification

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents are true and correct copies of documents received from or sent by the state agency which originated the document.

Executed on July 3, 2012, at Sacramento, California, by



Keith B. Petersen

C: Commission electronic service list