Hearing Date: July 27, 2012
J:\MANDATES\2002\tc\02-tc-46 (DCP)\Ps&Gs\04. psgsPropSODandPs&Gs\psgsPropSOD.docx

ITEM 4

PROPOSED PARAMETERS AND GUIDELINES

AND

STATEMENT OF DECISION

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-Claimants

EXECUTIVE SUMMARY

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission's regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.[1] Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.[2] Oral or written testimony is offered under oath or affirmation in article 7 hearings.[3]

---

[1] California Code of Regulations, Title 2, section 1187.

[2] Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

[3] *Ibid*.

Summary of the Mandate

The *Discrimination Complaint Procedures* (02-TC-46) test claim addresses state antidiscrimination laws as they apply to community college districts.[4] 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 community college districts identified on pages 238-255 of the Commission's statement of decision on the test claim and those activities are included in the proposed parameters and guidelines.[5]

On April 27, 2011, the claimants submitted proposed parameters and guidelines to the Commission. 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.

On May 15, 2012, the Commission staff issued a draft staff analysis and proposed parameters and guidelines recommending the adoption of some of the claimants' proposals and a denial of others. An informal conference regarding the draft staff analysis and proposed parameters and guidelines for this program was held on May 24, 2012. On June 14, 2012, the Commission staff

---

[4] 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.

[5] Exhibit A.

issued a revised draft staff analysis and proposed parameters and guidelines. Along with the recommended changes in the original draft staff analysis for the proposed parameters and guidelines, the revised draft staff analysis recommended the adoption of three sets of parameters and guidelines for the equal employment opportunity activities separated based on costs incurred during the 2001-2002 fiscal year only, the 2002-2003 fiscal year only, and beginning 2003-2004 fiscal year. In addition, the revised draft staff analysis made clarifying changes to the reimbursable activities in the proposed parameters and guidelines.

On July 3, 2012, the claimants filed comments on the revised draft staff analysis and the proposed parameters and guidelines. The claimants disagree with some of the clarifying changes made to the reimbursable activities. In addition, the claimants continue to disagree with the exclusion of specific activities related to regulations that the Commission found to not impose state-mandated activities in the statement of decision for the test claim.

The State Controller's Office filed comments on the revised draft staff analysis and the proposed parameters and guidelines on July 5, 2012. The State Controller's Office recommends removal of an activity not found in the Commission's statement of decision on the test claim. In addition, the State Controller's Office recommends various technical, non-substantive, changes to the proposed parameters and guidelines.

The Department of Finance has not filed comments on the proposed parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision on the parameters and guidelines and the attached seven sets of proposed parameters and guidelines as amended by staff:

Parameters and Guidelines 1: Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set One) (Fiscal Year 2001-2002 only)

Parameters and Guidelines 2: Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set Two) (Fiscal Year 2002-2003 only)

Parameters and Guidelines 3: Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set Three) (Beginning Fiscal Year 2003-2004)

Parameters and Guidelines 4: Discrimination Complaint Procedures (Federal Rights for Individuals with Disabilities for Employment – Set One) (Fiscal Year 2001-2002 only)

Parameters and Guidelines 5: Discrimination Complaint Procedures (Federal Rights for Individuals with Disabilities for Employment and Information Technology – Set Two) (Beginning Fiscal Year 2002-2003)

Parameters and Guidelines 6: Discrimination Complaint Procedures – Set One (Fiscal Year 2001-2002 only)

Parameters and Guidelines 7: Discrimination Complaint Procedures – Set Two (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.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES FOR: Education Code Sections 66010.2, 66010.7, and 87102, as amended by 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, as added or amended by Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35 (Consolidated With) Government Code Section 11135, as added or amended by 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, as added or 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 Period of reimbursement beginning: July 1, 2001	Case No.: 02-TC-46 (and a Portion of 02-TC-25 and 02-TC-31) *Discrimination Complaint Procedures* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Proposed for Adoption: July 27, 2012*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on July 27, 2012. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 *et seq*., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

I. Summary of the Mandate

The *Discrimination Complaint Procedures* (02-TC-46) test claim addresses state antidiscrimination laws as they apply to community college districts.[6] 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 community college districts identified on pages 238-255 of the Commission's statement of decision on the test claim and those activities are included in the parameters and guidelines.

II. Procedural History

The test claim statement of decision was adopted on March 24, 2011.[7] 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

---

[6] 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.

[7] Exhibit A.

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.

On May 15, 2012, the Commission staff issued a draft staff analysis and proposed parameters and guidelines recommending the adoption of some of the claimants' proposals and a denial of others. An informal conference regarding the draft staff analysis and proposed parameters and guidelines for this program was held on May 24, 2012. On June 14, 2012, the Commission staff issued a revised draft staff analysis and proposed parameters and guidelines. The claimants and the State Controller's Office filed comments on the revised draft staff analysis and the proposed parameters and guidelines on July 3, 2012 and July 5, 2012.

The Department of Finance has not filed comments on the proposed parameters and guidelines.

III. Commission Findings

The Commission 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, the Commission 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, the Commission adopts three separate parameters and guidelines for the equal employment opportunity activities based on fiscal year. One for costs incurred during the 2001-2002 fiscal year, a second set for costs incurred during the 2002-2003 fiscal year, and a third set for costs incurred in fiscal year 2003-2004 and subsequent fiscal years.

The student equity activities are severed from these parameters and guidelines and included with parameters and guidelines for the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim.

Also, the captions for the proposed parameters and guidelines titled by the claimants, "Americans with Disabilities Act," are amended to: (1) Federal Rights for Individuals with Disabilities for Employment – Set One (Fiscal Year 2001-2002 only); and (2) Federal Rights for Individuals with Disabilities for Employment and Information Technology – Set Two (Beginning Fiscal Year 2002-2003).

In addition, non-substantive, technical changes have been made for purposes of clarification, consistency, and conformity to the statement of decision on the test claim and statutory language. The following analysis addresses some of the non-substantive changes, and all of the substantive changes to each of the proposed single-subject parameters and guidelines.

The Commission also removes the following language from all sets of parameters and guidelines:

> 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.

This language was mistakenly included in each set of parameters and guidelines for the test claim as boilerplate language, but has not been adopted as such.

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

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. The Commission severs the "student equity" activities from the parameters and guidelines for this test claim and will include 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. <u>Equal Employment Opportunity Program – Set One (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)</u>

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.[8] 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

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

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

This section is revised 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, the split of parameters and guidelines based on subject matter and period of reimbursement is approved.

Section III. Period of Reimbursement

This section is revised 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, the activities that begin after June 30, 2002 are removed 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.

Also all reference to the term "equal employment opportunity program" and the "equal employment opportunity plan" are removed 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 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, the activity imposed by Education Code section 87102(a) is amended 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.[9]

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

[9] Statement of decision for the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim, adopted May 26, 2011, at <http://www.csm.ca.gov/sodscan/060111c.pdf> as of April 23, 2012.

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, the changes indicated by the underlined language are made 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).)

    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).)

The amended 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 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 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, the mandate imposed by title 5, section 53020(a), is combined 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(a) (Register 96, No. 23).)

The claimants assert that the above language imposes an independent activity, separate from all other activities approved by the Commission in the statement of decision for the test claim.[10] The claimants argue that the other sections approved by the Commission do not impose a distinct

[10] Exhibit E. Claimants' comments on revised draft staff analysis, dated July 3, 2012, p. 2.

duty to make progress on the goals, but are the methods to implement the plan.[11] The Commission disagrees. This activity 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, the mandate of section 53020(a) is combined with the other activities approved by the Commission, 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

California Code of Regulations, title 5, section 53022, requires the inclusion of a sensitivity to and understanding of various backgrounds in the job requirements of faculty and administrators in district job announcements. This activity is amended for purposes of clarification. The Commission found title 5, section 53022, to impose a reimbursable state mandate within the context of the whole section which addresses job announcements. The activity is amended 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).)

[11] *Ibid.*

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, the following activity related to the complaint process for alleged violations of the "equal employment opportunity program" is removed from the parameters and guidelines for the 2001-2002 fiscal year and combined 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 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 as offsetting revenue. 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. Reference to the amounts appropriated in the Budget Acts of 2002 and 2003 is removed from the 2001-2002 parameters and guidelines.

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

Section I. Summary of Mandate

This section is revised 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 in 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, the split of parameters and guidelines is approved. Neither the State Controller's Office nor the Department of Finance has objected to the split of the parameters and guidelines for this test claim.

Section III. Period of Reimbursement

This section is revised 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, the "equal employment opportunity program" activities that end on August 10, 2002 are added 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

Some of the "affirmative action" activities and "equal employment" activities that were combined as continuous activities in the Commission's statement of decision are separated. 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 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, the changes indicated by the underlined language are made 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 (Register 96, No. 23) 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).)

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).)

4. Include in the equal employment opportunity plan the following information *beginning August 11, 2002*:

a. 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

equal employment opportunity programs (Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, § 53003(c)(4) (Register 2002, No. 35).)

b. A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, § 53003(c)(5) (Register 2002, No. 35).)

c. An analysis of the number of ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of 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 2002, No. 35)). (Cal. Code Regs., tit. 5, § 53003(c)(6) (Register 2002, No. 35).)

d. An analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups 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 2002, No. 35).)

e. The determination of whether or not the underrepresentation for any group based on gender, ethnicity, or disability 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 2002, No. 35).)

f. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003(c)(7). (Cal. Code Regs., tit. 5, § 53003(c)(8) (Register 2002, No. 35).)

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, the mandate imposed by title 5, section 53020(a) is combined 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, the same non-substantive changes are made 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, the following activity related to the complaint process for alleged violations of the "equal employment opportunity program" is removed 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, this section is revised 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. In addition, reference to the use of funds from the Equal Employment Opportunity Fund from the State Budget Act of 2003 is removed. Funds appropriated in the State Budget Act of 2003 were appropriated for the 2003-2004 fiscal year, and not relevant to the claims filed for costs incurred in the 2002-2003 fiscal year.

D. Equal Employment Opportunity Program – Set Three (Effective Beginning Fiscal Year 2003-2004) (Cal. Code Regs., tit. 5, §§ 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034)

This set of parameters and guidelines effective beginning the 2003-2004 fiscal year for the "equal employment opportunity program" activities is added. Reimbursement for some activities approved by the Commission in the statement of decision for the test claim begins and reimbursement for other activities ends depending on the fiscal year. Therefore, in order to

avoid confusion in the claiming process, the addition of this set of of parameters and guidelines is approved. Neither the State Controller's Office nor the Department of Finance has objected to the split of the parameters and guidelines for this test claim.

Section III. Period of Reimbursement

The separation of the parameters and guidelines based on reimbursement period is detailed in this section. In addition, this section clarifies that the parameters and guidelines are for costs incurred on or after the 2003-2004 fiscal year.

Section IV. Reimbursable Activities

The activities listed in this section are identical to the activities listed in the 2002-2003 fiscal year parameters and guidelines for the "equal employment opportunity program" activities as amended by the Commission, except the Commission removed all activities that end on August 10, 2002, which is outside of the 2003-2004 fiscal year. In addition, the statement, "This activity is reimbursable beginning August 11, 2002," is removed because it is unnecessary for the parameters and guidelines for costs incurred on or after the 2003-2004 fiscal year.

Section VII. Offsetting Revenues and Reimbursement

The following reference, including the footnotes, to funds received from the Equal Employment Opportunity Fund in the State Budget Act as offsetting revenue if received by a district and used for the reimbursable state-mandated activities is included:

1. Funds received from the Equal Employment Opportunity Fund[12] and applied to the reimbursable state-mandated activities imposed by Title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as amended by Register 2002, number 35. (State Budget Act, Item 6870-101-0001.)[13]

E. Federal Rights for Individuals with Disabilities for Employment – Set One (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. Specifically, the Commission approved the following activity:

---

[12] Reference to the "Equal Employment Opportunity Fund" includes any future source of funding for the same or similar purposes for which the Equal Employment Opportunity Fund was created, regardless of any change in the name of the funding source, or line item and schedule in the State Budget Act. In addition, appropriations for this fund have been appropriated for program 20.20.041-Equal Employment Opportunity pursuant to Ch. 1169, Stats. 2002.)

[13] The State Budget Act line item for the Equal Employment Opportunity Fund has remained the same from the 2003-2004 fiscal year to the present (6870-101-0001), with the schedule number changing from year to year. In addition, an appropriation has been made for the Equal Employment Opportunity Fund in every fiscal year from the 2003-2004 fiscal year to the 2011-2012 fiscal year.

> 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).)

Although Section 202 of the ADA and its implementing regulations were generally determined by the Commission to constitute a federal mandate, the Commission found that Section 202 of the ADA and its implementing regulations do not constitute a federal mandate for purposes of employment. This finding was based on the 9th Circuit Court of Appeals decision in *Zimmerman v. Oregon Dept. of Justice*.[14] 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 Section 202 of the ADA applies to employment discrimination.[15] However, the 9th Circuit, which is the controlling circuit in California, found in *Zimmerman v. Oregon Dept of Justice* that Section 202 of the ADA unambiguously does not apply to employment discrimination.[16] Based on the current state of the law in the Ninth Circuit, the Commission found Section 202 of the ADA does not constitute a federal mandate in regard to employment, and found compliance with Section 202 of the ADA and its implementing regulations is a reimbursable state-mandated new program in regard to employment in community college districts.

Caption

The caption of the parameters and guidelines is revised to "Federal Rights for Individuals with Disabilities for Employment – Set One (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

This section is revised 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.

For purposes of clarification, the activity approved by the Commission is amended as discussed below.

---

[14] *Zimmerman v. Oregon Dept. of Justice* (9th Cir. 1999) 170 F.3d 1169.

[15] *Filush v. Town of Weston* (D.Conn. 2003) 266 F.Supp.2d 322, 326-327, noting the split of authority and the majority view.

[16] *Zimmerman v. Oregon Dept. of Justice*, *supra*, 170 F.3d 1169. The dissent in *Zimmerman v. Oregon Dept. of Justice* (9th Cir. 1999) 183 F.3d 1161, 1162, in which petition for rehearing en banc was denied, noted, "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."

Section III. Period of Reimbursement

This section is revised 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

In its statement of decision the Commission found the following activity imposed by Government Code section 11135(b) to be reimbursable:

> 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 where state law does not provide stronger protections and prohibitions. (Government Code Section 11135(b) (Statutes 2001, Chapter 708, beginning July 1, 2001.)

The language of the approved activity closely follows the language of Government Code section 11135(b), with the exception of the parenthetical citation to "28 C.F.R. § 35 et seq.," and that the approved activity is limited to *employment* within community college districts.

A. Claimant's Proposed Language

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, the claimants' proposed amendments to the activity approved by the Commission are denied.

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.

In addition, the claimants propose including the language of Section 202 of the ADA and the regulation that pertains specifically to employment in a footnote in the parameters and guidelines; 28 Code of Federal Regulations part 35.140. Specifically, claimants' footnote states 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.
>
> **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.

The parameters and guidelines do not include the above language proposed by the claimants because the language does not clarify the scope of the mandated activity.

Section 202 of the ADA and 28 C.F.R. part 35.140(a) sets forth prohibitory language that does not clarify what is mandated of community college districts. In addition, the regulations implementing Section 202 impose a variety of activities on entities subject to Section 202. These regulations contain provisions specific to employment (i.e. 28 C.F.R. part 35.140, which the claimants propose footnoting), but also include provisions that apply generally to other services and programs provided by a district that can include employment. Thus, the reference to "implementing regulations" in the statement of decision for this activity was not intended to refer only to 28 C.F.R. part 35.140, the regulation specifically pertaining to employment discrimination.

Also, 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. Additionally, 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.[17] 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, the language proposed by the claimants is not included in the parameters and guidelines.

B. Commission's Clarification

However, the Commission recognizes the need to clarify the scope of the activity approved by the Commission in its statement of decision. When interpreting an activity approved by the Commission it is necessary to read the activity in light of the law and the whole statement of decision, and not in a vacuum. To the extent that the implementing regulations of Section 202 of the ADA provide protections for employment that are required by other federal laws that were found to constitute non-reimbursable federal mandates by the Commission, those protections cannot be included in the parameters and guidelines. Thus, the approved activity must be read in light of, and be limited by, the federal mandate findings made by the Commission in the statement of decision.

As noted above, the regulations implementing Section 202 of the ADA regulations contain provisions specific to employment, but also include provisions that apply generally to other services and programs provided by a district that can include employment. As discussed above, the provisions specifically pertaining to employment were found by the Commission to constitute a federal mandate, and thus, are not reimbursable.[18]

The general provisions of the regulations implementing Section 202 of the ADA include designating an employee to coordinate district efforts to comply with the requirements of Section 202;[19] adopting grievance procedures for resolution of complaints alleging discrimination prohibited by Section 202 of the ADA;[20] and conducting a self-evaluation of district services, policies, and practices, and the effects thereof, that do not meet the requirements of the regulations, and to make necessary modifications to the services, policies and practices.[21] However, the majority of requirements imposed by the regulations implementing Section 202 of the ADA are also imposed by Section 504 of the Rehabilitation Act and its implementing regulations adopted by the Office of Civil Rights of the U.S. Department of Education (OCR),[22] which the Commission found to constitute a federal mandate.[23] Thus, most of the protections provided by the Section 202 regulations are mandated by the regulations implementing Section 504 of the Rehabilitation Act, and therefore not reimbursable. As described below, the only

---

[17] Statement of decision for *Discrimination Complaint Procedures* (02-TC-46, and a portion of 02-TC-25 and 02-TC-31), pgs. 74-76, at < http://www.csm.ca.gov/sodscan/033011b.pdf> [as of March 29, 2012].

[18] *Ibid*.

[19] 28 Code of Federal Regulations part 35.107(a).

[20] 28 Code of Federal Regulations part 35.107(b).

[21] 28 Code of Federal Regulations part 35.105.

[22] 28 Code of Federal Regulations part 41 et seq.

[23] *Discrimination Complaint Procedures* (02-TC-46) statement of decision, pgs. 76-79, at <http://www.csm.ca.gov/sodscan/033011b.pdf> as of June 6, 2012.

portion of the regulations eligible for reimbursement is a portion of the self-evaluation required by the Section 202 regulations that exceeds the requirements of Section 504.[24]

In regard to the self evaluation, the OCR's regulations implementing Section 504 of the Rehabilitation Act require a district within one year of May 9, 1980 to "Evaluate . . . its current policies and practices and the effects thereof that do not or may not meet the requirements of [the OCR regulations]."[25] In addition, the OCR's regulations require districts to "Modify . . . any policies and practices that do not meet the requirements of [the OCR regulations]."[26] Similarly, the regulations implementing Section 202 of the ADA require a district, within one year of the effective date of the regulation, to evaluate its current policies and practices and the effects thereof and to make necessary modifications to its policies and practices that do not meet the requirements of the regulations.[27] However, the language of the Section 202 regulations also requires an evaluation of a district's services which is not required by the Section 504 regulations. In addition, because the Section 504 regulations were adopted before the Section 202 regulations, the Section 202 regulations limit the self evaluation to "policies and practices that were not included in" the Section 504 self-evaluation.[28]

As a result, for purposes of reimbursement, the activity approved by the Commission is limited to the following protections imposed by the regulations implementing Section 202 of the ADA, which are one-time activities:

1. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)
2. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

The Commission notes that a significant number of districts will not be able to claim for the above one-time activities. 28 C.F.R. § 35.105 requires a community college district to evaluate districts services, policies, and practices within one year of July 26, 1991, and thus, most community college districts should have completed these activities prior to the start of the reimbursement period (July 1, 2001). However, the time limit is directory in nature, and as a result, some community college districts may not have done the self-evaluation within the time-frame set forth in the regulation. Instead some districts may have engaged in the evaluation during the 2001-2002 fiscal year. In addition, new district formation may have occurred during

---

[24] 28 Code of Federal Regulations part 35.140.

[25] 34 Code of Federal Regulations part 104.6(c).

[26] *Ibid.*

[27] 28 Code of Federal Regulations part 35.105.

[28] 28 Code of Federal Regulations part 35.105(d).

the 2001-2002 fiscal year, and thus, the self-evaluation would have had to occur outside of the timeframe set forth in the regulations and within the 2001-2002 fiscal year. As a result, this activity is included in the parameters and guidelines as a one-time activity.

Thus, the activity approved by the Commission is amended as follows:

> 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) (Statutes 2001, ch. 708).)
>
> This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:
>
> a. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)
>
> b. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

F. <u>Federal Rights for Individuals with Disabilities for Employment and Information Technology – Set Two (Beginning Fiscal Year 2002-2003) (Gov. Code, § 11135(b), Stats. 2001, Ch. 708; Stats. 2002, Ch. 1102)</u>

The activity to meet the protections contained in Section 202 of the ADA, described in the 2001-2002 fiscal year parameters and guidelines was found by the Commission to be reimbursable beginning in the 2001-2002 fiscal year. In addition, the Commission found the following activity to be reimbursable beginning in the 2002-2003 fiscal year:

> Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135(d)(2) (Stats. 2002, ch. 1102), beginning January 1, 2003.)

The plain language of Section 508 of the Rehabilitation Act and its implementing regulations indicates that these laws apply only to *federal* agencies. However, the California Legislature amended Government Code section 11135 to specifically require compliance with Section 508 of the Rehabilitation Act and its implementing regulations in developing, procuring, maintaining, or using electronic or information technology. Absent Government Code section 11135(d)(2), community college districts would not be required to comply with the provisions of Section 508 of the Rehabilitation Act and its implementing regulations.

<u>Caption</u>

The caption of the parameters and guidelines is revised to "Federal Rights for Individuals with Disabilities for Employment and Information Technology – Set Two (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

This section is revised 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.

For the reasons discussed in the 2001-2002 fiscal year parameters and guidelines, the activity approved by the Commission related to Section 202 of the ADA is clarified.

Section III. Period of Reimbursement

This section is revised to detail the separation of the parameters and guidelines based on reimbursement period. In addition it is 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 the 2002-2003 fiscal year revise the activity imposed by Government Code section 11135(b) in the same manner proposed in the 2001-2002 fiscal year.

For the same reasons discussed above for the parameters and guidelines for the 2001-2002 fiscal year, the language proposed by the claimants in the parameters and guidelines is not included. Instead for the reasons discussed for the parameters and guidelines for the 2001-2002 fiscal year, the activity approved by the Commission is amended as follows:

> 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) (Statutes 2001, ch. 708).)
>
> This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:
>
> > a. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)
> >
> > b. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

In regard to the activity imposed by Government Code section 11135(d)(2), the Commission found in its statement of decision for the test claim that section 11135(d)(2) imposed the following reimbursable state-mandated activity:

> Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology.

The claimants propose that just as the Commission "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."[29] The Commission disagrees. Extracting the reimbursable activities from Section 508's regulations is unnecessary and improper.

The activities related to meeting the protections of Section 202 of the ADA and its implementing regulations required clarification because some of the requirements of Section 202's implementing regulations were determined to be federally mandated in various portions of the Commission's 256 page statement of decision for the test claim, and therefore not reimbursable. Absent clarification of the reimbursable activities related to Section 202 of the ADA, parties would have to read through the 256 page statement of decision for the test claim to determine what requirements imposed by Section 202's regulations are reimbursable, and what requirements constitute federal mandates not subject to reimbursement under article XIII B. In contrast, the reimbursable activity imposed by Government Code section 11135(d)(2) 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. None of the requirements imposed by the Section 508 regulations were found to constitute federal mandates not subject to article XIII B. Thus, extracting the reimbursable activities from Section 508's regulations is unnecessary.

In addition, where the requirements of a set of laws are incorporated by general reference to the entire set of laws rather than by reference to specific sections in the set, the referring statute or regulation takes the law referred to not only in its contemporary form but also as it may be changed in the future or eliminated altogether by repeal.[30] Here, the language of the activity approved by the Commission in its statement of decision on the test claim incorporates by general reference the requirements set forth in the whole body of law in 36 C.F.R § 1194 et seq. This tracks the language in Government Code section 11135(d)(2), which incorporates the requirements of Section 508's regulations by a general reference to the whole of Part 1194 of Title 36 of the Federal Code of Regulations. Thus, the reimbursable activity takes the Section 508 regulations referred to not only in its contemporary form but also as it may be changed in the future or eliminated altogether by repeal. Extracting the reimbursable activities from Section 508's regulations as they exist at any one point would improperly limit or expand the scope of what is required by Government Code section 11135(d)(2).

For the reasons discussed above, the reimbursable activities for Section 508 and its implementing regulations are not extracted.

---

[29] Exhibit E. Claimants' comments on revised draft staff analysis, *supra*, p. 2.

[30] *People v. Eddy* (1995) 32 Cal.lApp.4th 1098, 1105-1106.

G. **Discrimination Complaint Procedures – Set One (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

This section is revised 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

This section is revised to detail the separation of the parameters and guidelines based on reimbursement period. In addition, this section clarifies 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.)

The Commission does not include the claimants' proposed change in the parameters and guidelines. 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.[31] 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.

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

The claimants proposed parameters and guidelines also includes the following activity associated with section 59338:

> 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).)

The State Controller's Office recommends removal of this activity from the discrimination complaint procedures parameters and guidelines, because "[t]he activity was not included on the list of activities that constitute a reimbursable state-mandated new program or higher level of service in the statement of decision [for the test claim]."[32] The State Controller's Office is correct. The Commission made findings on title 5 section 59338, and did not find this activity to constitute a reimbursable state-mandated activity. As a result, this activity cannot be included in the parameters and guidelines.

California Code of Regulations, title 5, section 59338, provides:

> (a) If the complainant is not satisfied with the results of the administrative determination rendered pursuant to section 59336, the complainant may submit a written appeal to the district governing board within fifteen (15) days from the date of the administrative determination. 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.
>
> (b) A copy of the final district decision rendered by the governing board that includes complainant's right to appeal the district's decision to the Chancellor pursuant to section 59339 shall be forwarded to the complainant and to the Chancellor.
>
> (c) If the governing board does not act within forty-five (45) days the administrative determination shall be deemed approved and shall become the final district decision in the matter. The district shall notify the complainant and the Chancellor that the board took no action and the administrative determination is deemed approved pursuant to this section. The complainant shall also be notified of his or her right to appeal the district's decision to the Chancellor pursuant to section 59339.

From the above language, the Commission only found the following activity to be mandated by the section:

> 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

[32] Exhibit F. State Controller's Office comments on revised draft staff analysis, dated July 5, 2012, p. 5.

> 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).)

The Commission also found that "all other test claim statutes and regulations [not found to specifically impose a reimbursable state-mandated new program or higher level of service] do not constitute a reimbursable state-mandated program"[33] Thus, the Commission found that the activity proposed by the claimants, which is present in subdivision (a) of section 59338, does not impose a state-mandated activity. Because the Commission did not receive a petition for reconsideration within the time period required by statute and regulation, the Commission's statement of decision is final.[34] As a result, the Commission does not have jurisdiction to rehear the issue of whether the activity is mandated by section 59338(a).

Also, the proposed activity cannot be considered the most reasonable method of complying with a mandate found by the Commission, because by definition, 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."[35] As shown by the language of section 59338 above, the activity proposed by the claimants is specified in regulation and found not to constitute a state-mandated activity. As a result, this activity is removed from the discrimination complaint procedures parameters and guidelines.

The claimants proposed parameters and guidelines further includes 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:
>
> [¶] . . . [¶]
>
> (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.)

---

[33] Statement of decision for *Discrimination Complaint Procedures* (02-TC-46, and a portion of 02-TC-25 and 02-TC-31), p. 256, at < http://www.csm.ca.gov/sodscan/033011b.pdf> [as of March 29, 2012].

[34] Government Code section 17559(a) and California Code of Regulations, title 5, section 1188.4, provide that 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. The statement of decision for the *Discrimination Complaint Procedures* 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.

[35] California Code of Regulations, title 2, section 1183.1(4).

> (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 "discrimination complaint procedures" for the 2001-2002 fiscal year.

In addition, all activities and references associated with California Code of Regulations, title 5, sections 59352, 59354, 59356, 59358, 59360, and 59362 are removed from the parameters and guidelines. These regulations set forth procedures for processing allegations of discrimination in community college districts at the state-level. The activities proposed by the claimants are not required by the plain language of sections 59352, 59354, 59356, 59358, 59360, and 59362, but are related to the state-level process. These activities are removed because: (1) the Commission specifically found that these title 5 regulations did not impose any state-mandated activities on community college districts; and (2) the activities the claimants suggest including into the parameters and guidelines are not necessary to carry out the activities found to be mandated by the Commission.

The claimants proposed parameters and guidelines include reimbursement for the activities associated with the "Chancellor's Office Compliance Action," which the claimants link to title 5 sections 59352, 59354, 59356, 59358, 59360, and 59362. 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.[36]

[36] 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].

The Commission's decision on the test claim is a final decision.[37]

The claimants argue, however, that the above finding "does not disqualify the language [of sections 59352, 59354, 59356, 59358, 59360, and 59362] as an articulation of a reasonable method of implementing the complete mandate."[38] The claimants then assert that sections 59352, 59354, 59356, 59358, 59360, and 59362 are incorporated by reference by title 5 sections 53026, 59320, 59322, 59326, 59338, and 59340, which the Commission found imposed reimbursable state-mandated activities. As a result, engaging in activities linked to, but not required by, sections 59352, 59354, 59356, 59358, 59360, and 59362 are necessary to implement the sections approved by the Commission.

The Commission disagrees. The claimants' incorporation by reference argument is essentially that *title 5 sections 59352, 59354, 59356, 59358, 59360, and 59362* impose state-mandated activities on community college districts. Absent any state-mandated activities in sections 59352, 59354, 59356, 59358, 59360, and 59362 there are no requirements to incorporate by reference. As discussed above, the Commission made findings that title 5 sections 59352, 59354, 59356, 59358, 59360, and 59362 do not impose state-mandated activities, and the Commission does not have jurisdiction to rehear this issue. Thus, the Commission's findings *do* prohibit including the activities proposed by the claimants for reimbursement in the parameters and guidelines.

Even if the claimants' proposed activities were not disqualified based on the Commission's findings on the test claim, the activities proposed by the claimants are not necessary to carry out sections 53026, 59320, 59322, 59326, 59338, and 59340. The title 5 regulations pled by the claimants in the test claim set forth the discrimination complaint procedures for complaints alleging discrimination in community college districts. These procedures contained procedures for a community college district-level complaint process and a *state-level* complaint process in which the *state* processes and resolves complaints alleging discrimination that the local level complaint process did not resolve. The Commission found portions of the community college district-level process to constitute reimbursable state-mandates (including sections 53026, 59320, 59322, 59326, 59338, and 59340). The activities proposed by the claimants are all related to participating in the *state-level* complaint process, which as stated above was found not to impose state-mandated activities on community college districts.

Sections 53026 and 59320 generally require community college districts to process or resolve complaints of unlawful discrimination in accordance with the title 5 subchapter which includes *both* the district-level process and the state-level process. However, as noted above, a *community college district* is no longer processing or resolving complaints at the state-level complaint process. Rather, the *state* is processing and resolving the complaints. Thus, there is

---

[37] 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. The statement of decision for the *Discrimination Complaint Procedures* 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. (Gov. Code, § 17559(a) and Cal. Code Regs., tit. 5, § 1188.4.)

[38] Exhibit E. Claimants' comments on revised draft staff analysis, *supra*, pgs. 2-3.

no additional activity for community college districts to act in accordance with. Additionally, the claimants have not provided evidence in the record to show why engaging in the state-level process is necessary to process and resolve complaints in the district-level process pursuant to sections 53026 and 59320.

Sections 59322, 59326, 59338, and 59340, address adopting policies consistent with the title 5 subchapter that includes both the district and state-level processes, and notifying various individuals of their rights in regard to discrimination complaints (including the right to appeal to the state). The claimants have not provided evidence to show why it is reasonably necessary for community college districts to engage in the state-level complaint process to implement any of the mandates imposed by these sections. Based on the record, it is not clear why the *adoption of policies* consistent with the title 5 regulations requires community college districts to engage in the state-level complaint process, when the regulations do not require this of community college districts. Additionally, there is no evidence to suggest that it is reasonably necessary to engage in the state-level complaint process when *providing notification* to individuals of their rights in regard to filing complaints alleging unlawful discrimination.

Thus, the Commission denies 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, the following activity from the "equal employment opportunity" section of the statement of decision is included 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.)

H. Discrimination Complaint Procedures – Set Two (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

This section is revised 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

This section is revised to detail the separation of the parameters and guidelines based on reimbursement period. In addition, this section clarifies 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, the claimants' proposed amendments and additions are denied.

In addition, the following activity is included in 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.)

IV. Conclusion

The Commission adopts this statement of decision and the attached seven sets of parameters and guidelines:

Parameters and Guidelines 1: Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set One) (Fiscal Year 2001-2002 only)

Parameters and Guidelines 2: Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set Two) (Fiscal Year 2002-2003 only)

Parameters and Guidelines 3: Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set Three) (Beginning Fiscal Year 2003-2004)

Parameters and Guidelines 4: Discrimination Complaint Procedures (Federal Rights for Individuals with Disabilities for Employment – Set One) (Fiscal Year 2001-2002 only)

Parameters and Guidelines 5: Discrimination Complaint Procedures (Federal Rights for Individuals with Disabilities for Employment and Information Technology – Set Two) (Beginning Fiscal Year 2002-2003)

Parameters and Guidelines 6: Discrimination Complaint Procedures – Set One (Fiscal Year 2001-2002 only)

Parameters and Guidelines 7: Discrimination Complaint Procedures – Set Two (Beginning Fiscal Year 2002-2003)

Hearing: July 27, 2012
J:\MANDATES\2002\tc\02-tc-46 (DCP)\Ps&Gs\04. FSA\01. Ps&Gs EEOP Set One.doc

PROPOSED PARAMETERS AND GUIDELINES

Education Code Section 87102

Statutes 1988, Chapters 973

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

Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set One)

02-TC-46
(And a Portion of 02-TC-25 and 02-TC-31)

(Fiscal Year 2001-2002 only)

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 statute 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 has adopted separate sets of 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 the equal employment opportunity program.

Because some of the activities approved in the statement of decision have a period of reimbursement that begins during the 2002-2003 fiscal year, and some of the activities are not reimbursable beyond the 2001-2002 fiscal year or the 2002-2003 fiscal year, the Commission has adopted three sets of parameters and guidelines for the equal employment opportunity program: (1) for costs incurred during the 2001-2002 fiscal year only; (2) for costs incurred during the 2002-2003 fiscal year only; and (3) for costs incurred in fiscal year 2003-2004 and subsequent fiscal years.

For the 2001-2002 fiscal year only, the activities approved in the equal employment opportunity program section of the statement of decision are contained in Education Code section 87102, as amended by Statutes 1988, chapter 973; and California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as amended by Register 92, number 17; Register 96, number 23; and Register 2002, number 35. These activities 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.

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. Three sets of parameters and guidelines have been adopted, one for costs incurred *only* during the 2001-2002 fiscal year, one for costs incurred *only* during the 2002-2003 fiscal year, and one for costs incurred in or after the 2003-2004 fiscal year. These parameters and guidelines are for the 2001-2002 fiscal year only. Therefore, costs incurred pursuant to Education Code section 87102 and California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034 as set forth in these parameters and guidelines are reimbursable only for the period of July 1, 2001 through June 30, 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.

For each eligible claimant, the following activities are reimbursable:

A. District Plan Contents and Review

Education Code section 87102(a) and Title 5, Sections 53003 and 53020

1. 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). (Ed. Code, § 87102(a) (Statutes 1988, Chapter 973).) *This activity is reimbursable from July 1, 2001 through September 3, 2001*.

2. Review the faculty and staff diversity plan, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., title 5, §§ 53003(b) and 53020(a) (Register 96, No. 23).)

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) and 53020(a) (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 (Register 96, No. 23) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, §§ 53003(c)(4) and 53020(a) (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) and 53020(a) (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. (Cal. Code Regs., tit. 5, §§ 53003(c)(7) and 53020(a) (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) and 53020(a) (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) and 53020(a) (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) and 53020(a) (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) and 53020(a) (Register 96, No. 23).)

B. <u>Delegation of Authority</u>

Title 5, Section 53020

1. Design the administrative structure created by any delegation of authority to the affirmative action officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the affirmative action regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, § 53020(a) and (b) (Register 96, No. 23).)

2. Designate in the faculty and staff diversity plan a single officer, who may be the affirmative action officer, for ensuring complaints of violations of the affirmative action regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, *title 5, section 53026, are promptly and impartiall*y investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, § 53020(a) and (b) (Register 96, No. 23).)

C. Employee Survey

Title 5, Section 53004

1. In the report to the Chancellor's Office of the results of the employee survey, report each employee so that they may be identified as belonging to one of the following seven 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. (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 96, No. 23).)

2. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004(a) (Register 96, No. 23. (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 96, No. 23).)

    a. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 96, No. 23).)

D. Monitoring Recruitment

Title 5, Sections 53004 and 53006

1. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing the faculty and staff diversity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 96, No. 23).)

2. If a community college district has existing goals:

    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, §§ 53006(a) and 53020(a) (Register 96, No. 23).)

    b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53006(a)(1) and 53020(a) (Register 96, No. 23).)

    c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53006(a)(2) and 53020(a) (Register 96, No. 23).)

d. Comply with California Code of Regulations, title 5, section 53006(c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53006(a)(3) and 53020(a) (Register 96, No. 23).)

3. If a community college district has no existing goals:

   a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003(c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, §§ 53006(b) and 53020(a) (Register 96, No. 23).)

   b. The district shall take, at a minimum, the following corrective action:

      i. Review district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, §§ 53006(b)(1) and 53020(a) (Register 96, No. 23).)

      ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, §§ 53006(b)(2) and 53020(a) (Register 96, No. 23).)

      iii. Determine whether the group is still significantly underrepresented in the job categories in question after the measures described in California Code of Regulations, title 5, section 53006(b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, §§ 53006(b)(3) and 53020(a) (Register 96, No. 23).)

      iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if it persists. (Cal. Code Regs., tit. 5, §§ 53006(b)(4) and 53020(a) (Register 96, No. 23).)

      v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented groups in the specified job categories. (Cal. Code Regs., tit. 5, §§ 53006(b)(4) and 53020(a) (Register 96, No. 23).)

      vi. Discontinue the use of goals when expected representation has been achieved for that group in the job categories in question. (Cal. Code Regs., tit. 5, §§ 53006(b)(4) and 53020(a) (Register 96, No. 23).)

4. The following additional measures are to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists:

   a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, §§ 53006(c) and 53020(a) (Register 96, No. 23).)

b. Implement the following additional corrective measures until expected representation has been achieved for that group in the job category in question: Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, §§ 53006(c)(2) and 53020(a) (Register 96, No. 23).)

5. If a community college district has no existing goals for women or persons with disabilities implement the measures required in California Code of Regulations, title 5, section 53006(b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category in which they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, §§ 53006(d) and 53020(a) (Register 96, No. 23).).

   a. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, §§ 53006(d) and 53020(a) (Register 96, No. 23).)

   b. An aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, §§ 53006(d) and 53020(a) (Register 96, No. 23).)

E. <u>Recruitment Procedures</u>

Title 5, Section 53021

1. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).)

   a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).)

   b. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).)

2. Recruit at least statewide for full-time faculty and educational administrator positions, and at a minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).)

3. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).)

4. Notify the Faculty and Staff Diversity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(c) and 53020(a) (Register 96, No. 23).)

5. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005(b). (Cal. Code Regs., tit. 5, §§ 53021(d) and 53020(a) (Register 96, No. 23).)

F. Job Announcements

Title 5, Section 53022

1. 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. (Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 96, No. 23).)

2. Review job specifications, excluding any "required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 96, No. 23).)

G. Applicant Pool

Title 5, Section 53023

1. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 96, No. 23).)

2. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 96, No. 23).)

3. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).)

4. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).)

5. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented

groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).)

6. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001(m) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).)

7. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).)

H. Screening and Selection Procedures

Title 5, Section 53024

1. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, §§ 53024(a)(1) and 53020(a) (Register 96, No. 23).)

2. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, §§ 53024(a)(2) and 53020(a) (Register 96, No. 23).)

3. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001(m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5, §§ 53024(a)(4) and 53020(a) (Register 96, No. 23).)

4. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024(a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, §§ 53024(b) and 53020(a) (Register 96, No. 23).)

I. Persons with Disabilities

Title 5, Section 53034

1. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 96, No. 23).)

J. Complaint Procedures (Nonemployees and Nonapplicants)

Title 5, Sections 53020 and 53026

1. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the affirmative action regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee to file a complaint alleging a violation of the affirmative action regulations on the basis of disability or gender (i.e., failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23).)

2. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23).)

3. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23).)

K. Program Reports to the Public, Chancellor and Board of Governors

Education Code Section 87102 and Title 5, Section 53034

1. Submit to the Board of Governors of the California Community Colleges, an affirmation of compliance with the provisions of Education Code sections 87100-87107, which address affirmative action hiring (as existing prior to September 4, 2001). (Ed. Code, § 87102(a) (Statutes. 1988, Chapter 973).) *This activity is reimbursable from July 1, 2001 through September 3, 2001*.

2. Publish and distribute a record of the success rate of the measurable progress, with respect to the district's goals and timetables, in hiring employees through its affirmative action employment program. (Ed. Code, § 87102(b) (Statutes 1988, Chapter 973).) *This activity is reimbursable from July 1, 2001 through September 3, 2001*.

   Make this publication a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code), and include data and information specified by the Board of Governors. (Ed. Code, § 87102(b) (Statutes 1988, Chapter 973).) *This activity is reimbursable from July 1, 2001 through September 3, 2001*.

3. Submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30 of the fiscal year following the use of the funds. (Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 96, No. 23).)

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 chapter[1] 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.

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 received from the following source shall be identified and deducted from this claim as follows:

> Funds appropriated and received from the Faculty and Staff Diversity Fund and applied to the reimbursable state-mandated activities imposed by Education Code section 87102, as amended by Statutes 1988, chapter 973, and Title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53026, and 53034, as amended in Register 96, number 23. (State Budget Act of 2001, Item 6870-101-0001, schedule 14)

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.

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

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.

Hearing: July 27, 2012
J:\MANDATES\2002\tc\02-tc-46 (DCP)\Ps&Gs\04. FSA\02. Ps&Gs EEOP Set Two.doc

PROPOSED PARAMETERS AND GUIDELINES

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

Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set Two)

02-TC-46
(And a Portion of 02-TC-25 and 02-TC-31)

(Fiscal Year 2002-2003 only)

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 sets of 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 the equal employment opportunity program.

Because some of the activities approved in the statement of decision have a period of reimbursement that begins during the 2002-2003 fiscal year, and some of the activities are not reimbursable beyond the 2001-2002 fiscal year or the 2002-2003 fiscal year, the Commission has adopted three sets of parameters and guidelines for the equal employment opportunity program: (1) for costs incurred during the 2001-2002 fiscal year only; (2) for costs incurred during the fiscal year 2002-2003 only; and (3) for costs incurred in fiscal year 2003-2004 and subsequent fiscal years.

For costs incurred in fiscal year 2002-2003 and in subsequent fiscal years, the activities approved in the equal employment opportunity program section of the statement of decision are contained in California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as amended by Register 92, number 17; Register 96, number 23; and Register 2002, number 35. These activities 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.

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. Three sets of parameters and guidelines have been adopted, one for costs incurred *only* during the 2001-2002 fiscal year, one for costs incurred *only* during the 2002-2003 fiscal year, and one for costs incurred in or after the 2003-2004 fiscal year. These parameters and guidelines are for the 2002-2003 fiscal year only. Therefore, costs incurred pursuant to California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034 as set forth in these parameters and guidelines are reimbursable only for the period of July 1, 2002 through June 30, 2003.

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.

For each eligible claimant, the following activities are reimbursable:

A. District Plan Contents and Review

Title 5, Sections 53003 and 53020

1. Review the faculty and staff diversity plan, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, §§ 53003(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53003(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable only until August 10, 2002.*

2. Review the equal employment opportunity plan, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, §§ 53003(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

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) and 53020(a) (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 (Register 96, No. 23) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, §§ 53003(c)(4) and 53020(a) (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) and 53020(a) (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. (Cal. Code Regs., tit. 5, §§ 53003(c)(7) and 53020(a) (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) and 53020(a) (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) and 53020(a) (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) and 53020(a) (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) and 53020(a) (Register 96, No. 23).)

4. Include in the equal employment opportunity plan the following information *beginning August 11, 2002*:

a. 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 equal employment opportunity programs (Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, §§ 53003(c)(4) and 53020(a) (Register 2002, No. 35).)

b. A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, §§ 53003(c)(5) and 53020(a) (Register 2002, No. 35).)

c. An analysis of the number of ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of 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 2002, No. 35)). (Cal. Code Regs., tit. 5, §§ 53003(c)(6) and 53020(a) (Register 2002, No. 35).)

d. An analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category. (Cal. Code Regs., tit. 5, §§ 53003(c)(7) and 53020(a) (Register 2002, No. 35).)

e. The determination of whether or not the underrepresentation for any group based on gender, ethnicity, or disability 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) and 53020(a) (Register 2002, No. 35).)

f. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003(c)(7). (Cal. Code Regs., tit. 5, §§ 53003(c)(8) and 53020(a) (Register 2002, No. 35).)

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) and 53020(a) (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) and 53020(a) (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) and 53020(a) (Register 2002, No. 35).)

B. <u>Delegation of Authority</u>

Title 5, Section 53020

1. Design the administrative structure created by any delegation of authority to the affirmative action officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the affirmative action program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, §§ 53020(b) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

2. Design the administrative structure created by any delegation of authority to the equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, §§ 53020(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

3. Designate in the faculty and staff diversity plan a single officer, who may be the affirmative action officer, for ensuring complaints of violations of the affirmative action program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly

monitored (excluding ensuring that the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, §§ 53020(b) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

4. Designate in the equal employment opportunity plan a single officer, who may be the equal employment opportunity officer, for ensuring complaints of violations of the equal employment opportunity program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, §§ 53020(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

C. Employee Survey

Title 5, Section 53004

1. In the report to the Chancellor's Office of the results of the employee survey, report each employee so that they may be identified as belonging to one of the following seven 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. (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 2002, No. 35).)

2. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004(a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 2002, No. 35).)

    a. Beginning August 11, 2002, count a person in only one ethnic group for reporting purposes if that person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 2002, No. 35).)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 2002, No. 35).)

D. Monitoring Recruitment

Title 5, Sections 53004 and 53006

1. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing the faculty and staff diversity plan and to provide data needed for the

analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

2. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing the equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002*.

3. If a community college district has existing goals, then the following activities are *reimbursable only until August 10, 2002*:

    a. Update goals established prior to June 30, 1996 and set a new target date for achieving expected representation for a group in a job category if significant underrepresentation still exists. (Cal. Code Regs., tit. 5, §§ 53006(a) and 53020(a) (Register 96, No. 23).)

    b. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53006(a)(1) and 53020(a) (Register 96, No. 23).)

    c. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53006(a)(2) and 53020(a) (Register 96, No. 23).)

    d. Comply with California Code of Regulations, title 5, section 53006(c) (Register 96, No. 23) while updating goals and setting new target dates pursuant to California Code of Regulations, title 5, section 53006(a) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53006(a)(3) and 53020(a) (Register 96, No. 23).)

4. If a community college district has no existing goals, then the following activities are *reimbursable only until August 10, 2002*:

    a. Take corrective action if, pursuant to California Code of Regulations, title 5, section 53003(c)(7), the district determines that a particular group is significantly underrepresented with respect to one or more job categories and no goal has previously been set. (Cal. Code Regs., tit. 5, §§ 53006(b) and 53020(a) (Register 96, No. 23).)

    b. The district shall take, at a minimum, the following corrective action:

        i. Review district recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract

candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, §§ 53006(b)(1) and 53020(a) (Register 96, No. 23).)

ii. Consider various other means of reducing the underrepresentation which do not involve taking underrepresented group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, §§ 53006(b)(2) and 53020(a) (Register 96, No. 23).)

iii. Determine whether the group is still significantly underrepresented in the job categories in question after the measures described in California Code of Regulations, title 5, section 53006(b)(1) and (2) (Register 96, No. 23) have been in place a reasonable period of time. (Cal. Code Regs., tit. 5, §§ 53006(b)(3) and 53020(a) (Register 96, No. 23).)

iv. Set a goal with a target date for achieving expected representation for the significantly underrepresented group in each job category where significant underrepresentation persists, if it persists. (Cal. Code Regs., tit. 5, §§ 53006(b)(4) and 53020(a) (Register 96, No. 23).)

v. Monitor on an ongoing basis the staffing rate for the significantly underrepresented groups in the specified job categories. (Cal. Code Regs., tit. 5, §§ 53006(b)(4) and 53020(a) (Register 96, No. 23).)

vi. Discontinue the use of goals when expected representation has been achieved for that group in the job categories in question. (Cal. Code Regs., tit. 5, §§ 53006(b)(4) and 53020(a) (Register 96, No. 23).)

5. The following additional measures are to be taken if a goal has been set and after a reasonable period of time significant underrepresentation persists. *These activities are reimbursable only until August 10, 2002*:

   a. Establish a specific timetable to project the levels of annual hiring of persons from the significantly underrepresented group which will be necessary to meet the existing goal by the target date. (Cal. Code Regs., tit. 5, §§ 53006(c) and 53020(a) (Register 96, No. 23).)

   b. Implement the following additional corrective measures until expected representation has been achieved for that group in the job category in question: Consider, as one factor in the final selection process, the fact that a candidate is a member of a significantly underrepresented group, provided that the qualifications of the candidates under consideration are reasonably considered to be equivalent. (Cal. Code Regs., tit. 5, §§ 53006(c)(2) and 53020(a) (Register 96, No. 23).)

6. If a community college district has no existing goals for women or persons with disabilities, implement the measures required in California Code of Regulations, title 5, section 53006(b)(1) and (2) (Register 96, No. 23) concurrently with setting a goal with a target date for achieving expected representation for women or persons with disabilities in each job category in which they are found to be significantly underrepresented. (Cal. Code Regs., tit. 5, §§ 53006(d) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

a. Goals shall remain in effect only until expected representation has been achieved for the group in the job category or categories in which significant underrepresentation is found. (Cal. Code Regs., tit. 5, §§ 53006(d) and 53020(a) (Register 96, No. 23).)

b. An aggregate labor force availability rate shall be utilized for setting goals for hiring persons with disabilities with respect to the total district work force until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, §§ 53006(d) and 53020(a) (Register 96, No. 23).)

7. Take the following additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories. *These activities are reimbursable beginning August 11, 2002*.

a. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, §§ 53006(a)(1) and 53020(a) (Register 2002, No. 35).)

b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, §§ 53006(a)(2) and 53020(a) (Register 2002, No. 35).)

c. Determine whether the group is still significantly underrepresented in the categories in question after the measures described in subdivisions (a)(1) and (2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, §§ 53006(a)(3) and 53020(a) (Register 2002, No. 35).)

d. Monitor the staffing rate for the significantly underrepresented group in the specified job categories in question on an ongoing basis until the projected representation has been achieved for that group if significant underrepresentation persists. (Cal. Code Regs., tit. 5, §§ 53006(a)(4) and 53020(a) (Register 2002, No. 35).)

E. <u>Recruitment Procedures</u>

Title 5, Section 53021

1. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).)

a. Active recruitment shall include focused outreach to historically underrepresented groups. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

b. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the

district. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

c. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).)

2. Recruit at least statewide for full-time faculty and educational administrator positions, and at a minimum, seek qualified applicants listed in the California Community Colleges Faculty and Staff Diversity Registry. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

3. Recruit at least statewide for full-time faculty and educational administrator positions, and at a minimum, seek qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

4. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).).

5. Notify the Faculty and Staff Diversity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(c) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

6. Notify the Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(c) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

7. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005(b). (Cal. Code Regs., tit. 5, §§ 53021(d) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(d) and 53020(a) (Register 2002, No. 35).)

F. Job Announcements

Title 5, Section 53022

1. 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. (Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 2002, No. 35).)

2. Review job specifications, excluding any "required," "desired," or "preferred" qualifications beyond the state minimum qualifications (set forth in Subchapter 4 Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 2002, No. 35).)

G. Applicant Pool

Title 5, Section 53023

1. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district's application for employment. (Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 2002, No. 35).)

2. Keep information regarding an applicant's gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 2002, No. 35).)

3. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that expected representation has been achieved for historically underrepresented groups. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

4. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002*.

5. Extend the application deadline and conduct additional focused recruitment for historically underrepresented groups for which expected representation has not been achieved, if necessary. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

6. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if

necessary. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

7. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when the expected representation of historically underrepresented groups is achieved, or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

8. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

9. Analyze the composition of the qualified applicant pool to ensure that no group defined in terms of ethnicity is adversely impacted as defined by California Code of Regulations, title 5, section 53001(m) (Register 96, No. 23). (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

10. Analyze the composition of the qualified applicant pool to ensure that no ethnic group is adversely impacted as defined by California Code of Regulations, title 5, section 53001(a) (Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53023(c) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

11. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district's applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53023(c) and 53020(a) (Register 2002, No. 35).)

H. <u>Screening and Selection Procedures</u>

Title 5, Section 53024

1. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, §§ 53024(a)(1) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53024(a)(1) and 53020(a) (Register 2002, No. 35).)

2. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, §§ 53024(a)(2) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53024(a)(2) and 53020(a) (Register 2002, No. 35).)

3. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to ensure that they do not have an adverse impact, as defined by California Code of Regulations, title 5, section 53001(m), on any group defined in terms of ethnicity. (Cal. Code Regs., tit. 5,

§§ 53024(a)(4) and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

4. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001(a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, §§ 53024(a)(4) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002*.

5. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024(a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, §§ 53024(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53024(b) and 53020(a) (Register 2002, No. 35).)

I. <u>Persons with Disabilities</u>

Title 5, Sections 53025 and 53034

1. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, §§ 53025(b) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002*.

2. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, §§ 53025(c) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002*.

3. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the Chancellor's Office provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, §§ 53025(c) and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002*.

4. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 2002, No. 35).)

J. Complaint Procedures (Nonemployees and Nonapplicants)

Title 5, Sections 53020 and 53026

1. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the affirmative action regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee to file a complaint alleging a violation of the affirmative action regulations on the basis of disability or gender (i.e., failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002.*

2. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee to file a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e., failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 2002, No. 35).) *This activity is reimbursable beginning August 11, 2002.*

3. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 2002, No. 35).)

4. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 2002, No. 35).)

K. Program Reports to the Public, Chancellor and Board of Governors

Title 5, Section 53034

1. Submit a report on the use of Faculty and Staff Diversity funds to the Chancellor's Office no later than September 30 of the fiscal year following the use of the funds. (Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 96, No. 23).) *This activity is reimbursable only until August 10, 2002*.

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 chapter[1] 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.

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 received from the following source shall be identified and deducted from this claim as follows:

1. Funds appropriated and received from the Faculty and Staff Diversity Fund and applied to the reimbursable state-mandated activities imposed by Education Code section 87102, as amended by Statutes 1988, chapter 973, and Title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53026, and 53034, as amended in Register 96, number 23. (State Budget Act of 2002, Item 6870-101-0001, schedule 14)

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.

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

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.

Hearing: July 27, 2012
J:\MANDATES\2002\tc\02-tc-46 (DCP)\Ps&Gs\04. FSA\03. Ps&Gs EEOP Set Three.doc

PROPOSED PARAMETERS AND GUIDELINES

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

Discrimination Complaint Procedures (Equal Employment Opportunity Program – Set Three)

02-TC-46
(And a Portion of 02-TC-25 and 02-TC-31)

(Beginning Fiscal Year 2003-2004)

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 sets of 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 the equal employment opportunity program.

Because some of the activities approved in the statement of decision have a period of reimbursement that begins during the 2002-2003 fiscal year, and some of the activities are not reimbursable beyond the 2001-2002 fiscal year or the 2002-2003 fiscal year, the Commission has adopted three sets of parameters and guidelines for the equal employment opportunity program: (1) for costs incurred during the 2001-2002 fiscal year only; (2) for costs incurred during the fiscal year 2002-2003 only; and (3) for costs incurred in fiscal year 2003-2004 and subsequent fiscal years.

For costs incurred in fiscal year 2002-2003 and in subsequent fiscal years, the activities approved in the equal employment opportunity program section of the statement of decision are contained in California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as amended by Register 92, number 17; Register 96, number 23; and Register 2002, number 35. These activities 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.

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. Three sets of parameters and guidelines have been adopted, one for costs incurred *only* during the 2001-2002 fiscal year, one for costs incurred *only* during the 2002-2003 fiscal year, and one for costs incurred in or after the 2003-2004 fiscal year. These parameters and guidelines are for the period beginning in the 2003-2004 fiscal year and subsequent fiscal years. Therefore, costs incurred pursuant to California Code of Regulations, title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034 as set forth in these parameters and guidelines are reimbursable on or after July 1, 2003.

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.

For each eligible claimant, the following activities are reimbursable:

A. District Plan Contents and Review

Title 5, Sections 53003 and 53020

1. Review the equal employment opportunity plan, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. (Cal. Code Regs., tit. 5, §§ 53003(b) and 53020(a) (Register 2002, No. 35).)
2. Include in the equal employment opportunity plan the following information:
    a. 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 equal employment opportunity programs (Register 2002, No. 35) and of state and federal nondiscrimination laws. (Cal. Code Regs., tit. 5, §§ 53003(c)(4) and 53020(a) (Register 2002, No. 35).)
    b. A process for providing annual written notice to professional organizations concerning the district's equal employment opportunity plan and the need for assistance from the organizations in identifying qualified applicants. (Cal. Code Regs., tit. 5, §§ 53003(c)(5) and 53020(a) (Register 2002, No. 35).)
    c. An analysis of the number of ethnic majority, men, and persons with disabilities who are employed in the district's work force and the number of persons from monitored groups who have applied for employment in each of 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 2002, No. 35)). (Cal. Code Regs., tit. 5, §§ 53003(c)(6) and 53020(a) (Register 2002, No. 35).)
    d. An analysis of the degree to which persons within the ethnic majority, men, and persons with disabilities are underrepresented in comparison to the numbers of persons from such groups whom the Chancellor determines to be available and qualified to perform the work required for each job category. (Cal. Code Regs., tit. 5, §§ 53003(c)(7) and 53020(a) (Register 2002, No. 35).)
    e. The determination of whether or not the underrepresentation for any group based on gender, ethnicity, or disability 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) and 53020(a) (Register 2002, No. 35).)

f. Methods for addressing any underrepresentation identified under the analysis required by California Code of Regulations, title 5, section 53003(c)(7). (Cal. Code Regs., tit. 5, §§ 53003(c)(8) and 53020(a) (Register 2002, No. 35).)

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) and 53020(a) (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) and 53020(a) (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) and 53020(a) (Register 2002, No. 35).)

B. <u>Delegation of Authority</u>

Title 5, Section 53020

1. Design the administrative structure created by any delegation of authority to the equal employment officer or others in such a manner so as to ensure prompt and effective implementation of the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). (Cal. Code Regs., tit. 5, §§ 53020(b) and 53020(a) (Register 2002, No. 35).)

2. Designate in the equal employment opportunity plan a single officer, who may be the equal employment opportunity officer, for ensuring complaints of violations of the equal employment opportunity program regulations (excluding those based on disability or gender), filed pursuant to California Code of Regulations, title 5, section 53026, are promptly and impartially investigated, and ensuring that selection procedures and the applicant pool are properly monitored (excluding ensuring that the selection procedure is based solely on job-related criteria and monitoring for adverse impact) as required by California Code of Regulations, title 5, sections 53023 and 53024. (Cal. Code Regs., tit. 5, §§ 53020(b) and 53020(a) (Register 2002, No. 35).)

C. <u>Employee Survey</u>

Title 5, Section 53004

1. In the report to the Chancellor's Office of the results of the employee survey, report each employee so that they may be identified as belonging to one of the following seven 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. (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 2002, No. 35).)

2. Afford each applicant or employee the opportunity to identify his or her gender, ethnicity and, if applicable, his or her disability for purposes of the survey and report required by California Code of Regulations, title 5, section 53004(a) (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 2002, No. 35).)

    a. Count a person in only one ethnic group for reporting purposes if that person designates multiple ethnic groups with which he or she identifies. (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 2002, No. 35).)

    b. Count and report Chinese, Japanese, Filipinos, Koreans, Vietnamese, Asian Indians, Hawaiians, Guamanians, Samoans, Laotians, and Cambodians as part of the Asian/Pacific Islander group as well as in separate subcategories. (Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53004(b) and 53020(a) (Register 2002, No. 35).)

D. <u>Monitoring Recruitment</u>

Title 5, Sections 53004 and 53006

1. Monitor applicants for employment on an ongoing basis in order to evaluate the progress in implementing the equal employment opportunity plan and to provide data needed for the analyses required by California Code of Regulations, title 5, sections 53003, 53006, 53023, and 53024 (Register 96, No. 23; Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53004(a) and 53020(a) (Register 2002, No. 35).)

2. Take the following additional steps if a district determines that a particular monitored group is significantly underrepresented with respect to one or more categories.

    a. Review recruitment procedures and identify and implement any additional measures which might reasonably be expected to attract candidates from the significantly underrepresented group. (Cal. Code Regs., tit. 5, §§ 53006(a)(1) and 53020(a) (Register 2002, No. 35).)

    b. Consider various other means of reducing the underrepresentation which do not involve taking monitored group status into account, and implement any such techniques which are determined to be feasible and potentially effective. (Cal. Code Regs., tit. 5, §§ 53006(a)(2) and 53020(a) (Register 2002, No. 35).)

    c. Determine whether the group is still significantly underrepresented in the categories in question after the measures described in subdivisions (a)(1) and (2) of California Code of Regulations, title 5, section 53006, have been in place a reasonable period of time (three years or longer). (Cal. Code Regs., tit. 5, §§ 53006(a)(3) and 53020(a) (Register 2002, No. 35).)

    d. Monitor the staffing rate for the significantly underrepresented group in the specified job categories in question on an ongoing basis until the projected representation has been achieved for that group if significant underrepresentation persists. (Cal. Code Regs., tit. 5, §§ 53006(a)(4) and 53020(a) (Register 2002, No. 35).)

E. Recruitment Procedures

Title 5, Section 53021

1. Actively recruit from both within and outside the district work force to attract qualified applicants for all new openings except as provided by California Code of Regulations, title 5, section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).)

    a. Active recruitment shall include outreach to ensure all persons, including persons from monitored groups, are provided the opportunity to seek employment with the district. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).)

    b. Open recruitment applies to all new full-time and part-time openings in all job categories and classifications, including but not limited to, faculty, classified employees, categorically funded positions, the chief executive officer, and all other executive/administrative/managerial positions. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).)

2. Recruit at least statewide for full-time faculty and educational administrator positions, and at a minimum, seek qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).)

3. Recruit part-time faculty positions separately for each new opening or by annually establishing a pool of eligible candidates. In either case, full and open recruitment is required consistent with California Code of Regulations, title 5, section 53021. (Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(a) and 53020(a) (Register 2002, No. 35).).

4. Notify the Equal Employment Opportunity Advisory Committee established pursuant to California Code of Regulations, title 5, section 53005 and the Chancellor, at least ten working days prior to offering the position to a candidate, if the district believes justification exists for use of any of the exceptions listed in section 53021(b). (Cal. Code Regs., tit. 5, §§ 53021(c) and 53020(a) (Register 2002, No. 35).)

5. Comply with the district's established hiring procedures and afford all qualified district employees the opportunity to apply even where in-house or promotional only recruitment is permitted under California Code of Regulations, title 5, section 53005(b). (Cal. Code Regs., tit. 5, §§ 53021(d) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53021(d) and 53020(a) (Register 2002, No. 35).)

F. Job Announcements

Title 5, Section 53022

1. 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. (Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 2002, No. 35).)

2. Review job specifications, excluding any “required,” “desired,” or “preferred” qualifications beyond the state minimum qualifications (set forth in Subchapter 4 Cal. Code Regs., tit. 5, commencing with § 53400) which the district wishes to utilize, before the position is announced to ensure conformity with the requirements of California Code of Regulations, title 5, section 53000 et seq., and state and federal nondiscrimination laws, excluding section 504 of the Rehabilitation Act, and Title IX of Education Amendments of 1972. (Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53022 and 53020(a) (Register 2002, No. 35).)

G. Applicant Pool

Title 5, Section 53023

1. Afford each applicant an opportunity to voluntarily identify his or her gender, ethnicity and, if applicable, his or her disability, in the district’s application for employment. (Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 2002, No. 35).)
2. Keep information regarding an applicant’s gender, ethnicity, and/or disability provided in an application for employment confidential. (Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53023(a) and 53020(a) (Register 2002, No. 35).)
3. Analyze the composition of the initial applicant pool after the application deadline has passed to ensure that any failure to obtain projected representation for any group defined in terms of ethnicity is not due to discriminatory recruitment procedures. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 2002, No. 35).)
4. Extend the application deadline and conduct additional recruitment, which eliminates discriminatory recruitment procedures and ensures that recruitment efforts provide a full and fair opportunity for participation to a wide diversity of potential applicants, if necessary. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 2002, No. 35).)
5. Screen applications to determine which candidates satisfy job specifications set forth in the job announcement when recruitment efforts have offered an opportunity for participation to a wide diversity of potential applicants or further recruitment efforts would be futile. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 2002, No. 35).)
6. Analyze the composition of the qualified applicant pool to ensure that no ethnic group is adversely impacted as defined by California Code of Regulations, title 5, section 53001(a) (Register 2002, No. 35). (Cal. Code Regs., tit. 5, §§ 53023(c) and 53020(a) (Register 2002, No. 35).)
7. Take effective steps to address adverse impact on any group defined in terms of ethnicity found in the district’s applicant pool before the selection process is continued. (Cal. Code Regs., tit. 5, §§ 53023(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53023(c) and 53020(a) (Register 2002, No. 35).)

H. Screening and Selection Procedures

Title 5, Section 53024

1. Provide all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to the Chancellor upon request. (Cal. Code Regs., tit. 5, §§ 53024(a)(1) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53024(a)(1) and 53020(a) (Register 2002, No. 35).)

2. Design all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole, to ensure that for faculty and administrative positions, meaningful consideration is given to the extent to which applicants demonstrate a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (Cal. Code Regs., tit. 5, §§ 53024(a)(2) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53024(a)(2) and 53020(a) (Register 2002, No. 35).)

3. Design and monitor all screening or selection techniques, including the procedure for developing interview questions, and the selection process as a whole to avoid an adverse impact as defined in California Code of Regulations, title 5, section 53001(a) on any group defined in terms of ethnicity, and to detect and address any adverse impact on any group defined in terms of ethnicity which does occur. (Cal. Code Regs., tit. 5, §§ 53024(a)(4) and 53020(a) (Register 2002, No. 35).)

4. Suspend the selection process and take timely and effective steps to remedy adverse impact on any group defined in terms of ethnicity before the selection process resumes if monitoring under California Code of Regulations, title 5, section 53024(a)(4) reveals that any selection technique or procedure has adversely impacted such ethnic group. (Cal. Code Regs., tit. 5, §§ 53024(b) and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53024(b) and 53020(a) (Register 2002, No. 35).)

I. Persons with Disabilities

Title 5, Sections 53025 and 53034

1. Update a goal established prior to July 12, 2002 for persons with disabilities, set a new target date for achieving projected representation in a job category or categories, and concurrently comply with California Code of Regulations, title 5, section 53006, subdivisions (a)(1), (a)(2), and (b) with respect to persons with disability, if significant underrepresentation still exists in the job category or categories. (Cal. Code Regs., tit. 5, §§ 53025(b) and 53020(a) (Register 2002, No. 35).)

2. Implement California Code of Regulations, title 5, section 53006, subdivisions (a)(1) and (a)(2) concurrently with setting a goal with a target date for achieving projected representation for persons with a disability in each job category where underrepresentation was found to exist. Goals are to remain in effect only until projected representation has been achieved for that group in the category or categories in question. (Cal. Code Regs., tit. 5, §§ 53025(c) and 53020(a) (Register 2002, No. 35).)

3. Utilize an aggregate labor force availability rate for setting goals for hiring persons with disabilities with respect to the total district work force, until the Chancellor's Office

provides data regarding the availability of persons with disabilities by job category. (Cal. Code Regs., tit. 5, §§ 53025(c) and 53020(a) (Register 2002, No. 35).)

4. Report the staffing rate of persons with disabilities by a separate survey as directed by the Chancellor's Office, until a data element to calculate the staffing rate of persons with disabilities has been integrated into the report required by California Code of Regulations, title 5, section 53004. (Cal. Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53034 and 53020(a) (Register 2002, No. 35).)

J. Complaint Procedures (Nonemployees and Nonapplicants)

Title 5, Sections 53020 and 53026

1. Establish a process permitting any person (excluding employees and applicants for employment) to file a complaint alleging that the requirements of the equal employment opportunity program regulations (Cal. Code Regs., tit. 5, § 53000 et seq.) have been violated. This excludes the establishment of a process permitting an employee to file a complaint alleging a violation of the equal employment opportunity program regulations on the basis of disability or gender (i.e., failure to designate a person to coordinate efforts to comply Section 504 and Title IX (see Cal. Code Regs., tit. 5, § 53020); failure to provide reasonable accommodations (see Cal. Code Regs., tit. 5, § 53020); and employment discrimination on the basis of disability and gender in district employee selection procedures). (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 2002, No. 35).)

2. Forward immediately to the Chancellor a copy of the complaint. (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53026 (Register 2002, No. 35).)

3. Provide a written investigative report within 90 days if required by the Chancellor. (Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 96, No. 23); Cal. Code Regs., tit. 5, §§ 53026 and 53020(a) (Register 2002, No. 35).)

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 chapter[1] 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.

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 received from the following source shall be identified and deducted from this claim as follows:

1. Funds received from the Equal Employment Opportunity Fund[2] and applied to the reimbursable state-mandated activities imposed by Title 5, sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as amended by Register 2002, number 35. (State Budget Act, Item 6870-101-0001.)[3]

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.

---

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

[2] Reference to the "Equal Employment Opportunity Fund" includes any future source of funding for the same or similar purposes for which the Equal Employment Opportunity Fund was created, regardless of any change in the name of the funding source, or line item and schedule in the State Budget Act. In addition, appropriations for this fund have been appropriated for program 20.20.041-Equal Employment Opportunity pursuant to Ch. 1169, Stats. 2002.)

[3] The State Budget Act line item for the Equal Employment Opportunity Fund has remained the same from the 2003-2004 fiscal year to the present (6870-101-0001), with the schedule number changing from year to year. In addition, an appropriation has been made for the Equal Employment Opportunity Fund in every fiscal year from the 2003-2004 fiscal year to the 2011-2012 fiscal year.

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.

Hearing: July 27, 2012
J:\MANDATES\2002\tc\02-tc-46 (DCP)\Ps&Gs\04. FSA\04. Ps&Gs ADA Set One.doc

PROPOSED PARAMETERS AND GUIDELINES

Government Code Section 11135

Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; and Statutes 2001, Chapter 708

Discrimination Complaint Procedures
(Federal Rights for Individuals with Disabilities for Employment – Set One)

02-TC-46
(and a portion of 02-TC-25 and 02-TC-31)

(Fiscal Year 2001-2002 only)

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 statutes 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 sets of parameters and guidelines for the *Discrimination Complaint Procedures* (02-TC-46) program 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 with respect to the costs incurred to comply with federal rights for individuals with disabilities for employment in fiscal year 2001-2002.

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 federal rights for individuals with disabilities activities: (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.

The Commission found that section 11135(b) requires community college districts to:

> 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) (Statutes 2001, ch. 708).) This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:
>
> > 1. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)

2. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

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 or after the 2002-2003 fiscal year. These parameters and guidelines are for the 2001-2002 fiscal year only. Therefore, costs incurred pursuant to Government Code section 11135(b) as set forth in these parameters and guidelines are reimbursable only for the period of July 1, 2001 through June 30, 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.

For each eligible claimant, the following activity is reimbursable:

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) (Statutes 2001, ch. 708).) This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:

1. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)

2. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

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 chapter[1] 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.

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.

---

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

The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

PROPOSED PARAMETERS AND GUIDELINES

Government Code Section 11135

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

Discrimination Complaint Procedures (Federal Rights for Individuals with Disabilities for Employment and Information Technology – 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 statutes 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 sets of parameters and guidelines for the *Discrimination Complaint Procedures* (02-TC-46) program 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 with respect to the costs incurred to comply with federal rights for individuals with disabilities for employment and information technology during fiscal year 2002-2003 and in subsequent fiscal years.

Because the 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 federal rights for individuals with disabilities activities: (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.

The Commission found that section 11135(b) requires community college districts to:

1. 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) (Statutes 2001, ch. 708).)

   This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:

a. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)

b. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

2. Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135(d)(2) (Stats. 2002, ch. 1102).) *This activity is reimbursable beginning January 1, 2003.*

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 Government Code section 11135(b) and (d)(2) 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.

For each eligible claimant, the following activities are reimbursable:

A. <u>Americans with Disabilities Act Access</u>

   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) (Statutes 2001, ch. 708).)

   This activity is limited to community college districts that have not engaged in the self-evaluation prior to the 2001-2002 fiscal year for the following one-time activities:

   a. Evaluate the district's employment related services and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq., and to the extent that modification of any such services is required, make the necessary modifications. (28 C.F.R. § 35.105)

   b. Evaluate the district's policies and practices related to employment, and the effects thereof, that do not or may not meet the requirements of 28 C.F.R. § 35 et seq. and that were not included in the district's self-evaluation required by Section 504 of the Rehabilitation Act. To the extent that modification of any such policies and practices is required, make the necessary modifications. (28 C.F.R § 35.105)

B. Electronic and Information Technology Access

Comply with the accessibility requirements of section 508 of the Rehabilitation Act (29 U.S.C. § 794d), and its implementing regulations (36 C.F.R. § 1194 et seq.) in developing, procuring, maintaining, or using electronic or information technology. (Gov. Code, § 11135(d)(2) (Stats. 2002, ch. 1102).) *This activity is reimbursable beginning January 1, 2003*.

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 chapter[1] 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.

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

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

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.

Hearing: July 27, 2012
J:\MANDATES\2002\tc\02-tc-46 (DCP)\Ps&Gs\04. FSA\06. Ps&Gs DCP Set One.doc

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 One)

02-TC-46
(and a portion of 02-TC-25 and 02-TC-31)

(Fiscal Year 2001-2002 only)

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 in fiscal year 2001-2002.

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 the 2001-2002 fiscal year only, 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 or after the 2002-2003 fiscal year. These parameters and guidelines are for the 2001-2002 fiscal year only. 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 as set forth in these parameters and guidelines are reimbursable only for the period of July 1, 2001 through June 30, 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.

For each eligible claimant, the following activities are 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 Cal. Code Regs., tit. 5, § 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 Cal. Code Regs., tit. 5, § 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).) *This activity is reimbursable beginning April 19, 2002*.

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).) *This activity is reimbursable beginning April 19, 2002*.

(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).) *This activity is reimbursable beginning April 19, 2002*.

b. <u>District Investigation</u>

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 witness, including the complainant and any witnesses identified by the complainant in the complaint. (Cal. Code Regs., tit. 5, § 59334(b) (Register 2001, No. 6).) *This activity is reimbursable from July 1, 2001 through April 18, 2002*.

(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).) *This activity is reimbursable beginning April 19, 2002*.

(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 the discrimination occurred with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59334(d) (Register 2001, No. 6).) *This activity is reimbursable from July 1, 2001 through April 18, 2002*.

(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).) *This activity is reimbursable beginning April 19, 2002*.

(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 formal 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. (Cal. Code Regs., tit. 5, § 59327(c) (Register 2001, No. 6).) *This activity is reimbursable from July 1, 2001 through April 18, 2002*.

(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).) *This activity is reimbursable beginning April 19, 2002*.

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 discrimination did or did not occur with respect to each allegation in the complaint. (Cal. Code Regs., tit. 5, § 59336(a) (Register 2001, No. 6).) *This activity is reimbursable from July 1, 2001 through April 18, 2002*.

(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).) *This activity is reimbursable beginning April 19, 2002*.

(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

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 chapter[1] 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.

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.

---

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

The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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.

For each eligible claimant, the following activities are 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. <u>Formal Complaint Process</u>

a. <u>District Response</u>

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

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 chapter[1] 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.

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

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

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.