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August 23, 2011

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

Re: CSM 02-TC-47
Test Claim of Santa Monica Community College District
Community College Construction

Dear Mr. Bohan:

I have received the Commission's Draft Staff Analysis (DSA) dated July 22, 2011, for the above-referenced test claim to which I respond on behalf of the test claimant. Issues raised by the DSA, but not responded to by this letter, are not waived.

1. NEW PROGRAM STANDARD OF REVIEW
Government Code Section 17514

The DSA (19) states that to determine if a program is new or imposes a higher level of service, the statutes pled must be "compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order." This standard is applied (DSA 26) for the analysis of Education Code section 81823 and other code sections alleged in the test claim. This is incorrect. The test claim was filed June 27, 2003. The filing was effective prior to the September 30, 2003, effective date of Statutes of 2002, Chapter 1124 (for mandates that became effective before January 1, 2002)¹, which first established at Government Code section 17551, subdivision (c),

¹ Statutes of 2002, Chapter 1124, is generally effective September 30, 2002. However, the amendment that added Government Code Section 17551, subdivision (c), delayed the effective date of that subdivision for mandates effective before January 1, 2002, by one year to September 30, 2003:

time limits for filing on statutes enacted after December 31, 1974. Based on the date the test claim was submitted, the standard of review is to compare the statutes pled on the effective date of the test claim filing (here July 1, 2001) to the status of the law as of December 31, 1974, pursuant to Government Code section 17514. The staff recommendation should be revised to compare the statutes and regulations effective July 1, 2001, to the law as it existed on December 31, 1974.

The Commission, however, decided to the contrary on this issue in the March 24, 2011, Statement of Decision for 02-TC-25/31/46, Discrimination Complaint Procedures, relying upon *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859. The legal issue here is identical to that in the Discrimination Complaint Procedures test claim. The test claimant raises it here for purposes of the record and does not waive the issue.

2. PRACTICAL COMPULSION FOR CONSTRUCTION AND STATE FUNDING

In the March 30, 2004, rebuttal to the Department of Finance and Chancellor's Office responses to the test claim, the test claimant asserted that college districts are practically and legally compelled to build new facilities and obtain funding from the state for that purpose. The DSA does not respond to the issue. The DSA determination that the various relevant Education Code and Title 5 sections pled in the test claim are not mandated relies upon this threshold issue. The Commission, however, has treated and decided this issue in four previous test claims.² The legal issue here is identical and the test claimant raises it here for purposes of the record and does not waive the issue.

3. NEW TITLE 5 SECTIONS AND THE CHAPTER 1372/90 CODE REPEALERS

In the finding for Education Code section 81830 (DSA 30), and other sections, the Commission staff notes the "three month gap between the repeal of former section 81830 and the effective and operative date of section 57014 of the title 5 regulations," but concludes as a matter of law, without citation of case law, that, as a result of Legislative *intent*, there was no lapse in any legal requirements of the repealed Education Code sections while awaiting for the adoption of new Title 5 regulations by the Board of Governors.

(c) Local agency and school district test claims shall be filed not later than three years following the date the mandate became effective, *or in the case of mandates that became effective before January 1, 2002*, the time limit shall be one year from the effective date of this subdivision. (Emphasis added)

² CSM 01-TC-28 Prevailing Wage Rate
CSM 02-TC-30/43 School Facilities Funding Requirements
CSM 03-TC-17 California Environmental Quality Act

Drew Bohan, Executive Director

3

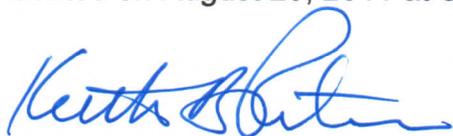
August 23, 2011

This is not an issue of first impression. The DSA conclusion regarding the gap issue for this test claim is consistent with the Commission decision on this issue in three previous test claims.³ The test claimant for the three previous test claims responded to this issue in a letter to Paula Higashi dated October 9, 2001, and at the hearing in January 2002, all of which is part of the record. The test claimant raises it here for purposes of the record and does not waive the issue.

Certification

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

Executed on August 23, 2011 at Sacramento, California, by



Keith B. Petersen

C: Commission electronic service list

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CSM.# 97-TC-10

CSM.# 97-TC-11

CSM.# 97-TC-12

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