



**JACK O'CONNELL**  
State Superintendent of Public Instruction

CALIFORNIA  
DEPARTMENT  
OF  
EDUCATION

1430 N Street

Sacramento, CA

98514

**RECEIVED**

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**COMMISSION ON  
STATE MANDATES**

November 5, 2003

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

*Via Facsimile and U.S. Mail*

Dear Ms. Higashi:

This letter is to inform you that the California Department of Education (CDE) has performed an initial review of the test claim entitled Uniform Complaint Procedures (K-12), 03-TC-02, filed by Solana Beach School District.

The claimant asserts on page 2 of the claim that, "Prior to January 1, 1975, there was no statute or regulation which mandated any uniform complaint resolution procedures." Claimant begins to support its claim by setting forth the language of Education Code sections 200 and 220 as added by Chapter 1117, Statutes of 1982, section 1. These code sections generally outline the state's policy that no person shall be subjected to discrimination on the basis of sex under any educational activity or program (see page 3 of the test claim). However, our initial review reveals that similar language existed under federal law as early as 1972 pursuant to 20 USC 1681(a), which states "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

Claimant continues to support its claim by setting forth code sections that require educational institutions to perform certain tasks designed to protect against discrimination. For Example, on page 4 of the test claim, claimant asserts that prior to the Statutes of 1982, which added Education Code section 250, there was no requirement that "prior to receipt of any state financial assistance or state student financial aid, an educational institution is required to provide assurance to the agency administering the funds...that each program or activity conducted by the educational institution will be conducted in compliance with...all other applicable provisions of state law prohibiting discrimination on the basis of sex." However, federal regulations adopted in 1980 (34 CFR 106 et seq.), also designed to eliminate discrimination on the basis of sex, required local education agencies to provide similar assurances. Specifically, 34 CFR 106.4(a) states:

“(a) General. Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with section 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.”

Claimant also asserts on page 22 of the test claim that the “Uniform Complaint Procedures” set forth in Title 5, California Code of Regulations, sections 4600-4671, resulted in mandated costs reimbursable by the state. However, a number of the regulations cited by claimant contain provisions already required pursuant to federal regulations. For example, many of the requirements of 5 CCR sections 4620, 4621, and 4622 (see test claim pages 24-26) are provided for, or anticipated by, 34 CFR 106.8 (adopted in 1980), which reads as follows:

“(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.”

The regulations governing test claim filing are set forth in Title 2, California Code of Regulations, section 1181 et seq. Section 1183, subdivision (d)(2) of the regulations requires the claimant to include a “copy of relevant portions of...federal statutes...that may impact the alleged mandate...” The fact that a large portion of the money provided to educational institutions by the state initially flows from the federal government, requires an analysis of federal statutes in order to make a determination of whether a state mandate actually exists. CDE asserts that claimant has failed to include the relevant federal law in its test claim, and therefore, CDE questions the completeness of the test claim. Accordingly, we request that the Commission direct the claimant to accurately provide the information required by the regulations.

As required by the Commission’s regulations, we are including a “Proof of Service” indicating that the parties included on the mailing list, which accompanied your August 5, 2003 letter, have been provided with copies of this letter via United States Mail.

Paula Higashi  
November 5, 2003  
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If you have any questions regarding this letter please contact me at (916) 319-0860.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Smith". The signature is stylized with loops and a long horizontal stroke extending to the right.

Todd M. Smith  
Deputy General Counsel

TS:ac

Enclosure

## Proof of Service

Test Claim Name: Uniform Complaint Procedures (K-12)  
Test Claim Number: CSM-03-TC-02

I, the undersigned declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 N Street, 5<sup>th</sup> Floor, Sacramento, CA 95814.

On November 5, 2003, I served the attached recommendation of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof enclosed in a sealed envelop with postage thereon fully prepaid in the United States Mail at Sacramento, California, to claimants and interested parties, addressed as follows:

Mr. Keith B. Petersen SixTen & Associates 5252 Balboa Avenue, Suite 807 San Diego, CA 92117 Tele: (858) 514-8605 Fax: (858) 514-8645	Ms. Ellie Topolovac Solana Beach School District 309 North Rios Avenue Solana Beach, CA 92075-1298 Tele: (858) 794-3914 Fax: (858) 755-0814
Mr. Paul Minney Spector, Middleton, Young & Minney, LLP 7 Park Center Drive Sacramento, CA 95825 Tele: (916) 646-1400 Fax: (916) 646-1300	Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd., #307 Sacramento, CA 95842 Tele: (916) 727-1350 Fax: (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586 Tele: (909) 672-9964 Fax: (909) 672-9963	Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670 Tele: (916) 669-0888 Fax (916) 669-0889
Dr. Carol Berg Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814 Tele: (916) 446-7517 Fax: (916) 446-2011	Mr. Arthur Palkowitz San Diego Unified School District 4100 Normal Street, Room 3159 San Diego, CA 92103-8363 Tele: (619) 725-7565 Fax: (619) 725-7569

<p>Mr. Steve Shields  Shields Consulting Group, Inc.  1536 36<sup>th</sup> Street  Sacramento, CA 95816  Tele: (916) 454-7310  Fax: (916) 454-7312</p>	<p>Ms. Beth Hunter  Centration, Inc.  8316 Red Oak Street, Suite 101  Rancho Cucamonga, CA 91730  Tele: (866) 481-2642  Fax: (866) 481-5383</p>
<p>Mr. Michael Havey  State Controller's Office (B-08)  Division of Accounting &amp; Reporting  3301 C Street, Suite 500  Sacramento, CA 95816  Tele: (916) 445-8757  Fax: (916) 323-4807</p>	<p>Mr. Keith Gmeinder  Department of Finance (A-15)  915 L Street, 8<sup>th</sup> Floor  Sacramento, CA 95814  Tele: (916) 445-8913  Fax: (916) 327-0225</p>
<p>Mr. Gerald Shelton  California Department of Education (E-08)  Fiscal and Administrative Services  Division  1430 N Street, Suite 2213  Sacramento, CA 95814  Tele: (916) 445-0554  Fax: (916) 327-8306</p>	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 5, 2003 at Sacramento, California.

  


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Anna Coleman