BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Section 76300; Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 140 1; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58500 – 58508. Filed on June 22, 2000, By Los Rios Community College District, Claimant. Education Code Section 76300; Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630; Filed on June 4, 2001, By Glendale Community College District, Claimant.	No. 99-TC-13 and OO-TC-15 *Enrollment Fee Collection* *Enrollment Fee Waivers* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. *(Adopted on April 24, 2003)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on April 25, 2003.

Paula Higashi

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Section 76300; Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58500 – 58508. Filed on June 22, 2000, By Los Rios Community College District, Claimant. Education Code Section 76300; Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630; Filed on June 4, 2001, By Glendale Community College District, Claimant.	No. 99-TC- 13 and 00-TC- 15 *Enrollment Fee Collection* *Enrollment Fee Waivers* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. *(Adopted on April 24, 2003)*

STATEMENT OF DECISION

The Commission heard and decided this test claim on March 27, 2003, during a regularly scheduled hearing. Mr. Keith Petersen appeared for claimants, Los Rios and Glendale Community College Districts, and Ms. Alice Kwong appeared on behalf of Los Rios Community College District. Mr. Randy Katz, Ms. Susan Geanacou, and Deputy Attorney General Leslie Lopez appeared on behalf of the Department of Finance (DOF).

At the hearing, testimony was given, the test claim was submitted, and the vote was taken.

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 partially approved this test claim by a 5-O vote.[1]

BACKGROUND

There are currently 72 community college districts governing 108 community colleges in California, serving over 2.9 million students.[2]

Claimant Los Rios Community College District (LRCCD) filed the *Enrollment Fee Collection* test claim (99-TC-13) on June 22, 2000. Originally enacted in 1984 and amended throughout the 1980s and 1990s, the original test claim legislation and regulations[3] authorize and require community colleges to implement enrollment fees and adopt regulations for their collection. Although the amount of the enrollment fee has been amended various times, the two percent of the fee retained by the community colleges[4] has remained constant.

Claimant Glendale Community College District (GCCD) filed the *Enrollment Fee Waivers* (00-TC- 15) test claim in May 200 1 in which claimant pled fee-waiver statutes and regulations[5] that specify the groups of students for which fees are waived or exempted, and for whom Board of Governors Grants (BOG grants) are available. A BOG grant is an instrument used by a community college district to process financial assistance to a low-income student! In 1993, the Legislature altered the BOG grant program, changing it from a fee-offset grant program to a fee-waiver program[7] (hereafter called BOG fee waivers). The regulations governing the program were left intact, and are part of this test claim.[8] Unless indicated otherwise, any reference to a BOG grant in this analysis should be understood to apply to a BOG fee waiver.

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[1] Included in the motion was a directive to staff to work with all parties, including DOF, Legislative Analyst's Office, and the Attorney General's Office to develop unit cost rates for consideration in the proposed parameters and guidelines.

[2] California Community College Chancellor's Office website <http://www.cccco.edu> [as of Jan. 7, 2003].

[3] Education Code section 76300. Statutes 1984xx, chapter 1; Statutes 1984, chapters 274 and 1401; Statutes 1985, chapters 920 and 1454; Statutes 1986, chapters 46 and 394; Statutes 1987, chapter 1118; Statutes 1989, chapter 136; Statutes 1991, chapter 114; Statutes 1992, chapter 703; Statutes 1993, chapters 8, 66, 67, and 1124; Statutes 1994, chapters 153 and 422; Statutes 1995, chapter 308; Statutes 1996, chapter 63; and Statutes 1999, chapter 72. California Code of Regulations, title 5, sections 58500 – 58508.

[4] Education Code Section 76300, subdivision (c). This is called a "revenue credit" by the Community College Chancellor's Office.

[5] Education Code section 76300; California Code of Regulations, title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual ('"BOG Fee Manual").

[6] California Code of Regulations, title 5, section 58601.

[7] Statutes 1993, chapter 1 I24 (Assem. Bill No. 156 1).

[8] California Code of Regulations, title 5, sections 58600 to 58630.

In August *2002,* the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waiver* (00-TC-15) test claims were consolidated?

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 175 14.

In the *Enrollment Fee Collection* (99-TC-13) test claim, claimant requests reimbursement for the following activities:

(1) determining the number of credit courses for each student subject to the student enrollment fees;

(2) calculating and collecting student enrollment fees for each nonexempt student enrolled, and providing a waiver of student enrollment fees for exempt students;

(3) calculating, collecting, waiving or refunding student enrollment fees due to subsequent timely program changes or withdrawal from school;

(4) entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems;

(5) processing all agency billings for students whose student enrollment fees are waived;

(6) preparing and submitting reports on student enrollment fees collected and waived as required by the Board of Governors and other state agencies. Claimant states that failure to implement this mandate would reduce the total district revenue by up to ten percent pursuant to Education Code section 76300, subdivision (d).

In the *Enrollment Fee Waivers* (00-TC- 15) test claim, claimant seeks reimbursement for:

(1) determining and classifying students eligible for Board of Governors grants ("BOG grants") according to the eligibility criteria;

(2) determining at the time of enrollment whether fees should be waived because the student is a recipient of benefits under the Aid to Families with Dependent Children (AFDC) [10] program or the Supplemental Security Income/State Supplementary program (SSI/SSP) or a beneficiary under a general assistance program;

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[9] California Code of Regulations, title 2, section 1183.06.

[10] On August 22, 1996, President Clinton signed into law H.R. 3734 --The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This federal legislation eliminated the AFDC program and replaced it with the Temporary Assistance for Needy Families (TANF) program. This federal welfare reform offered states flexibility to redesign their programs, and subjected states to financial penalties for failing to meet work participation and other requirements. In response, California created the California Work Opportunity and Responsibility to Kids (CalWORKs) program-(Stats. 1997, ch. 270; Assem. Bill No. 1542, Ducheny, Ashburn, Thompson, and Maddy). The AFDC and TANF programs are both referenced in the test claim legislation, and are used interchangeably in this analysis.

(3) determining at the time of enrollment whether fees should be waived for a student due to demonstration of financial need in accordance with federal methodology for determining expected family contribution of students seeking financial aid;

(4) determining at the time of enrollment whether fees should be waived for a student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in active service to the state;

(5) entering the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and processing all agency billings for students whose fees are waived;

(6) separately documenting and accounting for the funds allocated for collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance;

(7) preparing and submitting reports regarding the number and amounts of the enrollment fees waived as required by the Board of Governors and other state agencies.

Claimant contends that state funds allocated pursuant to Education Code section 76300, subdivision (i), currently calculated at .91 per credit unit waived, are not sufficient to fund the mandate. [11]

In its January 17, 2002 comments on the draft staff analysis, claimants stated general agreement with the analysis, except for the exclusion of the costs associated with collecting enrollment fees from nonresident students, which is discussed below.

Department of Finance's Position

DOF submitted separate comments on the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC- 15) test claims, and commented on the draft staff analysis on *Enrollment Fee Collection,* all of which are discussed in detail below.

In its most recent (2/25/03) comments on the draft staff analysis of *Enrollment Fee Collection* (99-TC-13) and the *Enrollment Fee Waivers* (OO-TC-15) test claims, DOF concurs that calculating and collecting the student enrollment fee for each student who is not exempt from the fee is a state-mandated activity within the scope of the test claim. DOF also concurs that two activities are not state reimbursable mandated activities: (1) determining the number of credit courses for each student subject to the enrollment fees, and (2) preparing and submitting reports regarding enrollment fees collected. DOF disagrees with the remainder of the conclusions in the draft staff analysis, which is discussed in more detail below.

Community Colleges Chancellor's Office Position

In its comments on the *Enrollment Fee Collection* (99-TC-13), the CCC concludes that the test claim statute was "clearly a higher level of service for community colleges." The CCC provides (1) a bill analysis from the Legislative Analyst that concludes the two percent revenue credit is

[11] Declaration of Carrie Bray, Director of Accounting Services, Los Rios Community College District, June 22, 2000.

an insufficient reimbursement for the locally mandated fee-collection program, and (2) a letter from its president to the author of the fee legislation.

The CCC stresses that although the amount of the enrollment fee has varied, the two percent revenue credit for community colleges has remained constant. Finally, the CCC states that, for fiscal year 1998-99, the claimant LRCCD collected $6.98 million in fees pursuant to Education Code section 76300, of which two percent, or $139,6 10 was a revenue credit. Statewide, enrollment fees totaled over $164 million, of which the two percent revenue credit totaled $3 .28 million.

The CCC did not provide comments on *Enrollment Fee Waivers* (OO-TC-15).

COMMISSION FINDINGS

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must mandate a new program or create an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."[12] The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[13] To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. [14] Finally, the new program or increased level of service must impose "costs mandated by the state."[15]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

These issues are addressed as follows.

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[12] *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

[13] *County of Los Angeles v. State of California (1987) 43* Cal.3d 46, 56.

[14] *Lucia Mar Unified School Dist. v. Honig (1988) 44* Cal.3d 830, 835.

[15] Government Code section 175 14.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," which is defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. [16] Only one of these findings is necessary to trigger article XIII B, section 6.[17]

The test claim legislation concerns collecting community college enrollment fees and determining eligibility for fee waivers and financial aid. Collecting enrollment fees and providing waivers and financial aid is a peculiarly governmental function administered by community college districts as part of their mission to provide educational services to the students. Moreover, the test claim legislation imposes unique fee collection, fee waiver, refund eligibility determination, reporting and accounting requirements on community college districts that do not apply generally to all residents or entities in the state. Therefore, the Commission finds that community college enrollment fees, fee waivers, and BOG grants constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states, "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This provision was specifically intended to prevent the state from forcing programs on local government that require them to spend their tax revenues? To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 175 14 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . .which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.) "Mandates" as used in article XIII B, section 6 has been defined to mean "orders" or "commands."[19] If the test claim legislation does not mandate the school district to perform a task, then compliance is within the discretion of the school district and a state-mandated program does not exist. The state has no duty under article XIII B, section 6 to reimburse the school district for costs of programs or services incurred as a result of the exercise of local discretion or choice.[20]

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[16] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[17] *Carmel Valley Fire Protection Dist.,* (1987), 190 Cal.App.3d 521, 537.

[18] *County of Fresno v. State of California* (1991) *53* Cal.3d *482,487; County of Los Angeles, supra, 43* Cal.3d *46, 56; County of Sonoma v. Commission on State Mandates (2000) 84* Cal.App.4th 1264, 1283-1284.

[19] *Long Beach Unified School District, supra,* 225 Cal.App.3d 155, 174.

[20] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777,783.

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[21]

Collection of enrollment fees: Education Code section 76300 governs collection of enrollment fees as follows:[22]

- Subdivision (a) requires the governing board of each community college district to charge each student a fee.
- Subdivision (b) sets the fee at $12 per unit per semester for 1998-99, and $11 per unit per semester effective fall 1999-2000,[23] and requires the chancellor to proportionally adjust the fee for term lengths based on a quarter system.
- Subdivision (c) requires the chancellor, for computing apportionments to districts, to subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging the fee.
- Subdivision (d) requires the chancellor to reduce apportionments by up to 10 percent to any district that does not collect the fee.
- Subdivision (f) authorizes the governing board of a community college district to exempt special part-time students admitted pursuant to section 7600 1 from the enrollment fee.

Under preexisting law, community colleges were authorized but not required to impose various student fees for the following: physical education courses using nondistrict facilities,[24] health services,[25] parking services,[26] transportation services,[27] program changes,[28] and late applications.[29]

As stated above, subdivision (f) authorizes but does not require the governing board of a community college district to exempt special part-time students admitted pursuant to Education Code section 76001 from the enrollment fee. This refers to students who attend a community college while in high school. The Commission finds that admitting these students and exempting their fees are discretionary activities, so collecting fees from them is not a new program or higher level of service within the meaning of article XIII B, section 6.

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[21] *Lucia Mar Unified* School *Dist.* v. *Honig, supra, 44* Cal.3d 830, 835.

[22] Waivers and exemptions pursuant to subdivisions (e), (g) and (h) will be discussed below.

[23] Statutes 1999, chapter 72 lowered the school year 1999-2000 fees from $12 to $11. Because chapter 72 became effective July 6, 1999 to be applied in fall 1999, it does not affect claimant's reimbursement period.

[24] Former Education Code section 72245 and current Education Code section 76395.

[25] Former Education Code section 72246 and current Education Code section 76355.

[26] Former Education Code section 72247 and current Education Code section 76360.

[27] Former Education Code section 72248 and current Education Code section 7636 1.

[28] Former Education Code sections 72250 – 72250.5 and current California Code of Regulations, title 5, section 58507.

[29] Former Education Code section 7225 1.

Additionally, prior to the test claim statute, there was no requirement to collect enrollment fees except for tuition from nonresident students.[30] Therefore, because it is not a new activity, the Commission finds that collecting fees from nonresident students is not a new program or higher level of service.

Claimant commented that although tuition fees were collected from nonresident students prior to 1975, that activity is not legally or factually relevant to the additional administrative procedures required to collect enrollment fees. Claimant points out there are no facts in the record that the fee collection procedures occur at the same time or location, are performed by the same staff members, or result in the same subsequent administrative burden (e.g., fees adjusted based on changes to class loads, student withdrawal, etc.). Therefore, according to claimant, the better conclusion of law would be that, to the extent that procedures for the collection of enrollment fees from nonresident students is different and exceeds the administrative tasks required to collect tuition fees from nonresident students, it is a new activity and a higher level of service.

In analyzing a test claim, the Commission identifies all the new activities or higher levels of service within the test claim legislation. If an activity in the test claim legislation appears to be the same or substantially the same as a pre-1975 activity, it does not qualify as a new program or higher level of service.[31] There is no evidence in the record that collecting tuition fees from nonresident students prior to 1975 is different from collecting enrollment fees from nonresident students after 1975. Therefore, without evidence to the contrary, the Commission's conclusion remains the same regarding nonresident student tuition.

In sum, the Commission finds that collecting enrollment fees constitutes a new program or higher level of service within the meaning of article XIII B, section 6 for all students except for nonresidents, and except for special part-time students (pursuant to Ed. Code, § 76300, subd. (f)).

Refunds for program changes: California Code of Regulations, title 5, sections 58500 through 58508,[32] also pertain to community college student fees. Section 58500 defines the enrollment fee, section 58501 states the semester, quarter or fractional unit fee, section 58501.1 discusses the differential enrollment fee, section 58502 states the enrollment fee shall be charged at the time of enrollment, and section 58503 requires students to be charged for variable unit classes at the time of enrollment, based on the number of units in which the college enrolls the student. Section 58507 authorizes students to add or drop classes during the term pursuant to district policy, and requires the enrollment fee to be adjusted accordingly. Section 58508 governs refunds for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course.

Prior law did not address enrollment fee refunds because there were no fees. Prior law did, however, require community colleges to impose a fee of $10 per course, not to exceed $20, for a student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. In 1987, this fee was made permissive and was not to exceed one dollar ($1) "for the actual pro rata cost for services relative to a program

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[30] Education Code section 76140.

[31] Subdivision (c) of section 6 of Article XIII B states that the Legislature may, but need not provide subvention of funds for mandates enacted prior to January 1, 1975.

[32] California Code of Regulations, title 5, section 58509 was not pled by claimant. This analysis does not address section 58509.

change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term."[33]

The Commission finds that refunding enrollment fees is not a new program or higher level of service.

In disputing that program changes constitute a new program or higher level of service, DOF points out that section 58507 of the regulations authorizes, but does not require community colleges to allow students to add or drop classes during the term. Section 58507 states:

> A community college district may allow a student to add or drop classes during the term pursuant to district policy. The enrollment fee or differential enrollment fee shall be adjusted to reflect added or dropped courses as allowed by district policy.

The claimant argues that this regulation was adopted as a result of the establishment of enrollment fees, and the need to refund fees is a foreseeable consequence of collecting them. Claimant says it is properly an activity to be included in the cost mandated by the state subject to reimbursement.

The Commission agrees with DOF that allowing a student to add or drop courses is not required. Allowing the program changes pursuant to section 58507 is an activity that is not required. The statute states that a "community college **may** allow a student to add or drop classes" (emphasis added). Use of the word "may" is permissive.[34] Thus, changing programs is an activity within the discretion of the community college district to allow. The court of appeal has concluded that discretionary actions of local agencies are not new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution.[35] In City *of Merced,* the court found that the exercise of eminent domain was discretionary and therefore not a cost which plaintiff was required or mandated to incur. The same is true in section 58507, which authorizes but does not require community colleges to allow program changes. Therefore, the Commission finds that section 58507 of title 5 of the California Code of Regulations is not a new program or higher level of service because the community college district is authorized but not required to allow a student to add or drop classes.

Section 58508 provides:

> (a) A community college district governing board shall refund upon request any enrollment fee paid by a student pursuant to Sections 58501 or 58501.1 for program changes made during the first two weeks of instruction for a primary term – length course, or by the 10 percent point of the length of the course for a short-term course.
>
> (b) A student shall be allowed at least two weeks from the final qualifying date of the program change specified in Subsection (a) to request an enrollment fee refund.
>
> (c) A community college district shall not refund any enrollment fee paid by a student for program changes made after the first two weeks of instruction for a primary term-length course, or after the 10 percent point of the length of the course for a short-term

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[33] Former Education Code sections 72250 and 72250.5. Both statutes excused the fee for changes initiated or required by the community college.

[34] Education Code section 75.

[35] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

course, unless the program change is a result of action by the district to cancel or reschedule a class or to drop a student pursuant to section 55202 (g) where the student fails to meet a prerequisite.

(d) When refunding an enrollment fee pursuant to Subsection (a), a community college district may retain once each semester or quarter an amount not to exceed $10.00.

The refund requirement of section 58508 is triggered by the district's discretionary decision to allow program changes pursuant to section 58507. Therefore, the Commission finds that issuing refunds for program changes pursuant to sections 58507 and 58508 of title 5 of the California Code of Regulations is not a new program or higher level of service.

Fee exemptions and waivers: The fee exemption and waiver provisions of Education Code section 76300 provide as follows:

- Subdivision (e) exempts the enrollment fee for (1) students enrolled in noncredit courses designated by section 84757; (2) California State University (CSU) or University of California (UC) students enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC; (3) students enrolled in credit contract education courses under certain conditions.
- Subdivision (f) authorizes (but does not require) fee exemption for special part-time students admitted pursuant to Education Code section 7600 1.
- Subdivision (g) requires fees to be waived for recipients of Aid to Families with Dependent Children (AFDC) or SSI/SSP, or a general assistance program, or those who demonstrate financial need in accordance with federal methodology. The fee waiver is also required for students who demonstrate eligibility according to income standards established by the Board of Governors and section 58620 of title 5 of the California Code of Regulations.
- Subdivision (h) requires a fee waiver for dependents or unmarried surviving spouses of members of the California National Guard who die or become permanently disabled as a result of an event that occurred during active service of the state.
- Subdivision (i) states legislative intent to fund fee waivers for students who demonstrate eligibility pursuant to subdivisions (g) and (h), and requires the Board of Governors to allocate to districts two percent of the fees waived pursuant to those subdivisions. Subdivision (i) also requires the Board of Governors, frorn funds provided in the annual Budget Act, to allocate to districts $.91 per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services.

Prior law did not require fee exemptions or waivers because there were no enrollment fees.

The Commission finds that exempting a student fee pursuant to subdivision (e) is not a new program or higher level of service, but waiving fees for student applicants is a new program or higher level of service.

The DOF, in its 9/25/01 comments, notes that the determinations for fee waiver eligibility required by Education Code section 76300, subdivisions (g) and (h) are alternative methods for determining student eligibility for BOG fee waivers and not additional requirements. As

students receive Board of Governors fee waivers without achieving any of the criteria listed above, by meeting income limits, an eligibility determination is not necessarily contingent on performance of any of these activities and they should not be considered higher levels of service. Furthermore, according to DOF the analysis of BOG grant determinations pursuant to California Code of Regulations, title 5, section 58620 focuses on every activity, requirement, and criteria for determining Board of Governors eligibility, so any costs identified with section 58620 would include these activities. Waiving fees pursuant to BOG fee waivers is discussed below.

In its 8130102 comments, DOF contends that waiving fees is not an "activity," but the preclusion of participation in the new program of collecting enrollment fees. DOF cites language in the Board of Governors Fee Waiver Program Manual for 200112002 ("BOG Fee Manual"), stating that waivers are simply a transaction in which no money is received. DOF argues that upon proof of eligibility for a waiver, the community colleges neither provide anything to, nor collect anything from, the student. DOF concludes that since fee waivers prohibit colleges from participation in the new program of enrollment fees, for this particular test claim, providing fee waivers for exempt students is not a state-mandated activity. DOF admits that the fee waiver is granted "upon proof of eligibility."[36]

In its 2/25/03 comments, DOF states that section 76300, subdivision (e), specifies groups of students for which the fee requirement does not apply, which students are not required to have the fee waived as in subdivisions (g) and (h). Since these students[37] pay no enrollment fees, they have no need for waivers. DOF argues that since there is no waiver eligibility deterrnination required, there is no mandated activity associated with section 76300, subdivision (e).

The Commission agrees that exempting fees pursuant to subdivision (e) does not constitute a new activity. Therefore, the Commission finds that granting an exemption for a fee waiver, pursuant to section 76300, subdivision (e), is not a new program or higher level of service.

DOF also states in its 2/25/03 comments that the burden of demonstrating fee waiver eligibility rests with the student, not the financial aid office. DOF quotes section 76300, subdivision (g), emphasizing the student's responsibility to demonstrate financial need and eligibility. There is nothing in section 76300, according to DOF, that requires the institution to establish the financial aid group to which the student belongs.

The Commission disagrees. A community college has no discretion to grant a fee waiver. If a student demonstrates eligibility pursuant to the test claim statute, he or she is entitled to the

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[36] Education Code section 76300, subdivision (g) reads in pertinent part, "The governing board of a community college district also shall waive the fee requirements of this section for any student **who demonstrates eligibility** according to income standards established by the Board of Governors and contained in section 58620 of Title 5 of the California Code of Regulations." (Emphasis added.) Education Code section 76300, subdivision (i)(l) reads in pertinent part "It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student **who demonstrates eligibility** pursuant to subdivisions (g) and (h). (Emphasis added.)

[37] Students specified in section 76300, subdivision (e) are those (1) enrolled in noncredit courses designated by section 84757; (2) CSU or UC students in remedial classes for whom the district claims an attendance apportionment pursuant to an agreement between the district and CSU or UC; and (3) students enrolled in credit contract education courses under certain conditions.

waiver. Payment of the fee or provision for its exemption or waiver is a transaction,[38] and as such, cannot be achieved unilaterally.

Community colleges must waive student fees required (not authorized) by section 76300, which lists the following groups, one of which a student must belong to in order qualify for the waiver.

(1) A recipient of benefits under the AFDC, SSI/SSP, or a general assistance program, or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) A student who demonstrates eligibility according to income standards established by the Board of Governors and contained in section 58620 of title 5 of the California Code of Regulations (this section relates to BOG fee waivers, discussed below).

(3) A student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state (as defined), was killed, became permanently disabled, or died of a disability resulting from an event that occurred while in the active service of the state.

The Commission finds that waiving fees for each student applicant in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h), is a new program or higher level of service.

Eligibility for a Board of Governors fee waiver is included by reference[39] in Education Code section 76300, subdivision (g), which requires the governing board of a community college district to waive the fee "for any student who demonstrates eligibility according to income standards established by the Board of Governors and contained in Section 58620 of the California Code of Regulations." Since claimant also pled section 58620 of title 5 of the California Code of Regulations, it is discussed separately below.

Board of Governors Grants

BOG grant regulations: California Code of Regulations, title 5, sections 58600 - 58630 govern the distribution of a BOG grant, which is "an instrument used by a community college district to process the financial assistance provided to a low-income student."[40] In 1993, the Legislature altered the BOG grants program,[41] changing it from a fee-offset grant program to a fee-waiver program. The regulations governing the program were left intact. Therefore, as stated above, references to BOG grants herein should be read to apply to BOG fee waivers.

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[38] Section 7.3 of the BOG Fee Manual states that "waivers are simply a transaction in which no money is received." One definition of transaction is "a communicative action or activity involving two parties or two things reciprocally affecting or influencing each other." (Webster's 3d New Intemat. Dict. (1993) p. 2425.)

[39] California Code of Regulations, title 5, section 58620.

[40] California Code of Regulations, title 5, section 58601.

[41] Statutes 1993, chapter 1124 (Assem. Bill No. 156 1). Herein referred to as a BOG fee-waiver.

Section 58611 of the regulations requires community college districts to report to the CCC the number of and amounts provided for BOG grants. Section 58612 requires a district to provide BOG grants "to all students who are eligible and who apply for this assistance." This section also states a presumption of student eligibility for the remainder of the academic year until the beginning of the following fall term, and states that nothing in the chapter prohibits community college districts from establishing an application deadline for BOG grants. Section 58613 requires BOG grants to be made in the amount of enrollment fees calculated after program changes (pursuant to section 58507, discussed above). Section 58620 lists the eligibility criteria for a BOG grant, which is California residency and one of the criteria under the rubric of either (1) income standards;[42] (2) recipient of AFDC benefits described in Education Code section 76300, subdivision (g);[43] or (3) need-based financial aid eligibility.[44]

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[42] The income standards are: (A) be single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the U.S. Department of Health and Human Services (HHS) Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the HHS Poverty Guidelines for a family of two. (B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size. (C) Provide documentation of taxable or untaxed income. (D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size. (E) Be an independent student whose estimated family contribution as determined by federal methodology is equal to zero or a dependent student for whom the parent portion of the estimated family contribution as determined by federal methodology is equal to or less than zero. (F) For purposes of this subsection HHS Poverty guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

[43] The benefits described in Education Code section 76300, subdivision (g) are for recipients of Aid to Families with Dependent Children, the general assistance program, or demonstration of financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. Subsection (2) also lists: (A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parents(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian. (B) At the time of enrollment, be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent or guardian(s). (C) At the time of enrollment be a recipient of benefits under the General Assistance program. (D) Provide documentation that the student if [sic] a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.

[44] Need-Based Financial Aid Eligibility means any student who has been determined financially eligible for federal and/or state needed [sic] based financial aid.

Prior law did not require community colleges to provide BOG grants to students.

In its 9/25/01 comments, DOF asserts that much of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975. For example, Education Code section 76355[45] requires the governing board of a community college district to adopt rules and regulations that either exempt low-income students from any health service fee or provide for the payment of the fee from other sources. Education Code section 69648 requires the community colleges to adopt rules and regulations to, among other activities, identify students who would be eligible for extended opportunity programs and services (EOPS) based on socioeconomic disadvantages. Both of these sections existed when enrollment fee waivers were implemented in 1984 and still exist. DOF argues that section 58620 of the California Code of Regulations merely clarifies the process for identifying low-income students and does not constitute a higher level of service.

Claimant rebuts DOF, arguing that the legislation enacting the health fee merely required adoption of rules and regulations that either exempt "low-income" students or provide for payment of fees from other sources. But the legislation provided no guidance or direction as to the method or means to determine whether a student was "low-income," and said nothing of the BOG grant factors of section 58620 of the California Code of Regulations. Claimant states that DOF's argument fails because there was no "infrastructure" to determine the specific requirements of section 58620 until 1987. Claimant also notes that the existence of '"infrastructure," or lack thereof, is not one of the statutory exceptions set forth in Government Code section 17556, and therefore irrelevant.

The Commission finds that waiving student fees for students who apply for and are eligible for BOG fee waivers is a new program or higher level of service.

DOF's argument of 9/25/01 is unconvincing. The health fee promulgated in Education Code section 76355, cited by DOF, is not mandatory. Subdivision (b) states that the governing board "may decide whether the fee shall be mandatory or optional." Since the health fee program is optional, the "infrastructure" for determining eligibility for it that DOF cites is also optional. More importantly, nothing in the record indicates that a BOG fee waiver deterrnination, or even a substantially similar determination, must be made for waiver of the optional health fee pursuant to section 76355, or the student's "social or economic disadvantages" to determine eligibility for the extended opportunity program pursuant to section 69648.[46]

In its 2/25/03 comments, DOF states that with the passage of Assembly Bill No. 1561 (Stats. 1993, ch. 1124), the BOG grant program was replaced with the BOG fee-waiver program. Consequently, DOF argues that regulations pertaining to BOG grants are obsolete. Since the program no longer exists, DOF asserts that determining the eligibility for BOG grants is not a mandate. Alternatively, DOF argues that even if BOG grants were not obsolete, demonstrating eligibility is the responsibility of the student, not the institution.

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[45] Former Education Code section 72246.

[46] Eligibility for EOPs is stated in title 5, section 56220 of the California Code of Regulations, which were adopted in 1987. Eligibility criteria include California residency, less than 70 units of degree-credit completion, eligibility for a BOG grant pursuant to section 58620 (1) or (2), and be educationally disadvantaged as determined by the EOPS director or designee, who must consider specific factors.

The Commission disagrees. The regulations pertaining to the BOG grants are not invalid. Regulations have a strong presumption of regularity.[47] Even though it was changed from a fee-offset grant program to a fee-waiver program by Statutes 1993, chapter 1124, the BOG fee program still exists. The BOG grant regulations, sections 58600 to 58630 of title 5 of the California Code of Regulations, cite to three statutes for their authority: Education Code sections 66700, 70901, and 72252. These statutes are still in effect, except that section 72252[48] has been amended and renumbered to section 76300.[49] With the authority for the regulations still in effect, the regulations are valid.[50]

As to DOF's contention that documenting eligibility is the responsibility of the student, not the institution, the Commission disagrees. As with fee waivers discussed above, a community college has no discretion to grant a BOG fee waiver. A student requirement to demonstrate financial need triggers a duty on the part of the college to waive the fee. Awarding the BOG fee waiver is a transaction,[51] and as such, cannot be achieved unilaterally.

Therefore, the Commission finds that waiving fees for students who apply for and are eligible for BOG fee waivers is a new program or higher level of service.

Districts are required to report to the CCC the number of and amounts provided for BOG fee waivers.[52] Because this is a new requirement, the Commission also finds that this reporting is a new program or higher level of service. (Cal. Code Regs., tit. 5, § 58611).

District reporting and accountability: Claimant pled California Code of Regulations, title 5, section 58630. Subdivision (a) of this section requires districts to identify separately in district accounts dollars allocated for financial assistance. Subdivision (b) requires adoption of procedures to document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations. The procedures must include rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Prior to adoption of section 58630, there was no requirement for community colleges to account for financial assistance funds separately in district accounts.

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[47] *Agricultural Labor Relations Board v. Superior Court (1976)* 16 Cal. 3d 392,411.

[48] Section 76300 was enacted by Statutes 1995, chapter 308 due to the sunset of the prior section 76300. The community college fee statute has been at section 76300 since 1993 (Stats. 1993, ch. 8). Prior to that, it was in section 72252 since its enactment in 1984 (Stats. 1983-1984xx, ch. 1).

[49] A renumbered or restated statute is not a newly enacted provision. Education Code section 3 provides that "The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments." *See* also *In re Martin's Estate* (1908) 153 Cal. 225, 229,which held: "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time."

[50] *Agricultural Labor Relations Board v. Superior Court, supra, 16* Cal.3d 392, 401.

[51] *Ante,* footnote 40.

[52] This regulation states this pertains to BOG grants, but it would apply to BOG fee waivers now.

In its 2/25/03 comments, DOF argues that these activities relate to the administration of the funding mechanism for the obsolete BOG grant program, which was replaced by the BOG fee-waiver program in 1993. Since a fee waiver does not involve exchange of funds, the activities are no longer required.

The Commission agrees that identifying dollars for financial assistance in separate district accounts pursuant to subdivision (a) is not a new program or higher level of service due to the BOG grant program's conversion to a BOG fee-waiver program. Fee waivers do not require dollars to be identified in district accounts as BOG grants did.

As to the activities in section 58630, subdivision (b), the Commission disagrees. It is possible for colleges to comply with this subdivision by documenting financial assistance provided on behalf of students, including rules to retain support documentation that would enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Therefore, the Commission finds that the following activities constitute a new program or higher level of service pursuant to section 58630 of title 5 of the California Code of Regulations: adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations, and including in the authorized procedures rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

BOG grant executive orders: Claimant originally alleged that the *Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual* ("BOG Fee Manual")[53] is a state mandate. The BOG Fee Manual is issued by the CCC to assist community college financial aid staff.[54]

The BOG fee manual was withdrawn by the claimant's representative at the hearing, so the Commission makes no finding on whether the activities listed therein constitute a new program or higher level of service.

In summary, the Commission concludes that the test claim legislation imposes new programs or higher levels of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h);

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[53] California Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-200 1 Program Manual, effective July 1, 2000 – June 30, 2001.

[54] A copy of the BOG Fee Manual and other forms are available at the California Community College Chancellor's Office website: <http://www.cccco.edu/divisions/ss/financial%20assistance/financial%5Fassistance.htm> [as of Jan. 7, 2003].

- Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal.Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Additional activities pled by claimant include: "entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems," and "determination of credit courses." These activities do not appear in the test claim statute or regulations and therefore would be more appropriately discussed in the parameters and guidelines. [55]

Issue 3: Do the test claim legislation and regulations impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose costs mandated by the state,[56] and no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 175 14 defines "costs mandated by the state" as follows:

> . . .any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, subdivision (d) precludes finding costs mandated by the state if after hearing, the Commission finds that the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Government Code section 17556, subdivision (e) precludes findings costs mandated by the state if the test claim statute provides for offsetting savings which result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund it.

Collection of enrollment fees (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.): In response to the *Enrollment Fee Collection* test claim, the DOF originally commented that it mostly agrees that the test claim statutes constitute a new program or higher level of service "because community college districts had not previously been required to collect enrollment fees from students." However, DOF concludes that reimbursement should be denied because the statutory scheme sets up a mechanism whereby community college

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[55] Government Code section 17557; California Code of Regulations, title 2, section 1183.1.

[56] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; Government Code section 175 14.

districts are automatically provided with funding for their costs of administering the program.[57] Since collection of enrollment fees is entwined with the entire admission process, DOF argues it would be extremely difficult or impossible to accurately isolate the tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes.

In its response, claimant first quotes the CCC's comments, which like the test claim, note that colleges are compensated in the amount of two percent of the enrollment fees collected for the cost of collecting the enrollment fee. Claimant cites the legislative history provided by the CCC that quoted the Legislative Analyst's conclusion that the two percent revenue credit was an insufficient reimbursement. Claimant goes on to quote the applicable provisions of Government Code section 17556, subdivisions (d) and (e), as follows:

> The Commission shall not find costs mandated by the state, as defined in section 175 14, in any claim submitted by a local agency or school district, if, after a hearing, the Commission finds that: [¶] . . . [¶]
> (d) The local agency or school district has the **authority to levy** services charges, fees, or assessments **sufficient to pay** for the mandated program or increased level of service.
> **(e) The statute or executive order provides for offsetting savings** to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs** of the state mandate in an **amount sufficient** to fund the cost of the state mandate. (Emphasis added by claimant).

Claimant asserts these two Government Code subdivisions require the Commission to make findings of law and fact. Regarding subdivision (d), it can be determined that as a matter of law, neither the test claim statutes nor other laws provide the "authority to levy service charges, fees, or assessments" for the collection of enrollment fees. The "revenue credit" is not a service fee, charge, or assessment upon the consumer (student) of a service provided by the college district. Regarding subdivision (e), as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute. However, as a matter of law, the test claim statutes did include "additional revenue that was specifically intended to fund the costs of the mandate" in the forrn of the revenue credit. According to the claimant, this begs the question of fact of whether the additional revenue is "sufficient to fund the cost of the state mandate," The entire cost to implement the mandate will vary from district to district, so it cannot be determined as a matter of fact that the revenue credit is sufficient for any or all districts. The claimant notes the revenue credit can in the usual course of the mandate process be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursement and funds, in this case, the two-percent revenue credit.

Regarding DOF's statement that the collection of enrollment fees is entwined with the entire admission process making it extremely difficult, if not impossible to accurately isolate the

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[57] Education Code, section 76300, subdivision (c) states that for purposes of computing apportionments to community college districts, the Chancellor shall subtract 98% of the revenues received by districts from enrollment fees from the total revenue owed to each district.

specific tasks involved with collecting enrollment fees, claimant notes this is without foundation, and is neither a statutory exception to reimbursement of costs mandated by the state, nor a practical argument. The parameters and guidelines determine which activities are reimbursable and the cost accounting methods to be used, and the claimants have the burden of complying with the parameters and guidelines, not the state. Also, enrollment fee collection involves a high volume of uniform transactions (collecting the fee) comprised of identifiable direct costs (staff time and forrns to collect the fee). After several years of data are accumulated, claimant asserts that this mandate would be a candidate for a uniform cost allowance.

The Commission finds the community colleges' revenue credit does not preclude reimbursement for the fee collection activities specified. Government Code section 17556, subdivision (d), by its express terms, only applies to "fees, or assessments **sufficient to pay** for the mandated program or increased level of service" (emphasis added). Likewise, subdivision (e) only applies to "revenue . . .in an amount **sufficient to fund** the cost of the state mandate" (emphasis added). The record indicates that the revenue credit is insufficient to fund these activities.

The test claim statute reads in pertinent part as follows:

> 76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section. [¶] . . . [¶]
> (c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

Claimant submitted a declaration that it incurred about $677,640 (or $4.60 per student) in staffing and other costs in excess of the two percent of the enrollment fees retained during July 1998 to June 1999.[58] The assertion of insufficient fee authority is supported by the LAO's legislative history submitted by the CCC.[59] Thus, the Commission finds that Government Code section 17556, subdivision (d) does not preclude reimbursement because the record indicates that the fee is not sufficient to pay for the program.

Similarly, the Commission finds that Government Code section 17556, subdivision (e) does not preclude reimbursement because there is nothing in the record to indicate that offsetting savings or additional revenue -- in this case the two percent revenue credit -- is sufficient to fund the mandate.[60]

The Commission disagrees with DOF's assertion that the Legislature made a valid determination that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes. DOF cites no authority for this proposition, nor is there statutory language in the test claim statute to support it.

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[58] Declaration of Carrie Bray, Director, Accounting Services, Los Rios Community College District, June 22, 2000.

[59] Office of the Legislative Analyst, analysis of Assembly Bill No. 1 (1983- 1984 2d Ex. Sess.) January 23, 1984, as submitted in the CCC comments.

[60] The two percent fee would be determined to be an offset in the parameters and guidelines per California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

Even if the Legislature had expressly determined the fee adequate, the determination would not prevent finding the existence of a mandate. Two cases have held legislative declarations unenforceable that attempt to limit the right to reimbursement. In *Carmel Valley Fire Protection District v. State of California,*[61] the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The *Carmel Valley* court called such language "transparent attempts to do indirectly that which cannot lawfully be done directly."[62] Similarly, in *Long Beach Unified School District v. State of California*,[63] the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement . . . [The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right."[64] If the Legislature could not prevent a mandate explicitly as the authorities indicate, it could not prevent one implicitly.

In its 8/30/02 comments on the draft staff analysis on the *Enrollment Fee Collection* test claim, DOF asserts that the community colleges have sufficient fee authority pursuant to Education Code section 70902, subdivision (b) (9), for enrollment fee collection. This statute covers fees of a governing board "as it is required to establish by law," or "as it is authorized to establish by law." The fees in existing law that fall within the authorization provided in section 70902, subdivision (b) (9) are for the following purposes: apprenticeship courses, health, parking and transportation, instructional materials, course auditing, student body center building and operations, fees for classes not eligible for state apportionments, and fees for physical education courses requiring use of nondistrict facilities.[65]

For fee authority pursuant to Education Code section 70902, subdivision (b) (9) to apply, it must be "required or authorized by law." There is nothing in the record to indicate the existence of any fee authority "required or authorized by law," for collecting enrollment fees other than that listed in Education Code section 76300. The record indicates this section 76300 authority is not "sufficient to pay for the mandated program" within the meaning of Government Code section 17556, subdivision (d). Therefore, the Commission finds that the fee authority in Education Code section 70902, subdivision (b) (9) does not preclude reimbursement under this test claim.

BOG fee waivers (Ed. Code, § 76300, subds. (g) & (h); Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.): DOF argues that costs associated with BOG fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Education Code section 76300, subdivision (i), states legislative intent to provide sufficient funds for fee waivers for every student who demonstrates eligibility pursuant to subdivisions (g) and (h) (referring to students who receive TANF, SSI/SSP or other general assistance or dependents or surviving spouses of members of the California National Guard who are killed or permanently disabled in the line of duty). This section also requires the Community Colleges Board of Governors, from funds in the annual budget act, to allocate to community

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[61] *Carmel Valley, supra*, 190 Cal.App.3d at page 521.

[62] *Id.* at page 541.

[63] *Long Beach Unified, supra,* 225 Cal.App.3d 155.

[64] *Id.* at page 184.

[65] Education Code sections 76350 through 76395.

colleges two percent of the fees waived under subdivisions (g) and (h) of section 76300. Finally, this section requires the Board of Governors to allocate from funds in the annual budget act ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Thus, DOF argues that costs associated with fee waivers should not be included in the test claim.

In its 9/25/01 comments on the *Enrollment* Fee *Waivers* test claim (00-TC- 15), DOF argued that funding is provided to cover costs associated with deterrnining eligibility for BOG fee waivers. DOF disputes the number of fee waiver determinations pled by claimant, estimating it to be roughly 36 percent of the number asserted by claimant. DOF also asserts that the average time to make a fee waiver is overstated by claimant, since students only need to demonstrate that they meet one of the seven criteria. DOF says it believes that the total cost of the BOG fee waiver determination is less than $70,000, and that the Glendale Community College District received $66,000 for Student Financial Aid Administration and $22,888 for Fee Waiver Administration, both allocated as authorized by Education Code section 76300, subdivision (i). DOF believes that eligibility determination is fully funded and not a reimbursable mandate.

In its 1 1/12/01 rebuttal to DOF's comments on *Enrollment Fee Waivers* (00-TC-15), claimant objects to DOF's comments as legally incompetent and in violation of California Code of Regulations, title 2, section 1183.02(d) because (1) they are not signed under penalty of perjury by an authorized representative that they are true and complete to the best of the representative's personal knowledge or information and belief, and (2) they are not supported by documentary evidence authenticated by declarations under penalty of perjury (Cal. Code Regs., tit. 2, § 1183.02 (c)(2).). Claimant argues that DOF's comments constitute hearsay.

Claimant also disputes DOF's assertion of revenue sufficient to fund any requirements for determining eligibility for BOG fee waivers. Claimant asserts that Government Code section 17556, subdivision (e), indicates that test claim statutes must include the offsetting revenue in the same legislation, and that claimant already identified the offsetting revenue in the test claim as 7 percent of the fees waived from July 1, 1999 through July 4, 2000 and at ninety-one cents ($0.91) per credit unit waived thereafter pursuant to Education Code section 76300, subdivision (i)(2). Claimant asserts that the cost to implement the mandate will vary from district to district so it cannot be determined if this identified revenue is sufficient for any or all of them.

The Commission finds that Education Code section 76300, subdivision (i), does not preclude finding a mandate for waiving fees pursuant to BOG fee waivers. Claimant's assertion in the record indicates that legislative allocations are not sufficient to pay for the waivers under the fee collection program. In sum, the Commission finds that neither Government Code section 17556, subdivisions (d) and (e), nor the statute's reimbursement mechanism, precludes reimbursement for costs associated with BOG fee waivers. Revenue as a result of Education Code section 76300, subdivision (i), or any other source, would be determined as offsetting revenue in the parameters and guidelines?

District reporting and accountability (Cal. Code Regs., tit. 5, § 58630.): In its 9/25/01 comments, DOF argues that the reporting and accounting activities do not constitute reimbursable mandates because claimant seeks reimbursement to document and account for funds allocated for collection of enrollment fees, but section 58630 only refers to identification

[66] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

and documentation of financial assistance, not enrollment fee collection. Therefore, any attempt to claim reimbursement for the accounting and documentation of enrollment fees should be denied. DOF also asserts that this activity receives funding from both the two percent funds for fee waiver administration and the seven percent fund for Student Financial Aid Administration.

DOF is correct in observing that section 58630 only pertains to financial assistance. As to prior receipt of funding, Education Code section 76300, subdivision (i)(2) states, "From funds provided in the annual Budget Act, the Board of Governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivision (g) and (h) **for determination of financial need and delivery of student financial aid services,** on the basis of the number of students for whom fees are waived." (Emphasis added.) This funding would be considered as an offset in the parameters and guidelines for this test claim.

In summary, there is nothing in the record to indicate that the Legislature repealed other programs or appropriated sufficient funds for enrollment fee collection or BOG fee waivers.

CONCLUSION

Based on the foregoing analysis, the Commission finds that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14 for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (g) and (h);
- Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal.Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

The Commission also finds that all other test claim statutes and regulations not cited above do not impose reimbursable state-mandated activities within the meaning of article XIII B, section 6 and Government Code section 17514.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 958 14.

April 25, 2003, I served the:

Adopted Statement of Decision
Enrollment Fee Collection, 99-TC- *13*
Los Rios Community College District, Claimant
Education Code Section 76300, Statutes 1984xx, Chapter 1 et al. ; California Code of Regulations, Title 5, Sections 58500 - 58508.
Enrollment Fee Waivers, OO-TC-15
Glendale Community College District, Claimant
Education Code Section 76300, Statutes 1984xx, Chapter 1 et al. ; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 - 58613, 58620, 58630

by placing a true copy thereof in an envelope addressed to:

Mr. Keith Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

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 April 25, 2003, at Sacramento, California.

Victoria Soriano
VICTORIA SORIANO