

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Education Code Sections 66010.2, 66010.7,¹
66721.5, 66731, 66732, 66736, 66738, 66740,
66742, 70902, 78015, and 78016

Statutes 1988, Chapter 973; Statutes 1991,
Chapter 1188; Statutes 1991, Chapter 1198;
Statutes 1998, Chapter 365; and Statutes 2000,
Chapter 187

California Code of Regulations, Title 5,
Sections 53203, 53207, 55001, 55002, 55005,
55006, 55150, 55201, 55202, 55750, 55751,
55753, 55753.5, 55753.7, 55754, 55755,
55756, 55756.5, 55757, 55758, 55759, 55760,
55761, 55764, 55800, 55805, 55805.5, 55806,
58102, 58104, and 58106

Register 91, Number 23; Register 93,
Number 25; Register 93, Number 42; Register
94, Number 38; Register 98, Number 7;
Register 2000, Number 50; Register 2002,
Number 8; and Register 2003, Number 18.

Period of reimbursement begins July 1, 2001,
or later for specified activities added by
subsequent statutes.

Case No.: 02-TC-25 and 02-TC-31

Minimum Conditions for State Aid

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted April 19, 2013)

(Served April 23, 2013)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on April 19, 2013.

¹ During the September 28, 2012 Commission hearing, the Commission severed the reimbursable state-mandated new programs or higher levels of service imposed by Education Code sections 66010.2 and 66010.7 from the *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) parameters and guidelines in order to include those activities with the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) parameters and guidelines. See the adopted statement of decision and parameters and guidelines for *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) at <<http://www.csm.ca.gov/pendingclaims/docs/dcp/doc78.pdf>> as of October 24, 2012.

Keith Peterson appeared on behalf of Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, test claimants. Christian Osmena appeared on behalf of the Department of Finance.

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

The Commission adopted the parameters and guidelines and statement of decision by a vote of 6 to 0.

Summary of the Mandate

The *Minimum Conditions for State Aid* program addresses standards for the formation and basic operation of the California Community Colleges. On May 26, 2011, the Commission adopted a statement of decision finding that the test claim statutes and regulations impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission separated the activities found to be reimbursable into the following seven program areas: (1) faculty participation in district and college governance; (2) transfer centers in community colleges; (3) vocational education; (4) standards of scholarship; (5) curriculum; (6) degrees and certificates; and (7) open courses.

The Commission approved this test claim for the reimbursable activities associated with the newly required standards for the formation and basic operation of community college districts identified on pages 150-164 of the Commission's statement of decision on the test claim and those activities are included in the parameters and guidelines.

In addition, at the September 28, 2012 Commission hearing, the Commission severed the reimbursable state-mandated new programs or higher levels of service imposed by Education Code sections 66010.2 and 66010.7, which address student equity in education, from the *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) parameters and guidelines in order to include those activities with the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) parameters and guidelines.²

II. Procedural History

The test claim statement of decision was adopted on May 26, 2011.³ Pursuant to Government Code section 17557 and Section 1183.11 of the Commission's regulations, the claimants submitted proposed parameters and guidelines to the Commission on June 16, 2011. The State Controller's Office (SCO) and the Department of Finance (Finance) filed comments on the proposed parameters and guidelines on July 22, 2011 and December 7, 2011, respectively.⁴ A draft proposed statement of decision and parameters and guidelines were issued for comment on

² Adopted statement of decision and parameters and guidelines for *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31), at <<http://www.csm.ca.gov/pendingclaims/docs/dcp/doc78.pdf>> as of October 24, 2012.

³ Exhibit A, statement of decision for *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31), at <<http://www.csm.ca.gov/sodscan/060111c.pdf>> as of October 24, 2012.

⁴ Exhibits C and D.

December 6, 2012.⁵ SCO filed comments on the draft proposed statement of decision and parameters and guidelines on December 18, 2012.⁶ The claimant filed comments on the draft on December 26, 2012.⁷

Position of the Parties

Claimants' Position

The claimants propose separating the parameters and guidelines into the following nine separate single subject parameters and guidelines: (1) Academic Standards; (2) Co-requisite Courses; (3) College Catalog; (4) Curriculum Standards; (5) Degrees and Certificates; (6) Open Courses; (7) Shared Governance; (8) Transfer Centers; and (9) Vocational Education Programs. The claimants also filed substantive comments on the draft proposed statement of decision and parameters and guidelines, which are summarized and addressed in the analysis below.

Position of the State Controller's Office

On July 22, 2011, SCO submitted comments raising three substantive issues regarding the claimants' proposed parameters and guidelines. First, the SCO recommends that all of the reimbursable activities from the *Minimum Conditions for State Aid* program be placed into one set of parameters and guidelines in order to avoid confusion, simplify future amendments if necessary, and to maintain consistency. Second, SCO points out that the Commission partially approved activities falling under seven programmatic categories, however, the claimants propose separating the approved activities into nine programmatic categories and moving some of the activities under categories that differ from the Commission's statement of decision on the test claim. SCO recommends using only the seven categories from the Commission's statement of decision on the test claim and to leave the same reimbursable activities under these categories in order to reduce confusion. Third, SCO notes that activities that were not found to be reimbursable were included in the claimants' proposed parameters and guidelines. The SCO asserts that these activities need to be removed because they are non-reimbursable activities. In response to the draft proposed statement of decision and parameters and guidelines, SCO requested clarification whether the activities are required to be reimbursed based on a one-time or ongoing basis.

Position of the Department of Finance

On December 7, 2011, the Department of Finance (Finance) submitted comments on the claimants' proposed parameters and guidelines. Finance's comments raises concerns in regard to the following four programmatic areas in which the claimants have separated the activities: (1) Curriculum Standards; (2) Open Courses; (3) Shared Governance; and (4) Transfer Centers.

In regard to "Curriculum Standards," Finance notes that the claimants have combined the reimbursable activity imposed by Education Code section 70902(b)(2)(A) with the language of Education Code section 70902(b)(2)(B). Finance argues that this causes confusion as to what the reimbursable activity actually is, and requests that the activities be separated to avoid confusion.

⁵ Exhibit E.

⁶ Exhibit F.

⁷ Exhibit G.

In the claimants' proposed parameters and guidelines for "Open Courses," the claimants have included reference to the *Discrimination Complaint Procedures* (02-TC-46) parameters and guidelines in activities associated with a student challenging course enrollment requirements. Finance argues that the *Minimum Conditions for State Aid* parameters and guidelines should explicitly state what is needed instead of referencing the parameters and guidelines of a separate mandate in order to avoid any confusion and inappropriate claims. As a result, Finance requests that references to the *Discrimination Complaint Procedures* parameters and guidelines be removed and that appropriate language be added to state what is needed.

In regard to "Shared Governance," Finance argues that reimbursements received by a school district from the Academic Senate for the release time of faculty serving as president and vice president for the Academic Senate should be identified as an offsetting revenue source. In addition, Finance argues that the claimants have included activities that are not reimbursable in the "Shared Governance" and "Transfer Centers" parameters and guidelines proposed by the claimants. Finance requests the removal of these activities.

III. Commission Findings

The test claim statement of decision, the claimants' proposed parameters and guidelines, and comments filed by the SCO and Finance were reviewed and considered by the Commission as discussed below.

A. Claimants' Proposal to Adopt Nine Sets of Parameters and Guidelines

The claimants' proposed parameters and guidelines separates the parameters and guidelines into the following nine separate single subject parameters and guidelines: (1) Academic Standards; (2) Co-requisite Courses; (3) College Catalog; (4) Curriculum Standards; (5) Degrees and Certificates; (6) Open Courses; (7) Shared Governance; (8) Transfer Centers; and (9) Vocational Education Programs. The claimants state that issuing "[s]eparate single-subject parameters and guidelines will reduce confusion when the districts collect documentation for the annual claims and facilitate amendments required by any future legislation or litigation."⁸

Additionally, the claimants propose reorganizing, and in some cases splitting, some of the activities within and among the separate subject parameters and guidelines. The claimants also propose adding activities not specifically found to impose reimbursable state-mandated activities in the proposed parameters and guidelines.

The Commission denies the claimants' proposal to issue nine separate single subject parameters and guidelines and to reorganize and split the approved activities among the separate subject parameters and guidelines for the following reasons: (1) the separation of the parameters and guidelines into separate single subject parameters and guidelines unnecessarily separates the reimbursable activities approved in the *Minimum Conditions for State Aid* test claim, which are already delineated under subject headings consistent with the test claim statement of decision and the Education Code and regulations; and (2) the benefit of adding additional subject headers and reorganizing the activities approved is outweighed by the added confusion created by these proposals.

⁸ Exhibit B, parameters and guidelines proposed by the claimants, dated June 16, 2011.

In the statement of decision for the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) the Commission organized the approved activities into seven separate categories based on subject matter. The headers identifying each category sufficiently delineate the approved activities in the statement of decision for the test claim.

In addition, any benefit arising from creating two new subject matter headings, renaming other headings, and reorganizing and splitting the activities approved in the statement of decision for the test claim within and among nine separate parameters and guidelines is outweighed by the confusion that arises from the claimants' proposal. The Commission organized the approved activities based on subject matter, organization that exists within the Education Code and California Code of Regulations, and the order in which the code sections and regulations were analyzed within the statement of decision of the test claim. The claimants' proposal to reorganize and split the approved activities between nine separate subject matter parameters and guidelines would cause confusion as to the meaning of activities meant to be read in context. In addition, the proposal makes it difficult to trace the activity back to the statement of decision for the test claim in the event of such confusion. The statements of decision adopted for the test claim and parameters and guidelines provide the legal and factual basis for the parameters and guidelines.

In response to the draft staff analysis and proposed parameters and guidelines, claimants "concede" the issue of having nine sets of parameters and guidelines, and instead urge the Commission to adopt seven distinct sets of parameters and guidelines based on the seven programs determined by the Commission to be reimbursable. The claimants explain their proposal as follows:

First, nearly all of the seven programs have a requirement to adopt and publish policies and procedures (usually in the student catalog and class schedule which are mass printed each year). The test claimants' proposed to detach the printing and publication activities from the adoption portion, thus creating an eighth "program ("College Catalog") in order to utilize more precise cost accounting methods, and perhaps establish a future unit cost allowance, for the cost of printing the required notification to students based on each document in which the policies and procedures are published. Adoption of policies is labor-based (staff time to draft and present the material to the governing board), whereas publication is based on materials and supplies (the number of pages and the number of copies distributed). There are distinct methods of cost accounting for both types of costs. The second departure from the arrangement in the statement of decision and the source of the test claimants' ninth program ("Corequisites Courses") is that two activities would be removed from the DSA "Curriculum" (Program 5) group of activities in order to facilitate the cost accounting for the corequisite course load.

However, both the DSA and the Controller's July 22, 2011, letter state that the arrangement of the content into the nine programs is confusing. The DSA (8) states that in the interest of simplicity and clarity the activities approved by the statement of decision should be listed in the seven program areas. If they must concede the issue of the nine programs, the test claimants propose separate parameters and guidelines based on the seven programs. The activities for the seven programs are distinct (even if badly organized in the regulations for purposes of cost accounting) and are independently implemented. This is the

same factual circumstance that promoted the September 28, 2012, adoption of three separate parameters and guidelines from the one statement of decision for *Discrimination Complaint Procedures*. Separate single-subject parameters and guidelines will reduce confusion when the districts collect documentation for the annual claims and facilitate amendments required by any future legislation or litigation. Further, some of the seven programs may be amenable to a reasonable reimbursement method (unit cost) in the future as we gain a history of the actual costs from filed annual claims.⁹

The Commission's adoption of separate sets of parameters and guidelines for one test claim is very rare. In recent years, it has occurred only twice for the following programs; *Discrimination Complaint Procedures* and *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* ("*Pupil Expulsions II*," CSM 96-358-03, et al.). The parameters and guidelines for *Discrimination Complaint Procedures* were adopted as separate sets of parameters and guidelines for each program area because of the different subject areas approved in the claim, the different periods of reimbursement for each subject area, and because neither the Department of Finance nor the State Controller's Office objected to the proposal. The statement of decision for the parameters and guidelines for that claim states the following:

Based on the number of activities approved in this test claim and the varying subjects that the reimbursable activities address, the Commission generally agrees with the claimants' proposals regarding the adoption of separate parameters and guidelines based on subject matter and on the period of reimbursement in order to reduce confusion in the claiming process. Neither the Department of Finance nor the State Controller's Office has filed an objection to the separation recommended for these parameters and guidelines. However, the Commission adopts three separate parameters and guidelines for the equal employment opportunity activities based on fiscal year. One for costs incurred during the 2001-2002 fiscal year, a second set for costs incurred during the 2002-2003 fiscal year, and a third set for costs incurred in fiscal year 2003-2004 and subsequent fiscal years.¹⁰

In *Pupil Expulsions II*, separate sets of parameters and guidelines were adopted, without objection, to isolate the claims and activities that had different effective dates and, thus different periods of initial reimbursement, for the initial period of reimbursement. These sets were eventually consolidated in *one* set of parameters and guidelines with *Pupil Expulsions I* for future claiming.¹¹

Although this case also presents a situation where there are multiple programs approved for reimbursement, the claimants' proposal to adopt separate sets of parameters and guidelines is not compelling. Unlike the other two programs discussed above, there are not several different periods of reimbursement at issue in this claim. Here, reimbursement for a majority of activities

⁹ Exhibit G.

¹⁰ *Discrimination Complaint Procedures* (02-TC-46), statement of decision on parameters and guidelines, page 7.

¹¹ See, <http://www.csm.ca.gov/agendas/102711/item7.pdf>, for the statement of decision adopted October 27, 2011, on the parameters and guidelines for *Expulsions II*.

begins July 1, 2001. Only one approved regulation, section 53207 of the Title 2 regulations, has a different period of reimbursement that begins April 11, 2003. The parameters and guidelines clearly indicate each different program area by separate headers, and all reimbursable activities continue to be eligible for reimbursement. Moreover, unlike *Expulsions II*, there is not a preexisting mandated program that can be consolidated with this claim for future claiming. Thus, multiple sets of parameters and guidelines would not, as suggested by claimants, make it easier and would, in fact, require the State Controller's Office to issue multiple sets of claiming instructions pursuant to Government Code section 17558. The State Controller's Office objects to the adoption of multiple sets of parameters and guidelines for this claim, stating the following:

For uniformity, only one set of proposed Ps and Gs should be approved for a particular mandate. We recommend putting all reimbursable activities from Minimum Conditions for State Aid mandate into one set of Ps and Gs, which is the standard practice for mandate programs. This will avoid confusion, simplify future amendments if necessary, and maintain consistency.¹²

Therefore, in the interests of consistency with the statement of decision on the test claim and clarity in understanding the reimbursable activities, the Commission denies the claimants' proposal to adopt nine sets of parameters and guidelines, and instead adopts one set of parameters and guidelines.

B. Reimbursable Activities (Section IV of the Parameters and Guidelines)

The following discussion addresses claimant's proposed activities and non-substantive, technical changes made to the reimbursable activities for the purposes of clarification, consistency, and conformity to the test claim statement of decision and the statutory and regulatory language.

1. Participation in District and College Governance (Ed. Code, §§ 66010.2(b), 70902(b)(7) and (b)(14), and Cal. Code Regs., tit. 5, §§ 53203 and 53207)

For purposes of clarification, the title for the activities listed under "Faculty Participation in District and College Governance" in the statement of decision for the test claim has been changed in the parameters and guidelines to "Participation in District and College Governance." Although most of the reimbursable activities contained in this section of the statement of decision for the test claim are limited to faculty participation in district and college governance, the activity imposed by Education Code section 70902(b)(7) is not limited to faculty, but also includes the establishment of procedures for staff and student participation in college governance.

a. One-time activities

The statement of decision on the test claim approved reimbursement for the establishment and adoption of the following policies related to the participation in district and college governance issues:

- Establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure that these opinions are given every reasonable consideration,

¹² Exhibit C.

and to ensure the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

The procedures established shall be consistent with the minimum standards set forth in California Code of Regulations, title 5, sections 53200-53207 (for faculty), 51023.5 (for staff), and 51023.7 (for students). (Ed. Code, § 70902(b)(7) (Stats. 1988, ch. 973).)

- Adopt policies for appropriate delegation of authority and responsibility to its college or district academic senate.

Policies must provide, at a minimum, that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. (Cal. Code Regs., tit. 5, § 53203(a) (Register 94, No. 38).)

- Adopt procedures for responding to recommendations of the academic senate that incorporate the following:
 - a. In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate. (Cal. Code Regs., tit. 5, § 53203(d)(1) (Register 94, No. 38).)
 - b. In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons. (Cal. Code Regs., tit. 5, § 53203(d)(2) (Register 94, No. 38).)

The claimants raise an issue with respect to the first activity required by Education Code section 70902(b)(7), to “establish procedures to ensure faculty, staff and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.” The claimants propose including language in the parameters and guidelines that paraphrases or quotes the requirements of California Code of Regulations, title 5, sections 51023.5(a)(3) and (4), and 51023.7(a)(1)-(3). This language includes the adoption of policies and procedures that provide district and college staff and students the opportunity to participate effectively in district and college governance, and the opportunity to participate in the formulation and development of district and college policies and procedures that have or will have a significant effect on staff or students. The claimants also urge the Commission to approve reimbursement to implement the

mandate, arguing that “the requirement to establish a policy compels implementation as a practical matter or [the policy] is without legal significance.”¹³

Finance argues that the claimants’ proposal incorrectly allows for costs associated with activities related to California Code of Regulations, title 5, sections 51023.5 and 51023.7. Finance states:

While the Commission identified state-mandated activities related to Education Code 70902(b)(7) which directs districts to establish procedures consistent with CCR, title 5, sections 51023.5 and 51023.7, the activities associated with these regulations are not mandated activities because [community college districts] do not face practical compulsion to comply.¹⁴

Finance is correct. Education Code section 70902(b)(7) provides in relevant part:

[T]he governing board of each community college district shall do all of the following:

[¶] ... [¶]

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level

The language of Education Code section 70902(b)(7) does not specifically cite to California Code of Regulations, title 5, sections 53200-53207 (for faculty), 51023.5 (for staff), and 51023.7 (for students). References to the regulation sections are included for purposes of clarifying for the parties where the minimum standards established by the Board of Governors were located at the start of the reimbursement period for this test claim. The statement of decision for the test claim, however, contains a finding that sections 51023.5 and 51023.7 of the regulations do not independently impose state-mandated activities because: (1) the requirements contained in the sections are triggered by a district’s underlying discretionary decision; and (2) there is no evidence of practical compulsion to comply with the requirements.¹⁵ The test claim statement of decision states the following:

Education Code section 70902, subdivision (b)(7), requires community college districts to establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards. The procedures that community college districts are required to establish must be consistent with the minimum standards established by the Board of Governors. The minimum standards regarding faculty are set forth in title 5, sections 53200-53207, discussed below. In contrast, the minimum standards established by the Board of Governors addressing staff and student participation are set forth in title 5, sections 51023.5 and 51023.7, which the Board of Governors established as

¹³ Exhibit G.

¹⁴ Exhibit D.

¹⁵ Exhibit A, Statement of Decision, pgs. 26-30.

minimum conditions, satisfaction of which entitles a district to state aid. As a result, although the requirements of title 5, sections 51023.5 and 51023.7, do not independently impose state-mandated activities, Education Code section 70902, subdivision (b)(7), requires that community college districts establish policies to ensure staff and students the opportunity to participate in college governance, that are consistent with sections 51023.5 and 51023.7. (Underline added.)

Thus, as the Commission determined, although the requirements of title 5, sections 51023.5 and 51023.7 do not independently impose state-mandated activities, Education Code section 70902(b)(7) requires that community college districts establish policies to ensure staff and students the opportunity to participate in college governance that are consistent with sections 51023.5 and 51023.7 in order for the procedures to be consistent with the minimum standards adopted by the Board of Governors. Thus, the claimants' proposed language, which would entitle claimants to reimbursement to implement the procedures, goes beyond the scope of the mandate in Education Code section 70902(b)(7), and conflicts with the Commission's determination that the activities required by sections 51023.5 and 51023.7 of the Title 5 regulations are not eligible for reimbursement. The reimbursable activity found to be imposed by Education Code section 70902(b)(7) is the *establishment of procedures* to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, *not* the subsequent *process or implementation of the procedures* that allow faculty, staff, and student participation in formulating and developing any subsequent district and college policies and procedures.

In addition, where the requirements of a set of laws are incorporated by general reference to the entire set of laws rather than by reference to specific sections in the set, the referring statute or regulation takes the law referred to not only in its contemporary form but also as it may be changed in the future or eliminated altogether by repeal.¹⁶ Education Code section 70902(b)(7) incorporates the minimum standards regarding faculty, staff, and student participation by general reference to the "minimum standards" established by the Board of Governors. Thus, the reimbursable activity takes the minimum standards referred to not only in its contemporary form but also as it may be changed in the future or eliminated altogether by repeal. In this respect, claimants correctly point out that a new test claim, or parameters and guidelines amendment, would not be necessary to reflect changes made to the "minimum standards" established by the regulations of Board of Governors for purposes of the activity to establish procedures pursuant to Education Code section 70902(b)(7).¹⁷ The mandate comes from Education Code section 70902(b)(7) to establish procedures, and not from the regulations. A new test claim or parameters and guidelines amendment may only be necessary if section 70902(b)(7) is amended or repealed.

Thus, including language in the parameters and guidelines that paraphrases the content of title 5, sections 51023.5 and 51023.7, as they exist at any specific time would improperly limit or expand the scope of what is required by Education Code section 70902(b)(7). As a result, the Commission does not adopt the claimants' proposed language.

In addition, the SCO requests clarification on whether these activities are reimbursable on a one-time or ongoing basis. Historically, the Commission has determined that a mandate to establish

¹⁶ *People v. Eddy* (1995) 32 Cal.App.4th 1098, 1105-1106.

¹⁷ Exhibit G.

or adopt policies and procedures is a one-time activity, unless otherwise evident in the law that the activity is intended as an ongoing requirement, or there is evidence in the record showing the reasonable necessity that the policies and procedures require ongoing revision. Here, there is no indication in the law or the record to support a finding that the establishment and adoption of these policies and procedures is an ongoing activity. Accordingly, the parameters and guidelines identify the following one-time activities under the header “Participation in District and College Governance”:

1. Establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

The procedures established shall be consistent with the minimum standards established by the Board of Governors. The minimum standards are set forth in California Code of Regulations, title 5, sections 53200-53207 (for faculty), 51023.5 (for staff), and 51023.7 (for students).

Except for those ongoing activities listed below in 1(b), reimbursement is not required to implement the procedures. (Ed. Code, § 70902(b)(7), Stats. 1988, ch. 973.)

2. Adopt policies for appropriate delegation of authority and responsibility to its college or district academic senate.

Policies must provide, at a minimum, that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. (Cal. Code Regs., tit. 5, § 53203(a), Register 94, No. 38.)

3. Adopt procedures for responding to recommendations of the academic senate that incorporate the following:
 - a. In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate. (Cal. Code Regs., tit. 5, § 53203(d)(1), Register 94, No. 38.)
 - b. In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons. (Cal. Code Regs., tit. 5, § 53203(d)(2), Register 94, No. 38.)

b. Ongoing Activities

1) Addition of activity required by Education Code section 66010.2(b)

At the September 28, 2012 Commission hearing, the Commission severed the reimbursable state-mandated new programs or higher levels of service imposed by Education Code sections 66010.2 and 66010.7, which address student equity in education, from the *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) parameters and guidelines in order to include those activities with the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) parameters and guidelines.¹⁸ In the statement of decision for the *Discrimination Complaint Procedures* test claim, the Commission found Education Code section 66010.2(b) imposes the following reimbursable activity:

Provide all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens, in community college programs. (Ed. Code, § 66010.2(b) (Stats. 1991, ch. 1198).)

In the draft analysis for this item, the above activity was placed in the “Curriculum” section with the activity required by Education Code section 70902(b)(2)(A), to provide as follows:

Establish policies for and approve educational programs. When doing so, provide~~Provide~~ all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens, ~~in community college programs.~~ (Ed. Code, § 66010.2(b) (Stats. 1991, ch. 1198) and Ed. Code, § 70902(b)(2)(A) (Stats. 1988, ch. 973).)

The claimants object to this language, arguing that the activity “to provide” all students the opportunity to address issues, including ethical issues central to their full development as responsible citizens, is a program activity to be implemented as part of the stated goals for community college districts to provide quality teaching and programs of excellence. The claimants argue that the plain language of section 66010.2(b) independently imposes the state mandate “to provide,” and not merely to adopt policies to do so.

The Commission agrees with the claimants on this point. Neither the plain language of section 66010.2(b), nor the Commission’s decision in *Discrimination Complaint Procedures* requires that this activity be stated as policy; the plain language requires the following: “The commitment to academic excellence shall provide all students the opportunity to address issues, including ethical issues, that are central to their full development as responsible citizens.”

The claimants also suggest that the activity is more appropriately placed under the section on “Participation in District and College Governance.” The Commission agrees with this proposal. The program on “Participation in District and College Governance” already includes the one-time activity to establish procedures to ensure students have the opportunity to express their opinions at the campus level, which similarly addresses the ongoing activity required by section 66010.2(b), to provide students the opportunity to address issues, including ethical issues, central to their full development as responsible citizens.

¹⁸ Adopted statement of decision and parameters and guidelines for *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31), at <<http://www.csm.ca.gov/pendingclaims/docs/dcp/doc78.pdf>> as of October 24, 2012.

2) *Clarifying changes to the activities imposed by California Code of Regulations, title 5, section 53207*

California Code of Regulations, title 5, section 53207, provides for the release or reassigned time of faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges (ASCCC) and the process for community colleges to get reimbursement from the ASCCC for the release or reassigned time. The Commission's statement of decision on the test claim, at pages 39 and 40, contains the following findings:

The ASCCC has been established through ratification by local academic senates, and that the ASCCC is recognized by the Board of Governors as the representative of community college academic senates before the Board of Governors.¹⁹ The purpose of the ASCCC is to provide community college faculty with a formal and effective procedure for participating in the formation of *state* policies on academic and professional matters.

Title 5 section 53207 provides for the release or reassignment of faculty members elected to serve as president and vice president of the ASCCC, and for the reimbursement of the districts employing the faculty members elected by the ASCCC. Section 53207 provides:

This section shall only be operative during any fiscal year in which sufficient funds are provided therefore to the ASCCC in the annual Budget Act for that fiscal year or other legislation.”²⁰

The claimants note that the sufficiency of the amount provided to the ASCCC is determined by the state, and that when funding is provided it is unclear whether reimbursements provided pursuant to section 53207 fully reimburse all costs for releasing faculty members. [Footnote omitted.] The Commission agrees. Thus, the Commission finds that title 5 section 53207 requires community college districts to engage in the following state-mandated activities, subject to offsets for reimbursement provided by the ASCCC for release and reassignment time:

1. Grant faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges release or reassigned time from their terms of office. This activity is subject to offsetting revenue from reimbursement of release or reassigned time and administrative costs for hiring faculty to replace the faculty serving as president or vice president pursuant to title 5 section 53207, subdivision (b) (Register 2003, No. 18). (Cal. Code Regs., tit. 5, § 53207(a) (Register 2003, No. 18).)
2. Identify release or reassigned time prior to September of each year for employees elected to serve as president and vice president of the Academic Senate of the

¹⁹ California Code of Regulations, title 5, section 53206.

²⁰ California Code section 53207, subdivision (f). During the fiscal year in which the reimbursement period for this test claim begins (2001-2002 fiscal year), \$497,000 was provided for reimbursement per California Code of Regulations, title 5, section 53207 (see, the 2001-02 Budget Act line-item 6870-101-0001, schedule (13)).

California Community Colleges for reimbursement at the part-time replacement cost. (Cal. Code Regs., tit. 5, § 53207(c) (Register 2003, No. 18).)

3. If the release or reassigned time need identified by the district is 100 percent and the position is in a hard to replace discipline area, certify this to the Chancellor by August 1 for reimbursement at the full-time temporary replacement cost of the employee released. (Cal. Code Regs., tit. 5, § 53207(c) (Register 2003, No. 18).)

Funding has continued to be appropriated in the budget for the ASCCC since the beginning of the period of reimbursement for this claim and, thus, the activities required by section 53207 continue to be operative. As noted in the statement of decision on the test claim, \$497,000 was appropriated to the ASCCC for section 53207 in fiscal year 2001-2002 through line item 6870-101-0001. That appropriation continued until fiscal year 2008-2009. The amount appropriated was reduced in fiscal year 2009-2010 to \$317,560 (item 6870-101-0001, schedule (10)) and then has continued at \$318,000 since fiscal year 2010-2011.

Claimants continue to urge the Commission, for purposes of the parameters and guidelines, to approve reimbursement for the cost of replacement of the released or reassigned faculty member, minus any offsetting revenue provided pursuant to section 53207 of the regulations.²¹ The Commission agrees that the statement of decision on the test claim, on the pages cited above, approved reimbursement for the replacement cost of the faculty member serving on the Academic Senate, offset by the cost of reimbursement received from the ASCCC. The amount of reimbursement to a community college district for the replacement cost of the faculty member will depend, however, on whether the release or reassigned time need is 100 percent, as determined by ASCCC under subdivision (b), and whether the faculty member's position is in a hard-to-replace discipline area. This determination can be made on a yearly basis by the Chancellor following the submittal of a certification from a community college district. If the Chancellor determines that the release or reassigned time need is 100 percent and the position is in a hard-to-replace discipline area, then the Chancellor can authorize reimbursement at the *full-time temporary replacement cost*. If these conditions are not met, the community college district is eligible for the *part-time replacement cost* of the faculty member serving as president or vice-president of the academic senate. Any amounts reimbursed by the ASCCC to a community college district for the replacement costs of the faculty member are offsetting revenue that must be identified and deducted from the claim.

In addition, section 53207(c) states that "districts shall be reimbursed by the ASCCC for reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice-president of the ASCCC." Finance argues that because California Code of Regulations, title 5, section 53027, provides for reimbursement by the ASCCC for the reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the Academic Senate the second and third activities listed above should be subject to the offsetting revenue provided by the Academic Senate. The Commission agrees. The second and third activities are administrative processes associated with seeking reimbursement from the ASCCC *to replace* the faculty serving in the Academic Senate.

²¹ Exhibit G.

For purposes of clarification and consistency with the plain language of the regulation and the Commission’s statement of decision on the test claim, the language in the parameters and guidelines for these activities and costs has been modified to state the following:

4. *Beginning April 11, 2003*, grant faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges release or reassigned time from their local responsibilities by the district by which they are employed during their terms of office. (Cal. Code Regs., tit. 5, § 53207 (Register 2003, No. 18).) Reimbursement is eligible for the following activities and costs:
 - a) Identify the part-time replacement cost prior to September of each year for employees elected to serve as president and vice president of the Academic Senate of the California Community Colleges.
 - b) If the release or reassigned time need identified is 100 percent and the position is in a hard to replace discipline area, certify this to the Chancellor by August 1 for reimbursement at the full-time temporary replacement cost of the employee released.

The costs to perform activities a) and b) are subject to any offsetting revenue provided the district from the Academic Senate of the California Community Colleges for the reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the Academic Senate.
 - c) The replacement cost of the faculty member serving as president or vice-president of the Academic Senate of the California Community Colleges is eligible for reimbursement, offset by any funds appropriated to the Academic Senate of the California Community Colleges (line item 6870-101-0001) and provided to the district at either the part-time replacement rate or the full-time temporary replacement rate pursuant to section 53207(c).

2. Transfer Centers (Ed. Code, §§ 66010.7, 66721.5, 66731, 66732, 66736, 66738, 66740, and 66742)

a. One-time activities

The statement of decision on the test claim approved reimbursement for the following activity:

Declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732 (Stats. 1991, ch. 1188).)

The plain meaning of “declare” is to “make known publicly, formally, or explicitly, [especially] by language.”²² In the context of the governing board of a community college district, making something formally known as policy is in essence the adoption of a policy. Moreover, there is no evidence in the plain language of this statute, or evidence provided in the record, to suggest that this activity is an ongoing requirement. Thus, the parameters and guidelines include the following one-time activity:

²² Webster’s Third New International Dictionary (1993) p. 586.

Adopt as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within community colleges, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732 (Stats. 1991, ch. 1188).)

The Commission also approved reimbursement for the activity of “formally acknowledging student matriculation from community colleges through the University of California and California State University as a central institutional priority of all segments of higher education” pursuant to Education Code section 66731. This activity is identified as a one-time activity in the parameters and guidelines. There is no evidence in the plain language of this statute, or evidence provided in the record, to suggest that this activity is an ongoing requirement.

b. Ongoing activities

1) Clarifying changes to the activities imposed by Education Code sections 66721.5(a)(1), and 66721.5(b),(c), and (d)

For purposes of clarification, the Commission makes the following changes to the activities imposed by Education Code sections 66721.5(a)(1) and 66721.5(b), (c), and (d):

- a. ~~The governing board of each community college district~~ Provide direction to the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum (Ed. Code § 66721.5(a)(1), Stats. 2000, ch. 187.)
- b. Distribute a copy of the current transfer core curriculum to each community college student who is enrolled in a degree or certification program and is physically in attendance at the institution. ~~(Ed. Code § 66721.5(b) (Stats. 2000, ch. 187).)~~

Include the text of the current transfer core curriculum in the published class schedule for each academic term, or distribute the transfer core curriculum during the registration process, or by mail, or during the issuance of student identification cards, or during student orientation programs (Ed. Code § 66721.5(b), (c) and (d), Stats. 2000, ch. 187.)

The Commission combines the activities imposed by Education Code section 66721.5(b),(c), and (d) because subdivisions (c) and (d) are ways in which community college districts distribute copies of the current transfer core curriculum to each student. These amendments are consistent with the Commission’s statement of decision on the test claim.

2) Clarifying changes to the activity imposed by Education Code section 66736

Education Code section 66736, as added in 1991, states the following:

Each community college district governing board shall ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

All policies and procedures shall give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students

from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations.

The Commission approved reimbursement for the following activity relating to the transfer of community college students to the CSU or UC system:

Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students. All policies and procedures adopted for this purpose must give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations. (Ed. Code, § 66736 (Stats. 1991, ch. 1188).)

The claimants propose amending the approved activity imposed by Education Code section 66736, by including activities derived from California Code of Regulations, title 5, section 51027. The claimants contend that section 51027 implements and defines the scope of what is required by Education section 66736 to ensure that the colleges maintain student transfer counseling centers and services.²³ The Commission disagrees with the claimants' proposal.

Section 51027 of the regulations requires the governing board of each community college district, *as a condition to be entitled to state aid*, to direct the development and adopt a transfer center *plan* that describes the activities and services provided to students by the transfer center. The plan is required to include components describing the services to students, with an emphasis on underrepresented students; facilities to house the transfer center; staffing; creation of an advisory committee to develop and implement the ongoing operation of the transfer center; and plans for the evaluation of the program and annual reporting to the Chancellor.

The Commission did not specifically address the language of section 51027 in the statement of decision for the test claim, but denied all of sections 51000 et seq. of the Title 5 regulations, including section 51027, because these regulations establish the rules and regulations fixing and affirming the *minimum conditions, satisfaction of which entitles a district* maintaining community colleges *to receive state aid* for the support of its community colleges. The Commission determined that these regulations do not impose a state-mandated program on community college districts, pursuant to the California Supreme Court's decision in *Kern High School Dist. and Department of Finance v. Commission on State Mandates (POBRA)*, because (1) the requirements contained in the section are triggered by a district's underlying discretionary decision to be entitled to state aid; and (2) there is no evidence of practical compulsion to comply with the requirements.²⁴ Since section 51027 was denied, reimbursement for the development and adoption of a transfer center plan required by section 51027 would conflict with the Commission's statement of decision. Reimbursement is not required to develop and adopt a transfer center plan, and this limitation is provided in the parameters and guidelines.

The statement of decision on the test claim, however, did not contain an analysis of what the Legislature meant when it directed community college districts to "ensure that its college or

²³ Exhibit G.

²⁴ Exhibit A, Statement of Decision, pgs. 22-30.

colleges-maintain student transfer counseling centers or other counseling and student services at its college or colleges designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.” And there are no regulations expressly implementing Education Code section 66736.

But the definition of the verb “ensure” is “to make certain or sure of.”²⁵ One way to make certain or sure of, as noted in the plain language of the statute, is for the local governing board to adopt policies and procedures. Although the plain language of the statute does not require the adoption of policies and procedures, as other statutes and regulations addressed in this test claim have, the plain language does recognize the adoption of policies and procedures as an option by providing the following: “All policies and procedures shall give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations.”

Accordingly, the parameters and guidelines authorize reimbursement for Education Code section 66736, as added in 1991, as follows:

Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services at its college or colleges designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

Reimbursement for this activity may include the adoption of policies and procedures. All policies and procedures adopted for this purpose must give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations. (Ed. Code, § 66736, Stats. 1991, ch. 1188.)

Reimbursement is not required to develop and adopt a transfer center plan pursuant to California Code of Regulations, title 5, section 51027.

3) Clarifying changes to the activity imposed by Education Code section 66738

The Commission approved reimbursement for the following activity required by Education Code section 66738(a):

Be accountable for the development and implementation of formal system wide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedure to support and enhance the transfer function. (Ed. Code, § 66738(a) (Stats. 1991, ch. 1188).)

The claimants propose amending the approved activity imposed by Education Code section 66738(a) by including the language of Education Code section 66738(b) in the parameters and guidelines based on the assertion that subdivision (b) defines the scope of the requirement in subdivision (a).²⁶ The Commission disagrees with the claimants’ interpretation of the statute.

²⁵ Webster’s II New College Dictionary, p. 375.

²⁶ Exhibit G.

Section 66738(b) states the following:

The elements in a comprehensive transfer system shall include, but not be limited to, the following:

- (1) Enrollment and resource planning, intersegmental faculty curricular efforts.
- (2) Coordinated counseling.
- (3) Financial aid and transfer services.
- (4) *Transfer articulation agreements and programs.*
- (5) Specific efforts to improve diversity.
- (6) Early outreach activities.
- (7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses.
- (8) Centers.

As determined by the Commission in the test claim statement of decision, subdivision (b) governs the elements of a comprehensive transfer system. Subdivision (a), however, does not require community college districts to develop a comprehensive transfer system. Subdivision (a) only requires community college districts to develop and maintain transfer articulation agreements and transfer programs. Transfer articulation agreements and transfer programs are identified as the fourth of eight elements in subdivision (b) and, thus, represent only a portion of a “comprehensive transfer system.” Thus, subdivision (b) does not define the scope of the mandated activity in subdivision (a), as asserted by the claimants. Moreover, the Commission found that Education Code section 66738(b) does not impose a reimbursable state-mandated program on community college districts.²⁷ As a result, the inclusion of the claimants’ proposed language is inconsistent with the test claim statement of decision and is not adopted as part of the parameters and guidelines.

Education Code section 66722.5, however, does provide a statement of legislative intent governing transfer agreement programs, which helps to define the Legislature’s purpose in imposing the mandated activity. That section was also added by the Legislature in 1991 and states the following:

It is the intent of the Legislature that the segments of higher education shall pursue the development of transfer agreement programs that specify the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments.

Thus, the parameters and guidelines include the following reimbursable activity:

Develop and implement formal, system wide, articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedure to support and enhance the transfer function.

²⁷ Exhibit A, Test claim statement of decision, p. 55.

Reimbursement for this activity may include specifying the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments. (Ed. Code, § 66738(a), Stats. 1991, ch. 1188.)

4) Addition of activity required by Education Code section 66010.7

At the September 28, 2012 Commission hearing, the Commission severed the reimbursable state-mandated new programs or higher levels of service imposed by Education Code sections 66010.2 and 66010.7, which address student equity in education, from the *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) parameters and guidelines in order to include those activities with the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) parameters and guidelines.²⁸ The approved activities imposed by Education Code section 66010.7(b) and (c) fit programmatically within the “Transfer Centers” activities approved by the Commission in the statement of decision for this test claim.

Thus, the parameters and guidelines include the following approved activities within the parameters and guidelines for the *Minimum Conditions for State Aid*. These activities are placed in Section IV.2.b(6) and (7), after the approved activity imposed by Education Code section 66736 and before the approved activity imposed by Education Code section 66738(a):

- Except as provided in the next paragraph, Undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do either of the following: (1) facilitate achievement of the goals of educational equity; (2) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions.

~~This activity excludes~~ Reimbursement is not required in instances in which cooperation can: (1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical region; and (3) provide more effective planning of postsecondary education on a statewide basis. (Ed. Code, § 66010.7(b), Stats. 1991, ch. 1198.)

- Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7(c), Stats. 1991, ch. 1198.)

²⁸ Adopted statement of decision and parameters and guidelines for *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31), at <<http://www.csm.ca.gov/pendingclaims/docs/dcp/doc78.pdf>> as of October 24, 2012.

3. Vocational Education (Ed. Code, §§ 78015 and 78106

The activities in this section require community college districts to conduct job market studies to justify proposed vocational educational programs, review the programs every two years, terminate programs that do not meet specified requirements, and make a written summary of findings available to the public. These activities are designated as ongoing activities.

4. Standards of Scholarship, Grade Changes (Ed. Code, § 70902(b)(3), and Cal. Code Regs., tit. 5, §§ 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764)

a. One-time activities

The Commission found that the following activities are eligible for reimbursement:

- Adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. (Cal. Code Regs., tit. 5, § 55755(c), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55032(c), Register 2007, No. 35.)
- Adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. (Cal. Code Regs., tit. 5, § 55756(c), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55033(c), Register 2007, No. 35.)
- Adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal. (Cal. Code Regs., tit. 5, § 55756(d), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55033(d), Register 2007, No. 35.)
- File a copy of the rules setting forth the circumstances that warrant exceptions to the standards for dismissal with the Chancellor. (Cal. Code Regs., tit. 5, § 55756(d), Register 91, No. 23; requirement repealed, operative August 16, 2007, Register 2007, No. 35.)

These activities are designated in the parameters and guidelines as one-time activities. There is no evidence in the law or the record suggesting that these requirements were intended to be ongoing.

b. Ongoing activities

1) Adoption of regulations

The Commission approved reimbursement for community college districts to adopt a number of regulations regarding standards of scholarship. Since the Commission acknowledged in the statement of decision on the test claim, that reimbursement was required to file a copy of any *amendments* to these regulations, these activities are identified as ongoing activities.²⁹

In addition, several of these regulations are required to be published in the college catalog. Language is added to the parameters and guidelines that reimbursement is not required to publish the entire college catalog; only the pro rata cost of publishing the regulations is reimbursable.

²⁹ Exhibit A, Statement of decision on test claim, page 154.

2) Clarification of the activities required by section 55759

Section 55759 requires that the policies and procedures regarding probation and dismissal be published in the college catalog. As indicated above, the adoption of these policies and procedures is a one-time activity.

College catalogs, however, are published annually. Thus, what is reimbursable with respect to this activity is the one-time cost to get the policies and procedures formatted for publication, and the ongoing pro-rata cost to publish only the section of the catalog that contains the policies and procedures mandated (i.e. the cost of printing the additional page(s)). Reimbursement is not required for the cost of publishing the entire catalog. The parameters and guidelines reflect this limitation.

3) Clarification of the activities required by Title 5, section 55760

Section 55760 of the Title 5 regulations governs the procedures for grade changes. That section, as originally enacted, stated the following:

(a) In any course of instruction in a community college district for which grades are awarded, the instructor of the course shall determine the grade to be awarded each student in accordance with section 55758 of this chapter. The determination of the student's grade by the instructor shall be final in the absence of mistake, fraud, bad faith, or incompetency. Procedures for the correction of grades given in error shall include expunging the incorrect grade from the record.

(b) The governing board of a district shall adopt and publish procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded in accordance with sections 55761 and 55762. When grade changes are made in accordance with these sections appropriate annotations of any courses repeated shall be entered on the student's permanent academic record in such a manner that all work remains legible, insuring a true and complete academic history.

The Commission approved section 55760 of the Title 5 regulations for the following reimbursable activities:

1. The instructor of the course is to determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”). (Cal. Code Regs., tit. 5, § 55760(a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025(a) (Register 2007, No. 35).)
2. Include in the procedures for the correction of grades given in error the expunging of the incorrect grade from the record. (Cal. Code Regs., tit. 5, § 55760(a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025(d) (Register 2007, No. 35).)
3. Adopt and publish regulations for repeating courses in which substandard work has been recorded. (Cal. Code Regs., tit. 5, §§ 55760(b); and 55761 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, §§ 55040(a), and 55042(a) (Register 2007, No. 35).)

In 2007, section 55760 was renumbered to section 55025 and amended to define a “mistake” in the grade and to add language governing the procedure for correcting a grade. The procedures for correcting a grade provide as follows:

- (c) Procedures for the correction of grades shall be consistent with Education Code section 76232 or provide an alternative mechanism which will ensure that students receive a reasonable and objective review of the requested grade change. If the procedure requires the student to first request a grade change from the instructor, provisions shall be made for another faculty member to substitute for the instructor if the instructor is not available, the student has filed a discrimination complaint or the district determines that it is possible there has been gross misconduct by the original instructor.

Education Code section 76232, as referenced in the regulation, provides procedures for students to request a correction or removal of information recorded in his or her student record. Education Code section 76232 and section 55025(c) of the Title 5 regulations were not pled in this test claim, and the Commission did not approve reimbursement in the test claim statement of decision to develop and adopt procedures for the correction of grades. The only reimbursable component relating to the procedures is to *include* in the procedures for correcting a grade, procedures for expunging the incorrect grade from the record.

Accordingly, the parameters and guidelines more specifically track the plain language of the regulation, define what is not reimbursable, and identify the activity to include in the procedures for the correction of grades given in error, procedures for expunging an incorrect grade from the record as a one-time activity, as follows:

One-Time Activity:

- Include in the procedures for the correction of grades given in error, procedures for the expunging an incorrect grade from the record. (Cal. Code Regs., tit. 5, § 55760(a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025(d) (Register 2007, No. 35).)

Reimbursement is not required to develop and adopt procedures for the correction of grades.

Ongoing Activities:

20. Grade changes. The following activities are eligible for reimbursement:

- a) The instructor of the course ~~is to~~ shall determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”), which shall be final in the absence of mistake, fraud, bad faith, or incompetency. (Cal. Code Regs., tit. 5, § 55760(a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025(a) (Register 2007, No. 35).)
- b) Adopt and publish regulations for repeating courses in which substandard work has been recorded. If these regulations are published in the college catalog, reimbursement for publishing is required only for the ongoing pro-rata cost to publish the section of the catalog that contains the regulations for repeating courses (i.e. the cost of printing the additional page(s)). *Reimbursement is not*

required for the cost of publishing the entire catalog. (Cal. Code Regs., tit. 5, §§ 55760(b); and 55761 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, §§ 55040(a), and 55042(a) (Register 2007, No. 35).)

5. Curriculum (Ed. Code, § 70902(b)(2)(A), and Cal. Code Regs., tit. 5, §§ 55001, 55002, 55005, 55006, 55150, 55201, and 55202)

a. One-time activity

In the statement of decision on the test claim, the Commission approved reimbursement to establish and adopt the following policies related to curriculum:

- Adopt policies for the following in accordance with the Board of Governors regulations addressing faculty participation in district and college governance (Cal. Code Regs., tit. 5, §§ 53200-53204) when establishing prerequisites or co-requisites for an associate degree credit course as required by California Code of Regulations, title 5, section 55002, subdivisions (a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or co-requisite, or success in a course is dependent on communication or computation skills):
 - a. The process for establishing prerequisites and co-requisites. The policy for the process for establishing prerequisites or co-requisites shall be based on content review with additional methods of scrutiny being applied depending on the type of prerequisite or co-requisite established. (Cal. Code Regs., tit. 5, § 55201(b)(1) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(1) (Register 2007, No. 35).)
 - b. The procedures to assure that courses for which prerequisites or co-requisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or co-requisite. (Cal. Code Regs., tit. 5, § 55201(b)(2) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(2) (Register 2007, No. 35).)
 - c. The process, including levels of scrutiny, for reviewing prerequisites and co-requisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and co-requisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201(b)(3) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(3) (Register 2007, No. 35).)
 - d. The bases and process for an individual student to challenge the application of a prerequisite or co-requisite. The bases to challenge a prerequisite or co-requisite are:
 - i. The prerequisite or co-requisite was not established in accordance with the district's process for establishing prerequisites and co-requisites;
 - ii. The prerequisite or co-requisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and co-requisites;

- iii. The prerequisite or co-requisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
- iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or co-requisite; and
- v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or co-requisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201(b)(2) and (f)(1)-(5) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(2) and (m)(1)-(5) (Register 2007, No. 35).)

This activity is designated as a one-time activity in the parameters and guidelines. These policies govern the general process to establish prerequisites and co-requisites. Although classes may change over time, there is no evidence in the law or in the record that the process to identify those courses should be reimbursed on an ongoing basis.

In addition, non-substantive changes are made to the language for purposes of clarity. The parameters and guidelines identify this activity as follows:

1. Adopt policies for the provisions outlined in i. through iv. below, in accordance with the Board of Governors regulations addressing faculty participation in district and college governance (i.e. Cal. Code Regs., tit. 5, §§ 53200-53204), when a college is required to establish prerequisites or co-requisites for an associate degree credit course pursuant to California Code of Regulations, title 5, section 55002(a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or co-requisite, or success in a course is dependent on communication or computation skills) (Cal. Code Regs., tit. 5, §§ 53200-53204) ~~when establishing prerequisites or corequisites for an associate degree credit course as required by California Code of Regulations, title 5, section 55002(a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or corequisite, or success in a course is dependent on communication or computation skills):~~
 - a) The policy for the process for establishing prerequisites or co-requisites shall be based on content review with additional methods of scrutiny being applied depending on the type of prerequisite or co-requisite established. (Cal. Code Regs., tit. 5, § 55201(b)(1), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(1), Register 2007, No. 35.)
 - b) The procedures to assure that courses for which prerequisites or co-requisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or co-requisite. (Cal. Code Regs., tit. 5, § 55201(b)(2), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(2), Register 2007, No. 35.)
 - c) The process, including levels of scrutiny, for reviewing prerequisites and co-requisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and co-requisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201(b)(3), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(3), Register 2007, No. 35.)

- d) ~~The basis and process for an individual student to challenge the application of a prerequisite or co-requisite.~~ The basies to challenge a prerequisite or co-requisite are:
1. The prerequisite or co-requisite was not established in accordance with the district's process for establishing prerequisites and co-requisites;
 2. The prerequisite or co-requisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and co-requisites;
 3. The prerequisite or co-requisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 4. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or co-requisite; and
 5. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or co-requisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201(b)(2) and (f)(1)-(5) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(2) and (m)(1)-(5) (Register 2007, No. 35).)

b. Ongoing activities

1) Establish policies for and approve educational programs (Ed. Code, § 70902(b)(2)(A) (Stats. 1988, ch. 973).)

In the statement of decision on the test claim, the Commission approved reimbursement to establish policies for *and* approve educational programs pursuant to Education Code section 70902 (b)(2)(A). The language to “establish policies for and approve educational programs” pursuant to Education Code section 70902(b)(2)(A), contains two reimbursable components; the first to “establish policies for” “educational programs,” and the second to “approve educational programs.”³⁰ The establishment of policies for educational programs is designated in the parameters and guidelines as an ongoing activity. As recognized by the Commission in the statement of decision on the test claim, Education Code section 66010.4 establishes the mission and function of the California Community Colleges to include, as a primary mission, the provision of academic and vocational instruction at the lower division level. Section 66010.4 further provides that “a primary mission of the California Community Colleges is to advance California’s economic growth and global competitiveness through education, training, and services that contribute to continuous work force improvement.” As expressly required for vocational instruction pursuant to Education Code section 78016, community college districts are required to review every vocational or occupational training program offered every two years to ensure that each program meets the labor market demand and is effective. If these requirements are not met, the program and the standards for the program are required to be terminated. Accordingly, the establishment of policies governing educational programs, and the

³⁰ The claimants raised this issue in comments to the draft proposed statement of decision and parameters and guidelines, Exhibit G.

establishment of prerequisites and co-requisites for these programs may require change over time.

The requirement to approve educational programs is implemented through the approved regulations, and a citation for Education Code section 70902(b)(2)(A) is added to those activities in the parameters and guidelines; California Code of Regulations, Title 5, sections 55001, 55002, 55005, 55006, 55150, 55201, and 55202 (standards and criteria for courses, and prerequisites and co-requisites).³¹

The claimants propose amending the approved activity imposed by Education Code section 70902(b)(2)(A) to include language that was specifically denied in the Commission’s statement of decision for the test claim. Specifically, the claimants seek to amend the activity as indicated by the underlined language and strike-out below:

The governing board of each community college district shall [e]stablish policies for and approve courses of instruction and educational programs. The governing board shall establish policies for individual courses that are offered in approved educational programs without referral to the board of governors. (Citation omitted.)

[¶] . . . [¶]

The governing board of each community college district shall Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall approve individual courses that are not offered in approved educational programs without referral to the board of governors. (Citation omitted.)

The proposed language is derived from a portion of Education Code section 70902(b)(2)(A) and (b)(2)(B). As noted above, the language proposed to be added by the claimants was specifically denied in the Commission’s statement of decision for the test claim, which found that proposed language did not constitute a new program or higher level of service.³² Specifically, the Commission found that community college districts were required to engage in the activities relating to the approval of courses of instruction since 1971. As a result, the Commission denies the claimants’ proposed amendment because it is inconsistent with the statement of decision for the test claim.

2) Clarifying changes to the activity imposed by California Code of Regulations, title 5, section 55002

³¹ Section 55000(f) and (g) of the Title 5 regulations defines “course” to mean “an organized pattern of instruction on a specified subject offered by a community college pursuant to subdivisions (a), (b), or (c) of section 55002 [which addresses the standards and criteria for courses].” “Educational program” is defined as “an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.”

³² Exhibit A. Statement of Decision, pages 117-118.

California Code of Regulations, title 5, section 55002, identifies the standards and criteria when a community college seeks to offer new associate degree, nondegree, and noncredit courses. The regulation requires that a college or district curriculum committee first be established to recommend approval of new courses by the college based on specified standards and criteria. Approval of courses is then required by both the local district governing board and the Chancellor's Office.³³

The statement of decision on the test claim approved reimbursement for the activities required by section 55002, which are listed below. The claimant raises an issue with respect to the *third* provision, which requires that "each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record."

1. Establish a college or district curriculum committee by mutual agreement of the college or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college or district administration and academic senate. (Cal. Code Regs., tit. 5, § 55002(a)(1) (Register 93, No. 42).)
2. When seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course, the course must be recommended by the college or district curriculum committee and approved by the district governing board. (Cal. Code Regs., tit. 5, § 55002(a), (b), and (c) (Register 93, No. 42).)
3. Each section of an associate degree course, nondegree course, or noncredit course *is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.* (Cal. Code Regs., tit. 5, § 55002, (a)(4), (b)(4), and (c)(3) (Register 93, No. 42).)
4. Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:
 - a. Grading policy: The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with California Code of Regulations, title 5, section 55758 (Register 2000, No. 50), which details the academic record symbols and associated grade points to be used by community colleges.

The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays for associate degree credit courses or written expression for nondegree credit courses, or in courses where the curriculum committee deems them to be appropriate, by

³³ The Chancellor's approval of courses and programs is governed by Education Code section 70902(b)(2); California Code of Regulations, title 5, sections 55100, 55130, 55160, 55170, and 55182; and the Program and Course Approval Handbook issued by the Chancellor's Office.

problem-solving exercises or skills demonstrations by students. (Cal. Code Regs., tit. 5, § 55002(a)(2)(A) and (b)(2)(A) (Register 93, No. 42).)

- b. Units: The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

The course also requires a minimum of three hours of work per week, including class time (and/or demonstrated competency for nondegree credit courses) for each unit of credit, prorated for short-term, laboratory and activity courses. (Cal. Code Regs., tit. 5, § 55002(a)(2)(B) and (b)(2)(B) (Register 93, No. 42).)
 - c. Intensity: For associate degree credit course, the course must treat subject matter with a scope and intensity that requires students to study independently outside of class time. For nondegree credit courses, the course must provide instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses. (Cal. Code Regs., tit. 5, § 55002(a)(2)(C) and (b)(2)(C) (Register 93, No. 42).)
5. Proposed associate degree credit courses must also meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2), in order to receive a recommendation by the college or district curriculum committee:
 - a. Prerequisites and Co-requisites: Require prerequisites or co-requisites when: (a) the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (b) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or co-requisites eligibility for enrollment in associate degree credit courses in English and/or mathematics. (Cal. Code Regs., tit. 5, § 55002(a)(2)(D) and (E) (Register 93, No. 42).)
 - b. Difficulty: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Cal. Code Regs., tit. 5, § 55002(a)(2)(F) (Register 93, No. 42).)
 - c. Level: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Cal. Code Regs., tit. 5, § 55002(a)(2)(G) (Register 93, No. 42).)
 6. Maintain a course outline of record for associate degree credit courses, nondegree credit courses, and noncredit courses in the official college files that describe the course and make the outline available to each instructor.

For associate degree credit courses and nondegree credit courses, the course outline shall specify the unit value, scope, objectives, and content of the course in terms of a specific body of knowledge. Also, the course outline shall specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

For noncredit course, the course outline shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met. (Cal. Code Regs., tit. 5, § 55002(a)(3), (b)(3), and (c)(2) (Register 93, No. 42).)

7. Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee in order to receive a recommendation by the college or district curriculum committee. (Cal. Code Regs., tit. 5, § 55002(c)(1) (Register 93, No. 42).)

The claimant contends that the provision requiring that “each section of an associate degree course, nondegree course, or noncredit course *is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record*” means that community college districts are entitled to reimbursement for “the process required to determine that the instructor is qualified as well as the cost of course instruction.”³⁴

The Commission disagrees with the claimants’ interpretation of this regulation. The process required to determine that a community college instructor is qualified is governed by other statutes and regulations that are not included in this test claim; specifically, Education Code sections 87350 et seq. (Chapter 2.5, Qualifications for Community College Personnel) and sections 53430 et seq. of the Title 5 regulations (Minimum Qualifications). Minimum qualifications for community college instructors was the subject of a prior test claim decision (*Employment of Community College Faculty and Administrators*, 02-TC-27) that was denied by the Commission on the ground that the state appropriated funds sufficient to cover the cost of the new mandated activities, including the activity to “determine that an applicant for a faculty or educational administrator position possesses qualifications that are at least equivalent to the minimum qualifications identified in sections 53406, 53407, 53410, 53410.1, 53415, 53416, 53417, and 53420, before an action is taken to employ the individual.” Thus, the Commission disagrees that section 55002 of the regulations requires reimbursement for the process to determine that the instruction is qualified.

Moreover, section 55002 does not require reimbursement for the cost of course instruction. Community college districts are required to offer associate degree, nondegree, and noncredit courses, but the programs of education and courses offered by a community college are within their local discretion. In this regard, section 51021 of the regulations provides that each community college “shall establish such programs of education and courses as will permit the realization of the objectives and functions of the community college.” All courses, however, shall be approved by the Chancellor based on the standards and criteria provided in sections

³⁴ Exhibit G.

55000 et seq.³⁵ Thus, the Commission approved reimbursement for the *process* to receive a recommendation from the college or district curriculum committee and approval to offer the course. As stated in the “Program and Course Approval Handbook,” published by the Chancellor’s Office in September 2001, the curriculum committee is responsible for determining that the courses meet the standards for quality identified in section 55002 and that the course provides for critical thinking at the college level.³⁶ Thus, the Commission finds that section 55002 does not require reimbursement for the cost of course instruction.

Therefore, for purposes of consistency with the plain language of the regulation, and to clarify the reimbursable activities required by section 55002, the language in the parameters and guidelines has been modified to state the following:

- Get a recommendation by the college or district curriculum committee and approval by the district governing board, when seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course. Recommendation by the college or district curriculum committee and approval by the district governing board are based on the courses meeting the following standards and criteria listed in a) through d) below:
 - a) Each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record. (Cal. Code Regs., tit. 5, § 55002(a)(4), (b)(4), and (c)(3), Register 93, No. 42.)
 - b) Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002(a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:
 - i. Grading policy: The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with California Code of Regulations, title 5, section 55758 (Register 2000, No. 50), which details the academic record symbols and associated grade points to be used by community colleges.

The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays for associate degree credit courses or written expression for nondegree credit courses, or in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students. (Cal. Code Regs., tit. 5, § 55002(a)(2)(A) and (b)(2)(A), Register 93, No. 42.)

³⁵ Section 51021 of the regulations was denied by the Commission on the ground that it did not impose any state-mandated duties on community college districts. Section 51201 was established as a minimum condition entitling community college districts to receive state aid. (Exhibit A, Statement of decision on test claim, page 30.)

³⁶ Program and Course Approval Handbook” Chancellor’s Office California Community Colleges” (September 2001), pages 21-22.

- ii. Units: The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

The course also requires a minimum of three hours of work per week, including class time (and/or demonstrated competency for nondegree credit courses) for each unit of credit, prorated for short-term, laboratory and activity courses. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(B) and (b)(2)(B), Register 93, No. 42.)
 - iii. Intensity: For associate degree credit course, the course must treat subject matter with a scope and intensity that requires students to study independently outside of class time. For nondegree credit courses, the course must provide instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(C) and (b)(2)(C), Register 93, No. 42.)
- c) Proposed associate degree credit courses must also meet the following requirements found in California Code of Regulations, title 5, section 55002(a)(2), in order to receive a recommendation by the college or district curriculum committee:
- i. Prerequisites and Co-requisites: Require prerequisites or co-requisites when: (a) the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (b) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or co-requisites eligibility for enrollment in associate degree credit courses in English and/or mathematics. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(D) and (E), Register 93, No. 42.)
 - ii. Difficulty: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(F), Register 93, No. 42.)
 - iii. Level: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(G), Register 93, No. 42.)
- d) Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee

in order to receive a recommendation by the college or district curriculum committee. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(c)(1), Register 93, No. 42.)

Reimbursement for the activity identified in b.4) is limited to obtaining a recommendation and approval, as specified, when seeking to offer a course. Reimbursement is not required for the process to determine that the instructor is qualified, or for the cost of the courses or instruction offered. (Cal. Code Regs., tit. 5, § 55002(a), (b), and (c) (Register 93, No. 42).)

3) Clarifying changes to the activity imposed by California Code of Regulations, title 5, section 55002(a)(3), (b)(3), and (c)(2); and section 55150(b)

For purposes of clarification, the Commission makes the following non-substantive change to the following activity:

~~Maintain~~**Develop and keep** a course outline of record for associate degree credit courses, nondegree credit courses, and noncredit courses in the official college files that describe the course and make the outline available to each instructor.

For associate degree credit courses and nondegree credit courses, the course outline shall specify the unit value, scope, objectives, and content of the course in terms of a specific body of knowledge. Also, the course outline shall specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

For noncredit course, the course outline shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(3), (b)(3), and (c)(2), Register 93, No. 42; and Cal. Code Regs., tit. 5, § 55150(b), Register 91, No. 23.)

4) California Code of Regulations, title 5, sections 55201 and 55202 (prerequisite and co-requisite courses)

a. The mandate to establish prerequisites or co-requisites only for an associate degree credit course when required by section 55002

Pages 105-108 of the statement of decision on the test claim contain the Commission's findings on the activities mandated by sections 55201 and 55202 of the Title 5 regulations. These activities include the following:

1. Adopt policies for the following in accordance with the Board of Governors regulations addressing faculty participation in district and college governance (Cal. Code Regs., tit. 5, §§ 53200-53204) when establishing prerequisites or co-requisites for an associate degree credit course as required by California Code of Regulations, title 5, section 55002, subdivisions (a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or co-requisite, or success in a course is dependent on communication or computation skills):
 - a. The process for establishing prerequisites and co-requisites. The policy for the process for establishing prerequisites or co-requisites shall be based on content

review with additional methods of scrutiny being applied depending on the type of prerequisite or co-requisite established. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(1) (Register 98, No. 7).)

- b. The procedures to assure that courses for which prerequisites or co-requisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or co-requisite. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(2) (Register 98, No. 7).)
 - c. The process, including levels of scrutiny, for reviewing prerequisites and co-requisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and co-requisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(3) (Register 98, No. 7).)
 - d. The bases and process for an individual student to challenge the application of a prerequisite or co-requisite. The bases to challenge a prerequisite or co-requisite are:
 - i. The prerequisite or co-requisite was not established in accordance with the district's process for establishing prerequisites and co-requisites;
 - ii. The prerequisite or co-requisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and co-requisites;
 - iii. The prerequisite or co-requisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 - iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or co-requisite; and
 - v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or co-requisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201, subds. (b)(2) and (f)(1)-(5) (Register 98, No. 7).)
2. Gather data according to sound research practices and show that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or co-requisite, in addition to conducting a content review, if the community college district seeks to establish a course in communication or computation skills as a prerequisite or co-requisite for any non-communication or non-computation skills course.

This data gathering requirement does not apply when:

- a. Four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or
- b. The prerequisite or co-requisite is required for enrollment in a program that is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:

- i. Colleges in at least six different districts have previously satisfied the data collection requirement with respect to the same prerequisite or co-requisite for the same program; and
 - ii. The district establishing the prerequisite or co-requisite conducts an evaluation to determine whether the prerequisite or co-requisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor, and if there is a disproportionate impact the district in consultation with the Chancellor develops and implements a plan setting forth the steps the district will take to correct the disproportionate impact. (Cal. Code Regs., tit. 5, § 55201, subd. (e) (Register 98, No. 7).)
3. If a prerequisite or co-requisite is challenged on the basis that it is either unlawfully discriminatory or applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 55201, subd. (f)(3)), advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to the title 5 regulations addressing discrimination complaint procedures (Cal. Code Regs., tit. 5, § 59300 et seq.). (Cal. Code Regs., tit. 5, § 55201, subd. (g) (Register 98, No. 7).)
4. Identify prerequisites and co-requisites in college publications available to students as well as in the course outline of any course for which they are established. (Cal. Code Regs., tit. 5, § 55202, subd. (a) (Register 93, No. 42).)
5. Determine whether a student meets a prerequisite based on successful completion of an appropriate course. (Cal. Code Regs., tit. 5, § 55202, subd. (c) (Register 93, No. 42).)
6. Ensure precollegiate basic skills courses designed to teach the required skills in reading, written expression, or mathematics, are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course, if a prerequisite requires precollegiate skills in reading, written expression, or mathematics. (Cal. Code Regs., tit. 5, § 55202, subd. (d) (Register 93, No. 42).)
7. Offer sufficient sections of a co-requisite course to reasonably accommodate all students who are required to take the co-requisite. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42).)
8. Waive a co-requisite for any student whom space in the co-requisite course is not available. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42).)
9. Make a determination of whether a student meets a prerequisite prior to the student's enrollment in the course requiring the prerequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (g) (Register 93, No. 42).)

Page 105 of the statement of decision on the test claim, however, contains a finding that these activities are mandated only under *limited* circumstances. Based on the plain language of section 55201 of the regulations, the Commission determined that community college districts are required to establish prerequisites or co-requisites only when the course is offered for associate degree credit, and the curriculum committee finds, based on a review of the course outline of

record and pursuant to section 55002(a)(2)(D) or (a)(2)(E) of the Title 5 regulations, that the prerequisite or co-requisite is necessary. In other circumstances, activities related to prerequisites or co-requisites are *not* mandated by the state. The Commission’s finding is as follows:

Title 5, section 55201, provides “[n]othing in this subchapter [addressing programs, courses and classes (Cal. Code Regs., tit. 5, §§55000-55202)] shall be construed to require a district to establish prerequisites, co-requisites, or advisories on recommended preparation,” except when the course is offered for associate degree credit and the curriculum committee finds that the prerequisite or co-requisite is necessary pursuant to title 5, section 55002, subdivisions (a)(2)(D) or (a)(2)(E).³⁷ Subdivisions (a)(2)(D) and (a)(2)(E) require the establishment of prerequisites or co-requisites for an associate degree credit course whenever: (1) the college or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (2) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or co-requisites eligibility for enrollment in associate degree credit courses in English or mathematics. ***Thus, any activities required by the title 5 regulations pled by the claimants (particularly sections 55201 and 55202) regarding the establishment of prerequisites or co-requisites are only mandated by the state when applicable to prerequisites and co-requisites established for the above purposes.*** Also, any activities required by these sections in regard to the establishment of advisories on recommended preparation are not mandated by the state, because community college districts are authorized but not required to establish advisories on recommended preparation. (Emphasis added.)

This limitation is provided in the parameters and guidelines. In addition, some of the activities have been further amended consistent with the regulatory language.

b. Claimants’ proposal to amend the activity imposed by California Code of Regulations, title 5, section 55201(g)

The claimants propose to include the following underlined reference to the *Discrimination Complaint Procedures* parameters and guidelines to the activity imposed by California Code of Regulations, title 5, section 55201(g):

If a prerequisite or co-requisite is challenged on the basis that it is either unlawfully discriminatory or applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 55201(f)(3)), advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to the title 5 regulations addressing discrimination complaint procedures (Cal. Code Regs., tit. 5, § 59300 et seq.). (Cal. Code Regs., tit. 5, § 55201(g) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(n) (Register 2007, No. 35).) See the parameters and guidelines for Discrimination Complaint Procedures for reimbursable activities.

³⁷ California Code of Regulations, title 5, section 55201, subdivision (a) (Register 98, No. 7).

Title 5, section 59300 et seq., sets forth the procedures to handle complaints of discrimination within a community college and was analyzed and addressed in the *Discrimination Complaint Procedures* (02-TC-46, and a portion of 02-TC-25 and 02-TC-31) test claim. The activities approved in the statement of decision for *Discrimination Complaint Procedures* were included in the parameters and guidelines for that test claim. It is unnecessary to “[s]ee the parameters and guidelines for the Discrimination Complaint Procedures for reimbursable activities,” for *Minimum Conditions* program because the activity imposed by title 5, section 55201(g), is *only* to advise a student that he or she may file a complaint of unlawful discrimination pursuant to title 5, section 59300 et seq. Title 5, section 55201(g), *does not* require community college districts to process any subsequent complaints via that process. To the contrary, that process was addressed in the *Discrimination Complaint Procedures* statement of decision and any part of that process that is reimbursable is already included in the parameters and guidelines for the *Discrimination Complaint Procedures* and cannot be listed in these parameters and guidelines as reimbursable again. Thus, the Commission does not include the language proposed by the claimants.

c. Clarifying change to the activity imposed by California Code of Regulations, title 5, section 55202(d) and (e)

The Commission approved reimbursement for the activities required by former section 55202(d) and (e). These sections state the following:

- If a prerequisite requires precollegiate skills in reading, written expression, or mathematics, the governing board of a district shall ensure that precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course. (Cal. Code Regs., tit. 5, § 55202, subd. (d) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (i) (Register 2007, No. 35).)
- Whenever a co-requisite course is established, sufficient sections shall be offered to reasonably accommodate all students who are required to take the co-requisite. . . . (Cal. Code Regs., tit. 5, § 55202(e) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003(j) (Register 2007, No. 35).)

With respect to the second activity, the claimants argue that section 55202(e) requires the state to reimburse community college districts for the cost of course instruction; for “providing mandated basic skills courses and sufficient co-requisite courses.”³⁸ The same argument can also be made with respect to the first activity since both subdivisions seek to ensure that sufficient sections of prerequisite and co-requisite courses are offered to reasonably accommodate students. The Commission, however, disagrees with the claimants’ interpretation of this regulation.

As the Commission noted in the statement of decision on the test claim (pgs. 105-106), the requirement to offer sufficient sections of prerequisite and co-requisite courses to reasonably accommodate students, is mandated by the state only when the co-requisite is offered for an

³⁸ Exhibit G.

associate degree credit course and the curriculum committee finds that the co-requisite course is necessary pursuant to Title 5, section 55002(a)(2)(D) or (a)(2)(E).

Although community college districts are required to offer associate degrees, associate degree credit courses are established by the community colleges. In this regard, community college districts are required to adopt a policy and file it with the Chancellor's Office stating its philosophy and criteria for associate degrees.³⁹ In addition, the law is clear that associate degree courses are developed and established at the local level, based on standards and criteria in section 55002 of the regulations, and approved by the Chancellor's Office.⁴⁰ And when a community college establishes any credit course, including those that count toward an associate's degree, approval is required by the Chancellor's Office in accordance with section 55130 of the regulations. Section 55130 requires the district to prepare and file with the Chancellor's Office an application for approval of the credit course that contains information on a number of factors considered, including the availability of adequate or proposed financial support.

Community college districts are also required to adopt policies that outline the process for establishing prerequisite and co-requisite courses. Prerequisite and co-requisite courses determined to be required for an associate degree credit course are established by the community college district in accordance with the process outlined in the district's local policy.⁴¹

Thus, the state has not mandated community college districts to provide any specific prerequisite or co-requisite course. The state only requires that community college districts "ensure" that a sufficient number of co-requisite courses are offered when required for an associate credit degree course. In this respect, this claim is unlike prior Commission decisions addressing statutes that mandate specific curriculum required to be offered by a K-12 school district within an existing class day and year; for example, in *Graduation Requirements*, the test claim statute mandated the provision of a second science course for high school graduation.

As a result, the parameters and guidelines contain the following limitation for these activities:

Reimbursement is *not* required for offering the prerequisite or co-requisite course, or for the costs associated with the teacher time for the course.

6. Degrees and Certificates (Cal. Code Regs., tit. 5, §§ 55800, 55805, and 55806)

a. One-going activities to adopt policies on degrees and certificates

The Commission approved reimbursement to adopt a policy regarding degrees and certificates and a policy stating the district's specific philosophy on General Education. Based on the plain language of the regulations mandating these policies, which refer to amendments of the policies

³⁹ California Code of Regulations, title 5, section 55060.

⁴⁰ The Chancellor's approval of courses and programs is governed by Education Code section 70902(b)(2); California Code of Regulations, title 5, sections 55060, 55100, 55130, 55160, 55170, and 55182; and the Program and Course Approval Handbook issued by the Chancellor's Office.

⁴¹ Former California Code of Regulations, title 5, section 55201; for current requirement see California Code of Regulations, title 5, section 55003.

and ongoing requirements to review the policies, these activities are eligible for reimbursement on an ongoing basis.⁴²

b. Sections 55800 and 55806 of the regulations

The following activities are listed as reimbursable activities in the statement of decision on the test claim:

- Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)
- Condition receipt of an associate degree upon a student who has satisfactorily completed at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

The 18 semester or 27 quarter units in a major must be taken in a single discipline or related disciplines, as listed in the Community Colleges “Taxonomy of Programs.”

The 18 semester or 27 quarter units in general education requirements must include a minimum of three semester or four quarter units in each of the following areas:

(1) Natural Sciences, (2) Social and Behavioral Sciences, (3) Humanities, (4) Language and Rationality – English Composition, and (5) Language and Rationality – Communication and Analytical Thinking.

The remainder of the unit requirement is also to be selected from among these five divisions of learning or as determined by local option. (Cal. Code Regs., tit. 5, § 55806, subd. (a) and (b)(1) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (a) and (b) (Register 2007, No. 35).)

In the draft analysis, these activities were combined for purposes of clarification to state the following:

Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)

When adopting this policy, Condition receipt of an associate degree by a student upon a student who has on the satisfactory completion of satisfactorily completed at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum

⁴² Former section 55800(a) of the regulations (currently in section 55060) requires that a copy of the policy regarding degrees and certificates, “and any amendments,” be filed with the Chancellor. Former section 55805 of the regulations (currently in section 55061), community college districts are required to “review the policy and criteria for General Education . . . on a regular basis.”

accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

The 18 semester or 27 quarter units in a major must be taken in a single discipline or related disciplines, as listed in the Community Colleges “Taxonomy of Programs.”

The 18 semester or 27 quarter units in general education requirements must include a minimum of three semester or four quarter units in each of the following areas: (1) Natural Sciences, (2) Social and Behavioral Sciences, (3) Humanities, (4) Language and Rationality – English Composition, and (5) Language and Rationality – Communication and Analytical Thinking.

The remainder of the unit requirement is also to be selected from among these five divisions of learning or as determined by local option. (Cal. Code Regs., tit. 5, § 55806(a) and (b)(1) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063(a) and (b) (Register 2007, No. 35).)

While it is clear from the plain language of section 55800 that a policy must be adopted “consistent with the provisions of this chapter,” and that the chapter includes the criteria in section 55806 for the receipt of an associate degree, the claimants object to this language. The claimants argue that the requirement in section 55806 must be included in the parameters and guidelines as an additional activity, independent from the policy, which requires the community college district “to evaluate whether the student has met the specified courses required for the degree.”⁴³

The Commission disagrees with the claimants’ argument. The plain language of section 55806 provides that “The governing board of a community college district *shall confer* the degree of Associate in Arts or Associate in Science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed” the specified number of units and courses of study outlined in the regulation and in the quoted language above. The Commission determined that the activity to “confer a degree in associate in arts or associate in science who successfully completes the prescribed course of study . . .” did not constitute a new program or higher level of service. Page 132 of the test claim statement of decision contains the following finding:

The activities mandated by title 5, sections 55800, 55800.5, 55805, 55806, and 55809, carry out the governmental function of education, and as a result, the activities mandated by sections 55800, 55800.5, 55805, 55806, and 55809, constitute a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The claimants have pled title 5, sections 55800, 55805, 55806, and 55809, as added in 1983 and last amended in 1991; section 55800.5, as added in 1991; and section 55805.5, as added in 1988. [Footnote omitted.] Many of the activities mandated by these title 5 sections are derived from former title 5 regulations

⁴³ Exhibit G.

existing prior to 1983.⁴⁴ However, the former title 5 regulations were all part of former “Division 2” of the title 5 regulations, the provisions of which:

[C]omprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.⁴⁵

Thus, the pre-1983 title 5 regulations *which contain the same requirements as the regulations pled in this section of the analysis* did not legally require community college districts to engage in activities prior to 1983 for the same reasons that the regulations pled in the “Minimum Conditions” section of this analysis did not impose state-mandated activities. Specifically, the requirements of the pre-1983 title 5 regulations are downstream activities triggered by the discretionary decision to become *entitled to receive state aid*. In addition, with one exception, community college districts were not practically compelled to engage in the activities contained in the pre-1983 regulations, and thus constitute a new program or higher level of service. [Footnote omitted.] In 2007, the title 5 regulations pled in this section of the analysis were repealed and renumbered to title 5, section 55060 et seq., without any substantive changes to the new program or higher level of service found above.⁴⁶

The exception to the above finding of a new program or higher level of service is the requirement for community college districts to confer an associate degree. The court in *Kern High School Dist.* left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties such as double taxation or other draconian consequences as a result of noncompliance with a program that is not legally compelled.⁴⁷ In 1975, former title 5, section 51802, defined “colleges” as degree-granting institutions.⁴⁸ In other words, to *exist* community colleges were required to grant degrees. Thus, community colleges districts were practically compelled to grant degrees, rather than face the draconian consequence of not existing, *before and after 1983. As a result, the mandate to confer a degree does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.* (Emphasis added.)

⁴⁴ California Code of Regulations, title 5, section 55800, addressing a district’s policy regarding degrees and certificates, was derived from former title 5, section 51621, as added in 1971 by Register 71, number 40. Title 5, sections 55800.5 and 55809, which addresses a district’s duty to award an associate degree, was derived from former title 5, section 51626, as added in 1977 by Register 77, number 45. Title 5, section 55806, was derived from former title 5, section 55626, as amended in 1982 by Register 82, number 24. Title 5, section 55808, was derived from former title 5, section 51625, as added in 1971 by Register 71, number 40.

⁴⁵ Former California Code of Regulations, title 5, section 51000 (Register 80, number 11).

⁴⁶ Register 2007, number 35, operative August 16, 2007.

⁴⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁴⁸ Former California Code of Regulations, title 5, section 51802 (Register 75, no.26).

The original requirement to confer an associate degree stems from 1973 regulations (former section 51623), which required that the district confer the degree upon a student who satisfactorily completed substantially the same requirements identified in the test claim regulation: 60 to 64 semester hours of work, which included 18 semester units of study in the discipline listed by the community college district; 15 semester units of general education in courses that still required by law (Natural Sciences, Social Sciences, Humanities, Oral and Written Communication, Logic, Mathematics, and Ethnic Studies).⁴⁹

Thus, the activity to “confer the degree” was required under prior law, and required the community college district to evaluate whether the student completed substantially the same requirements that exist under section 55806 of the test claim regulations. Therefore, a duty “to evaluate whether the student has met the specified courses required for the degree,” as suggested by the claimants, is not new. The Commission did not approve the requirement “to confer,” but noted the requirement of the district “to condition” the receipt of the degree on the specified units and courses of study.

Accordingly, the parameters and guidelines contain the following reimbursable activity:

Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810. (Cal. Code Regs., tit. 5, § 55800, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55060, Register 2007, No. 35.)

Include in the policy the requirement to, ~~Condition receipt of an associate degree by a student upon a student who has~~ on the satisfactory completion of ~~satisfactorily completed~~ at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

The 18 semester or 27 quarter units in a major must be taken in a single discipline or related disciplines, as listed in the Community Colleges “Taxonomy of Programs.”

The 18 semester or 27 quarter units in general education requirements must include a minimum of three semester or four quarter units in each of the following areas: (1) Natural Sciences, (2) Social and Behavioral Sciences, (3) Humanities, (4) Language and Rationality – English Composition, and (5) Language and Rationality – Communication and Analytical Thinking.

The remainder of the unit requirement is also to be selected from among these five divisions of learning or as determined by local option. (Cal. Code Regs., tit. 5, § 55806(a) and (b)(1), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(a) and (b), Register 2007, No. 35.)

c. Additional edits to sections 55800 and 55805

For purposes of clarification, the Commission amends the following activities found in the statement of decision for the test claim as indicated by the underline and strike out:

⁴⁹ These 1973 regulations were included in Exhibit C of the record for the test claim.

- Publish in the college catalog under appropriate headings the policy that is consistent with the subchapter in title 5 of the California Code of Regulations regarding degrees and certificates ~~in the college catalog under appropriate headings~~. (Cal. Code Regs., tit. 5, § 55800, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55060, Register 2007, No. 35.)

[¶] ... [¶]

- When developing the policy stating its specific philosophy on General Education, ~~Consider~~ consider the policy of the Board of Governors specified in California Code Regulations, title 5, section 55805(a) (Register 91, No. 23), ~~when developing the policy stating its specific philosophy on General Education~~. (Cal. Code Regs., tit. 5, § 55805(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55061(a), Register 2007, No. 35.)

7. Open Courses (Cal. Code Regs., tit. 5, §§ 58102, 58104, and 58106)

The claimants propose to include the following underlined reference to the *Discrimination Complaint Procedures* parameters and guidelines⁵⁰ to the activity imposed by California Code of Regulations, title 5, section 58106:

Advise a student that he or she may file a formal complaint of unlawful discrimination pursuant to title 5, section 59300 et seq., upon completion of handling a challenge to an enrollment limitation made by a student alleging that an enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 58106(c)(1) (Register 93, No. 42)). (Cal. Code Regs., tit. 5, § 58106 (Register 93, No. 42).) See the parameters and guidelines for Discrimination Complaint Procedures for reimbursable activities.

Title 5, section 59300 et seq., set forth the procedures to handle complaints of discrimination within a community college and was analyzed and addressed in the *Discrimination Complaint Procedures* (02-TC-46, and a portion of 02-TC-25 and 02-TC-31) test claim. The activities approved in the statement of decision for the *Discrimination Complaint Procedures* were included in the parameters and guidelines for that test claim. It is unnecessary to “[s]ee the parameters and guidelines for the Discrimination Complaint Procedures for reimbursable activities,” because the activity imposed by title 5, section 58106, is *only* to advise a student that he or she may file a complaint of unlawful discrimination pursuant to title 5, section 59300 et seq. Title 5, section 58106, *does not* require community college districts to process any subsequent complaints via that process. To the contrary, that process was addressed in the *Discrimination Complaint Procedures* statement of decision. Any part of that process that is reimbursable is already included in the parameters and guidelines for the *Discrimination Complaint Procedures* and cannot be listed in these parameters and guidelines as reimbursable again. Thus, the Commission does not include the language proposed by the claimants.

⁵⁰ 02-TC-46 and a portion of 02-TC-25 and 02-TC-31.

C. Offsetting Revenues and Reimbursements (Section VII of the Parameters and Guidelines)

The Commission adds language to Section VII of the parameters and guidelines identifying reimbursement received from the ASCCC for the administrative costs associated with granting faculty members release or reassigned time and administrative costs for hiring faculty to replace the faculty serving as president or vice president to be deducted as offsetting revenue for the mandate imposed by California Code of Regulations, title 5, section 53207(a).

V. Conclusion

For the foregoing reasons the Commission hereby adopts the statement of decision and the attached parameters and guidelines for the *Minimum Conditions for State Aid* program, 02-TC-25 and 02-TC-31, with a period of reimbursement beginning July 1, 2001.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Education Code Sections 66010.2, 66010.7,
66721.5, 66731, 66732, 66736, 66738, 66740,
66742, 70902, 78015, and 78016

Statutes 1988, Chapter 973; Statutes 1991,
Chapter 1188; Statutes 1991, Chapter 1198;
Statutes 1998, Chapter 365; and Statutes 2000,
Chapter 187

California Code of Regulations, Title 5, Sections
53203, 53207, 55001, 55002, 55005, 55006,
55150, 55201, 55202, 55750, 55751, 55753,
55753.5, 55753.7, 55754, 55755, 55756,
55756.5, 55757, 55758, 55759, 55760, 55761,
55764, 55800, 55805, 55805.5, 55806, 58102,
58104, and 58106

Register 91, Number 23; Register 93, Number
25; Register 93, Number 42; Register 94,
Number 38; Register 98, Number 7; Register
2000, Number 50; Register 2002, Number 8; and
Register 2003, Number 18.

Period of reimbursement begins July 1, 2001, or
later for specified activities added by subsequent
statutes.

Case No.: 02-TC-25 and 02-TC-31

Minimum Conditions for State Aid


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 April 19, 2013)

(Served April 23, 2013)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached parameters and guidelines on
April 19, 2013.


Heather Halsey, Executive Director

PARAMETERS AND GUIDELINES

Education Code Sections 66010.2, 66010.7,¹ 66721.5, 66731, 66732, 66736, 66738, 66740, 66742, 70902, 78015, and 78016

Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1991, Chapter 1198; Statutes 1998, Chapter 365; and Statutes 2000, Chapter 187

California Code of Regulations, Title 5, Sections 53203, 53207, 55001, 55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104, and 58106

Register 91, Number 23; Register 93, Number 25; Register 93, Number 42; Register 94, Number 38; Register 98, Number 7; Register 2000, Number 50; Register 2002, Number 8; and Register 2003, Number 18.

Minimum Conditions for State Aid

02-TC-25 and 02-TC-31

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

I. SUMMARY OF THE MANDATE

The test claim statutes and regulations address the standards for the formation and basic operation of the California Community Colleges which includes: (1) faculty participation in district and college governance; (2) transfer centers in community colleges; (3) vocational education; (4) standards of scholarship; (5) curriculum; (6) degrees and certificates; and (7) open courses.

On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision for the *Minimum Conditions for State Aid* test claim finding that the test claim statutes and regulations impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

¹ During the September 28, 2012 Commission hearing, the Commission severed the reimbursable state-mandated new programs or higher levels of service imposed by Education Code sections 66010.2 and 66010.7 from the *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) parameters and guidelines in order to include those activities with the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) parameters and guidelines. See the adopted statement of decision and parameters and guidelines for *Discrimination Complaint Procedures* (02-TC-46 and a portion of 02-TC-25 and 02-TC-31) at <<http://www.csm.ca.gov/pendingclaims/docs/dcp/doc78.pdf>> as of October 24, 2012.

II. ELIGIBLE CLAIMANTS

Any community college district, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimants filed the test claim in the 2002-2003 fiscal year, establishing eligibility for reimbursement on or after July 1, 2001. All of the reimbursable activities approved in the *Minimum Conditions for State Aid* test claim were operative at the start of the reimbursement period *except* for the activities mandated by California Code of Regulations, title 5, section 53207. Title 5, section 53207, (Register 2003, No. 18) was operative April 11, 2003. As a result, all of the activities approved in the *Minimum Conditions for State Aid* test claim are eligible for reimbursement beginning July 1, 2001, *except* for the activities mandated by title 5, section 53207. The activities mandated by title 5, section 53207, are reimbursable beginning April 11, 2003.

Reimbursement for state-mandated costs may be claimed as follows:

- Actual costs for one fiscal year shall be included in each claim.
- Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
- Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
- If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
- There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations.

Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

1. Participation in District and College Governance (Ed. Code, §§ 66010.2(b), 70902(b)(7) and (b)(14), and Cal. Code Regs., tit. 5, §§ 53203 and 53207)

a. One-Time Activities

- 1) Establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

The procedures established shall be consistent with the minimum standards established by the Board of Governors. The minimum standards are set forth in California Code of Regulations, title 5, sections 53200-53207 (for faculty), 51023.5 (for staff), and 51023.7 (for students).

Except for those ongoing activities listed below in 1(b), reimbursement is not required to implement the procedures. (Ed. Code, § 70902(b)(7), Stats. 1988, ch. 973.)

- 2) Adopt policies for appropriate delegation of authority and responsibility to its college or district academic senate.

Policies must provide, at a minimum, that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. (Cal. Code Regs., tit. 5, § 53203(a), Register 94, No. 38.)

- 3) Adopt procedures for responding to recommendations of the academic senate that incorporate the following:

- a) In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate. (Cal. Code Regs., tit. 5, § 53203(d)(1), Register 94, No. 38.)

- b) In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons. (Cal. Code Regs., tit. 5, § 53203(d)(2), Register 94, No. 38.)

b. Ongoing Activities

- 1) Provide all students the opportunity to address issues, including ethical issues that are central to their full development as responsible citizens, in community college programs. (Ed. Code, § 66010.2(b), Stats. 1991, ch. 1198.)
- 2) Participate in the consultation process established by the Board of Governors for the development and review of policy proposals pursuant to Education Code section 70901(e). (Ed. Code, § 70902(b)(14), Stats. 1988. Ch. 973.)
- 3) Consult collegially with representatives of the academic senate when adopting the policies for appropriate delegation of authority and responsibility to its college or district academic senate pursuant to California Code of Regulations, title 5, section 53202(a). (Cal. Code Regs., tit. 5, § 53203(b), Register 94, No. 38.)
- 4) *Beginning April 11, 2003*, grant faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges release or reassigned time from their local responsibilities by the district by which they are employed during their terms of office. (Cal. Code Regs., tit. 5, § 53207 (Register 2003, No. 18).) Reimbursement is eligible for the following activities and costs:
 - a) Identify the part-time replacement cost prior to September of each year for employees elected to serve as president and vice president of the Academic Senate of the California Community Colleges.
 - b) If the release or reassigned time need identified is 100 percent and the position is in a hard to replace discipline area, certify this to the Chancellor by August 1 for reimbursement at the full-time temporary replacement cost of the employee released.

The costs to perform activities a) and b) are subject to any offsetting revenue provided the district from the Academic Senate of the California Community Colleges for the reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the Academic Senate.
 - c) The replacement cost of the faculty member serving as president or vice-president of the Academic Senate of the California Community Colleges is

eligible for reimbursement, offset by any funds appropriated to the Academic Senate of the California Community Colleges (line item 6870-101-0001) and provided to the district at either the part-time replacement rate or the full-time temporary replacement rate pursuant to section 53207(c).

2. Transfer Centers (Ed. Code, §§ 66010.7, 66721.5, 66731, 66732, 66736, 66738, 66740, and 66742)

a. One-Time Activities

- 1) Adopt as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within community colleges, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732 (Stats. 1991, ch. 1188).)
- 2) Formally acknowledge student matriculation from community colleges through the University of California and California State University as a central institutional priority of all segments of higher education. (Ed. Code, § 66731 (Stats. 1991, ch. 1188).)

b. Ongoing Activities

- 1) Provide direction to the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum. (Ed. Code § 66721.5(a)(1), Stats. 2000, ch. 187.)
- 2) Distribute a copy of the current transfer core curriculum to each community college student who is enrolled in a degree or certification program and is physically in attendance at the institution.

Include the text of the current transfer core curriculum in the published class schedule for each academic term, or distribute the transfer core curriculum during the registration process, or by mail, or during the issuance of student identification cards, or during student orientation programs. (Ed. Code § 66721.5(b), (c) and (d), Stats. 2000, ch. 187.)

- 3) Design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University. (Ed. Code, § 66732, Stats. 1991, ch. 1188.)
- 4) Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services at its college or colleges designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

Reimbursement for this activity may include the adoption of policies and procedures. All policies and procedures adopted for this purpose must give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally

underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations. (Ed. Code, § 66736, Stats. 1991, ch. 1188.) *Reimbursement is not required to develop and adopt a transfer center plan pursuant to California Code of Regulations, title 5, section 51027.*

- 5) Except as provided in the next paragraph, undertake intersegmental collaboration and coordination (with the University of California and California State University) particularly when it can do either of the following: (1) facilitate achievement of the goals of educational equity; (2) facilitate student progress from one segment to another, particularly with regard to preparation of students for higher education as well as the transfer from the California Community Colleges to four-year institutions.

Reimbursement is not required in instances which cooperation can:

(1) enhance the achievement of the institutional missions shared by the segments; (2) enable public and private postsecondary education to more effectively meet the educational needs of a geographical region; and (3) provide more effective planning of postsecondary education on a statewide basis. (Ed. Code, § 66010.7(b), Stats. 1991, ch. 1198.)

- 6) Work together with other leaders responsible for public (University of California and California State University) and independent institutions of higher education and the Superintendent of Public Instruction to promote and facilitate the development of intersegmental programs and other cooperative efforts aimed at improving the progress of students through the educational systems and at strengthening the teaching profession at all levels. (Ed. Code, § 66010.7(c), Stats. 1991, ch. 1198.)
- 7) Develop and implement formal, system wide, articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function.

Reimbursement for this activity may include specifying the curricular requirements that must be met, and the level of achievement that must be attained, by community college students in order for those students to transfer to the campus, undergraduate college, or major of choice in the public four-year segments. (Ed. Code, § 66738(a), Stats. 1991, ch. 1188.)

- 8) Expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus. (Ed. Code, § 66738(c), Stats. 1991, ch. 1188.)

- 9) Act in conjunction with each department, school, major in the University of California and California State University to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. In doing so, faculty from community colleges and university campuses are to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. (Ed. Code, § 66740, first paragraph, Stats. 1991, ch. 1188.)
- 10) Develop discipline-based agreements in conjunction with the California State University and the University of California with as many campuses of the two university segments as feasible, but no fewer than three University of California campuses and five California State University campuses. No one segment should bear the organizational or financial responsibility for accomplishing these goals. (Ed. Code, § 66740, third paragraph, Stats. 1991, ch. 1188.)
- 11) Present annual statistical reports with the California Community Colleges, California State University, and the University of California on transfer patterns to the Governor and Legislature via the California Postsecondary Education Commission. Include in these reports statistics and information as described in Education Code section 66742. (Education Code section 66742, Stats. 1991, ch. 1188.)

3. Vocational Education (Ed. Code, §§ 78015 and 78016). Reimbursement is authorized for the following ongoing activities:

- a. Conduct a job market study of the labor market area, as defined by Education Code section 52301.5, in which the community college district proposes to establish the program prior to establishing the program.²

The labor market study must use the State-Local Cooperative Labor Market Information Program established by Unemployment Insurance Code section 10533, or if this program is not available for the labor market area, the study must use other sources of labor market information.

The study must include a California Occupational Information System supply analysis of existing vocational and occupational education or training programs for adults maintained by high schools, community colleges, and private postsecondary schools in the area to ensure that the anticipated employment demand for students in the proposed programs justifies the establishment of the proposed courses of instruction. (Ed. Code, § 78015(a)(1), Stats. 1998, ch. 365.)

- b. Make copies of each job market study available to the public. (Ed. Code, § 78015(a)(2), Stats. 1998, ch. 365.)

² Education Code section 52301.5 defines “Labor Market Area” as “a county or aggregation of counties designated by the Employment Development Department (EDD) that has one or more central core cities and that meets criteria of population, population density, commute patterns, and social and economic integration specified by the EDD.

- c. Determine whether or not the job market study justifies the proposed vocational education program. (Ed. Code, § 78015(b), Stats. 1998, ch. 365.)
- d. Determine by resolution whether the program will be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Education Code section 8092, if the district determines that the job market study justifies the initiation of the proposed program. (Ed. Code, § 78015(c), Stats. 1998, ch. 365.)
- e. Review every vocational or occupational training program offered by the district and commenced subsequent to July 28, 1983, every two years to ensure that each program: (1) meets a documented labor market demand; (2) does not represent unnecessary duplication of other manpower training programs in the area; and (3) is of demonstrated effectiveness as measured by the employment and completion success of its students.

These three requirements are to be demonstrated by the California Occupational Information System, including State-Local Cooperative Labor Market Information Program established in Unemployment Insurance Code section 10533, or if this program is not available in the labor market area, other available sources of labor market information. (Ed. Code, § 78016(a), Stats. 1998, ch. 365.)

- f. Terminate any program that does not meet the requirements of Education Code section 78016(a), and the standards promulgated by the governing board within one year. (Ed. Code, § 78016(b), Stats. 1998, ch. 365.)
- g. Include the review and comments by the local Private Industry Council, established pursuant to Unemployment Insurance Code section 15000 et seq., in the review process of every vocational or occupational training program offered by the district and commenced subsequent to July 28, 1983. The review and comments by the Private Industry Council shall occur prior to any decision by the district governing board. (Ed. Code, § 78016(c), Stats. 1998, ch. 365.)
- h. Make a written summary of the findings of each review available to the public. (Ed. Code, § 78016(e), Stats. 1998, ch. 365.)

4. Standards of Scholarship (Ed. Code, § 70902(b)(3), and Cal. Code Regs., tit. 5, §§ 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764)

a. One-time Activities

- 1) Adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. (Cal. Code Regs., tit. 5, § 55755(c), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55032(c), Register 2007, No. 35.)
- 2) Adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. (Cal. Code Regs., tit. 5, § 55756(c), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55033(c), Register 2007, No. 35.)

- 3) Adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal. (Cal. Code Regs., tit. 5, § 55756(d), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55033(d), Register 2007, No. 35.)
- 4) File a copy of the rules setting forth the circumstances that warrant exceptions to the standards for dismissal with the Chancellor. (Cal. Code Regs., tit. 5, § 55756(d), Register 91, No. 23; requirement repealed, operative August 16, 2007, Register 2007, No. 35.)
- 5) Include in the procedures for the correction of grades given in error, procedures for expunging an incorrect grade from the record.

Reimbursement is not required to develop and adopt procedures for the correction of grades. (Cal. Code Regs., tit. 5, § 55760(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55025(d), Register 2007, No. 35.)

b. Ongoing Activities

- 1) Adopt regulations consistent with the subchapter regarding standards of scholarship consisting of California Code of Regulations, title 5, section 55750 – 55765. (Ed. Code, § 70902(b)(3), and Cal. Code Regs., tit. 5, § 55750, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55020, Register 2007, No. 35.)
- 2) Publish the regulations consistent with the subchapter regarding standards of scholarship in the college catalog under appropriate headings. Reimbursement is required only for the ongoing pro-rata cost to publish the section of the catalog that contains the mandated regulations (i.e. the cost of printing the additional page(s)). *Reimbursement is not required for the cost of publishing the entire catalog.* (Cal. Code Regs., tit. 5, § 55750, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55020, Register 2007, no. 35.)
- 3) File a copy of the community college district’s regulations regarding standards of scholarship, and any amendments of the regulations, with the Chancellor. (Cal. Code Regs., tit. 5, § 55750, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55020, Register 2007, No. 35.)
- 4) Determine a uniform grading practice for the district based on sound academic principles. (Cal. Code Regs., tit. 5, § 55751, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55021(a), Register 2007, No. 35.)
- 5) Conform the uniform grading practices to the standard that work in all courses acceptable in the fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license is graded in accordance with a grading scale adopted by the governing board consistent with section 55758, and sections 55752 (Credit-No Credit Options) or 55753 (Credit by Examination). (Cal. Code Regs., tit. 5, § 55751(a) and (b), Register 91, No.

23; for current requirement see Cal. Code Regs., tit. 5, § 55021(c), Register 2007, No. 35.)

- 6) Adopt and publish regulations pertaining to credit by examination in accordance with the provisions of Subchapter 9 “Standards of Scholarship” (Cal. Code Regs., tit. 5, § 55750 et seq.). Reimbursement for publishing the regulations is required only for the ongoing pro-rata cost to publish the section of the catalog that contains the mandated regulations. *Reimbursement is not required for the cost of publishing the entire catalog.* (Cal. Code Regs., tit. 5, § 55753(a), Register 2002, No. 8; for current requirement see Cal. Code Regs., tit. 5, § 55050(a), Register 2007, No. 35.)
- 7) Place a student on academic probation when he/she has attempted at least 12 semester or 18 quarter units as shown by the official academic record and earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale. (Cal. Code Regs., tit. 5, § 55754(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55031(a), Register 2007, No. 35.)
- 8) Remove a student from academic probation when the student’s accumulated grade point average is 2.0 or higher. (Cal. Code Regs., tit. 5, § 55755(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55032(a), Register 2007, No. 35.)
- 9) Make a student subject to dismissal if the student is on academic probation and has earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters or 5 consecutive quarters which were graded on the basis of a grading scale. (Cal. Code Regs., tit. 5, § 55756(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55033(a), Register 2007, No. 35.)
- 10) Determine a student’s need for remedial coursework using appropriate assessment instruments, methods, or procedures, including, but not limited to, interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test cores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. (Cal. Code Regs., tit. 5, § 55756.5(b), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55035(a), Register 2007, No. 35.)
- 11) Dismiss and refer students that have exhausted the remedial coursework unit limitation to appropriate adult noncredit education services, provided by college, adult school, community-based organization, or other appropriate local provider which the district has an established referral agreement. (Cal. Code Regs., tit. 5, § 55756.5(b) and (e), Register 91, No. 23; for current

requirement see Cal. Code Regs., tit. 5, § 55035(a) and (e), Register 2007, No. 35.)

- 12) Submit, through the established Management Information System, information necessary to enable the Chancellor to determine the effect of the California Code of Regulations, title 5, section 55756.5, on students by sex, age, and ethnicity, and the success rates for students enrolled in “remedial coursework.” (Cal. Code Regs., tit. 5, § 55756.5(g), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55035(g), Register 2007, No. 35.)
- 13) Adopt rules and regulations governing the inclusion in or exclusion of units, for the purpose of determining whether to place a student on probation or dismissal, in which a student did not receive a grade or “credit-no credit” or from which the student withdrew in accordance with rules adopted by the district governing board. (Cal. Code Regs., tit. 5, § 55757, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55030(a), Register 2007, No. 35.)
- 14) Determine a student’s grade point average using the grades from a grading scale and the corresponding point equivalencies set forth in California Code of Regulations, title 5, section 55758(a). (Cal. Code Regs., tit. 5, § 55758(a), Register 2000, No. 50; for current requirement see Cal. Code Regs., tit. 5, § 55023(a), Register 2007, No. 35.)
- 15) Publish the point equivalencies for the grades used in California Code Regulations, title 5, section 55758(a), in the catalog or catalogs of the community college district as part of its grading practices. “Point equivalencies for the grades” that are to be published excludes the symbols for credit (CR) and no credit (NC). Reimbursement is required only for the ongoing pro-rata cost to publish the section of the catalog that contains the mandated point equivalencies for grades (i.e. the cost of printing the additional page(s)). *Reimbursement is not required for the cost of publishing the entire catalog.* (Cal. Code Regs., tit. 5, § 55758(d), Register 2000, No. 50; for current requirement see Cal. Code Regs., tit. 5, § 55023(d), Register 2007, No. 35.)
- 16) Make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter which it will take effect, but no later than the start of the fall semester or quarter. (Cal. Code Regs., tit. 5, § 55759, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55034, Register 2007, No. 35.)
- 17) Make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. (Cal. Code Regs., tit. 5, § 55759, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55034, Register 2007, No. 35.)
- 18) Publish the policies and procedures regarding probation and dismissal in the college catalog. Reimbursement is required only for the one-time cost of

formatting the policies and procedures for publication, and the ongoing pro-rata cost to publish the section of the catalog that contains the policies and procedures on probation and dismissal (i.e. the cost of printing the additional page(s)). *Reimbursement is not required for the cost of publishing the entire catalog.* (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)

19) Make reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. (Cal. Code Regs., tit. 5, § 55759, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55034, Register 2007, No. 35.)

20) Grade changes. The following activities are eligible for reimbursement:

a) The instructor of the course shall determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”), which shall be final in the absence of mistake, fraud, bad faith, or incompetency. (Cal. Code Regs., tit. 5, § 55760(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55025(a), Register 2007, No. 35).

b) Adopt and publish regulations for repeating courses in which substandard work has been recorded Cal. Code Regs., tit. 5, §§ 55760(b) and 55761, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, §§ 55040(a), and 55042(a), Register 2007, No. 35.) If these regulations are published in the college catalog, reimbursement for publishing is required only for the ongoing pro-rata cost to publish the section of the catalog that contains the regulations for repeating courses (i.e. the cost of printing the additional page(s)). *Reimbursement is not required for the cost of publishing the entire catalog.*

21) Adopt and publish regulations for alleviation of previously recorded substandard academic performance that is not reflective of a student’s demonstrated ability. If these regulations are published in the college catalog, reimbursement for publishing is required only for the ongoing pro-rata cost to publish the section of the catalog that contains the regulations for alleviation of previously recorded substandard academic performance that is not reflective of a student’s demonstrated ability (i.e. the cost of printing the additional page(s)). *Reimbursement is not required for the cost of publishing the entire catalog.* (Cal. Code Regs., tit. 5, § 55764 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55046(a) (Register 2007, No. 35).)

5. Curriculum (Ed. Code, § 70902(b)(2)(A), and Cal. Code Regs., tit. 5, §§ 55001, 55002, 55005, 55006, 55150, 55201, and 55202)

a. One-Time Activities

1) Adopt policies for the provisions outlined in a) through d) below, in accordance with the Board of Governors regulations addressing faculty participation in

district and college governance (i.e. Cal. Code Regs., tit. 5, §§ 53200-53204), when a college is required to establish prerequisites or co-requisites for an associate degree credit course pursuant to California Code of Regulations, title 5, section 55002(a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or co-requisite, or success in a course is dependent on communication or computation skills):

- a) The policy for the process for establishing prerequisites or co-requisites shall be based on content review with additional methods of scrutiny being applied depending on the type of prerequisite or co-requisite established. (Cal. Code Regs., tit. 5, § 55201(b)(1), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(1), Register 2007, No. 35.)
- b) The procedures to assure that courses for which prerequisites or co-requisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or co-requisite. (Cal. Code Regs., tit. 5, § 55201(b)(2), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(2), Register 2007, No. 35.)
- c) The process, including levels of scrutiny, for reviewing prerequisites and co-requisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and co-requisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201(b)(3), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(3), Register 2007, No. 35.)
- d) The basis to challenge a prerequisite or co-requisite are:
 - i. The prerequisite or co-requisite was not established in accordance with the district's process for establishing prerequisites and co-requisites;
 - ii. The prerequisite or co-requisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and co-requisites;
 - iii. The prerequisite or co-requisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 - iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or co-requisite; and
 - v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or co-requisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201(b)(2) and (f)(1)-(5), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(b)(2) and (m)(1)-(5), Register 2007, No. 35.)

b. Ongoing Activities

- 1) Establish policies for educational programs. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973.)
- 2) Report the classification of all courses, classes, and activities offered in accordance with California Code of Regulations, title 5, sections 55001 (a) (describing instructional services of community colleges), and 55002 (standards and criteria for associate degree credit course, nondegree credit course, and noncredit course) by transmitting the following information to the Chancellor's Office:
 - a) The unique static course identifier and the course title for all credit and noncredit courses. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55001(c)(1), Register 94, No. 38, ending April 14, 2006.)
 - b) The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55001(c)(2), Register 94, No. 38, ending April 14, 2006.)
 - c) Whether the course is offered as credit or noncredit. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55001(c)(3), Register 94, No. 38 ending April 14, 2006.)
 - d) Whether the course transfers to the California State University or the University of California or both. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55001(c)(4), Register 94, No. 38 ending April 14, 2006.)
- 3) Establish a college or district curriculum committee by mutual agreement of the college or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college or district administration and academic senate. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(1), Register 93, No. 42.)
- 4) Get a recommendation by the college or district curriculum committee and approval by the district governing board, when seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course. Recommendation by the college or district curriculum committee and approval by the district governing board are based on the courses meeting the following standards and criteria listed in a) through d) below:
 - a) Each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(4), (b)(4), and (c)(3), Register 93, No. 42.)

b) Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002(a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:

i. Grading policy: The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with California Code of Regulations, title 5, section 55758 (Register 2000, No. 50), which details the academic record symbols and associated grade points to be used by community colleges.

The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays for associate degree credit courses or written expression for nondegree credit courses, or in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(A) and (b)(2)(A), Register 93, No. 42.)

ii. Units: The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

The course also requires a minimum of three hours of work per week, including class time (and/or demonstrated competency for nondegree credit courses) for each unit of credit, prorated for short-term, laboratory and activity courses. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(B) and (b)(2)(B), Register 93, No. 42.)

iii. Intensity: For associate degree credit course, the course must treat subject matter with a scope and intensity that requires students to study independently outside of class time. For nondegree credit courses, the course must provide instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(C) and (b)(2)(C), Register 93, No. 42.)

c) Proposed associate degree credit courses must also meet the following requirements found in California Code of Regulations, title 5, section 55002(a)(2), in order to receive a recommendation by the college or district curriculum committee:

- i. Prerequisites and Co-requisites: Require prerequisites or co-requisites when: (a) the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (b) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or co-requisites eligibility for enrollment in associate degree credit courses in English and/or mathematics. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(D) and (E), Register 93, No. 42.)
- ii. Difficulty: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(F), Register 93, No. 42.)
- iii. Level: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(2)(G), Register 93, No. 42.)
- d) Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee in order to receive a recommendation by the college or district curriculum committee. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(c)(1), Register 93, No. 42.)

Reimbursement for the activity identified in b.) is limited to obtaining a recommendation and approval, as specified, when seeking to offer a course. Reimbursement is not required for the process to determine that the instructor is qualified, or for the cost of the courses or instruction offered. (Cal. Code Regs., tit. 5, § 55002(a), (b), and (c), Register 93, No. 42.)

- 5) Develop and keep a course outline of record for associate degree credit courses, nondegree credit courses, and noncredit courses in the official college files that describe the course and make the outline available to each instructor.

For associate degree credit courses and nondegree credit courses, the course outline shall specify the unit value, scope, objectives, and content of the course in terms of a specific body of knowledge. Also, the course outline shall specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

For noncredit course, the course outline shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met. (Ed. Code, § 70902(b)(2)(A), Stats.

1988, ch. 973; Cal. Code Regs., tit. 5, § 55002(a)(3), (b)(3), and (c)(2), Register 93, No. 42; and Cal. Code Regs., tit. 5, § 55150(b), Register 91, No. 23.)

- 6) Make available to students through college publications all of the following facts regarding each course offered before they enroll in the course: (1) whether the course is offered as a credit or noncredit course; (2) whether the course is transferable to four-year colleges and universities; and (3) whether the course fulfills a major or general education requirement. (Ed. Code, § 70902(b)(2)(A) Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55005, Register 91, No. 23.)
- 7) Each community college must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, §§ 55006 and 55150(c), Register 91, No. 23.)
- 8) The following activities are eligible for reimbursement *only when the curriculum committee of a college determines that prerequisites or co-requisites for an associate degree credit course are required to be established pursuant to California Code of Regulations, title 5, section 55002(a)(2)(D) and (E)* (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or co-requisite, or success in a course is dependent on communication or computation skills):³
 - a) When establishing a course in communication or computation skills as a prerequisite or co-requisite for any associate degree credit course other than another course in communication or computation skills, gather data according to sound research practices and show the college or district curriculum committee and district governing board that a student is highly unlikely to succeed in a non-communication or non-computation skills course unless the student has met the proposed prerequisite or co-requisite.

This data gathering requirement does not apply when:

- i) Four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or
- ii) The prerequisite or co-requisite is required for enrollment in a program that is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:
 - Colleges in at least six different districts have previously satisfied the data collection requirement with respect to the same prerequisite or co-requisite for the same program; and
 - The district establishing the prerequisite or co-requisite conducts an evaluation to determine whether the prerequisite or co-requisite has a disproportionate impact on particular groups of students described in

³ Establishing prerequisites and co-requisites in all other situations is discretionary and not mandated by the state. (Cal. Code Regs., tit. 5, § 55201(a) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003(a) (Register 2007, No. 35).)

terms of race, ethnicity, gender, age or disability, as defined by the Chancellor, and if there is a disproportionate impact the district in consultation with the Chancellor develops and implements a plan setting forth the steps the district will take to correct the disproportionate impact. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55201(e), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(e), Register 2007, No. 35.)

- b) If a prerequisite or co-requisite required to be established for an associate degree credit course is challenged on the basis that it is either unlawfully discriminatory or applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 55201(f)(3)), advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to the title 5 regulations addressing discrimination complaint procedures (Cal. Code Regs., tit. 5, § 59300 et seq.). (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55201(g), Register 98, No. 7; for current requirement see Cal. Code Regs., tit. 5, § 55003(n), Register 2007, No. 35.)
- c) Identify prerequisites and co-requisites required to be established for an associate degree credit course in college publications available to students as well as in the course outline of any course for which they are established. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55202(a), Register 93, No. 42; for current requirement see Cal. Code Regs., tit. 5, § 55003(f), Register 2007, No. 35.)
- d) Determine whether a student meets a prerequisite for an associate degree credit course based on successful completion of an appropriate course. This determination shall be made prior to the student's enrollment in the associate degree credit course requiring the prerequisite. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55202(c)(g), Register 93, No. 42; for current requirement see Cal. Code Regs., tit. 5, § 55003(h)(l), Register 2007, No. 35.)
- e) If a prerequisite for an associate degree credit course requires precollegiate skills in reading, written expression, or mathematics, ensure precollegiate basic skills courses designed to teach the required skills are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course.
This activity does not require reimbursement for offering the course or the costs associated with the teacher time for the course. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55202(d), Register 93, No. 42; for current requirement see Cal. Code Regs., tit. 5, § 55003(i), Register 2007, No. 35.)
- f) When a co-requisite course is established by the district for an associate degree credit course based on a finding by the college or district curriculum committee that the co-requisite is necessary for the course pursuant to section

55002(a)(2)(D) and 55002(a)(2)(E) of the Title 5 regulations, ensure sufficient sections of a co-requisite course are offered to reasonably accommodate all students who are required to take the co-requisite. Reimbursement for this activity is limited to the administrative functions of ensuring that sufficient sections of a co-requisite course are offered.

This activity does not require reimbursement for offering the co-requisite course or the costs associated with the teacher time for the course. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55202(e), Register 93, No. 42; for current requirement see Cal. Code Regs., tit. 5, § 55003(j), Register 2007, No. 35.)

- g) Waive a co-requisite for an associate degree credit course for any student for whom space in the co-requisite course is not available. (Ed. Code, § 70902(b)(2)(A), Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 55202(e), Register 93, No. 42; for current requirement see Cal. Code Regs., tit. 5, § 55003(j), Register 2007, No. 35.)

6. Degrees and Certificates (Cal. Code Regs., tit. 5, §§ 55800, 55805, and 55806)

Reimbursement is authorized for the following ongoing activities:

- a. Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810. (Cal. Code Regs., tit. 5, § 55800, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55060, Register 2007, No. 35.)

Include in the policy the requirement to condition receipt of an associate degree by a student on the satisfactory completion of at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

The 18 semester or 27 quarter units in a major must be taken in a single discipline or related disciplines, as listed in the Community Colleges “Taxonomy of Programs.”

The 18 semester or 27 quarter units in general education requirements must include a minimum of three semester or four quarter units in each of the following areas: (1) Natural Sciences, (2) Social and Behavioral Sciences, (3) Humanities, (4) Language and Rationality – English Composition, and (5) Language and Rationality – Communication and Analytical Thinking.

The remainder of the unit requirement is also to be selected from among these five divisions of learning or as determined by local option. (Cal. Code Regs., tit. 5, § 55806(a) and (b)(1), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(a) and (b), Register 2007, No. 35.)

- b. Publish in the college catalog under appropriate headings the policy that is consistent with the subchapter in title 5 of the California Code of Regulations regarding degrees

- and certificates. (Cal. Code Regs., tit. 5, § 55800, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55060, Register 2007, No. 35.)
- c. File a copy of the policy regarding degrees and certificates, and any amendments, with the Chancellor. (Cal. Code Regs., tit. 5, § 55800, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55060, Register 2007, No. 35.)
 - d. Adopt a policy which states its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805(a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061(a) (Register 2007, No. 35).)
 - e. When developing the policy stating its specific philosophy on General Education, consider the policy of the Board of Governors specified in California Code Regulations, title 5, section 55805(a) (Register 91, No. 23). (Cal. Code Regs., tit. 5, § 55805(a), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55061(a), Register 2007, No. 35.)
 - f. Establish criteria, subject to the limitations in California Code of Regulations, title 5, section 55805.5 (Register 91, No. 23), to determine which courses may be used in implementing its philosophy on the associate degree and general education. (Cal. Code Regs., tit. 5, §§ 55805(b) and 55805.5, Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, §§ 55061(b) and 55062, Register 2007, No. 35.)
 - g. Review the policy and criteria for General Education, established pursuant to California Code of Regulations, title 5, section 55805(a) and (b), on a regular basis. (Cal. Code Regs., tit. 5, § 55805(c), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55061(c). Register 2007, No. 35.)
 - h. Offer ethnic studies in at least one of the general education areas of learning listed in California Code of Regulations, title 5, section 55806(b)(1)(A)-D) (i.e. Natural Sciences, Social and Behavioral Sciences, Humanities, Language and Rationality-English Composition, and Language and Rationality-Communication and Analytical Thinking). (Cal. Code Regs., tit. 5, § 55806(b)(3), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(b)(2), Register 2007, No. 35.)
 - i. Design a course to help students develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities, in order to satisfy the general education requirement in natural sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(A), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(b)(1)(A), Register 2007, No. 35.)
 - j. Design a course to develop an awareness of the method of inquiry used by the social and behavioral sciences and to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate, in order to satisfy the general education requirement in social and behavioral sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(B), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(b)(1)(B), Register 2007, No. 35.)

- k. Design a course to help students to develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and ability to make value judgments, in order to satisfy the general education requirement in humanities. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(C), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(b)(1)(C), Register 2007, No. 35.)
- l. Design courses fulfilling the written composition (English composition) requirement to include both expository and argumentative writing. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(1), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(b)(1)(D)(1), Register 2007, No. 35.)
- m. Design a course to fulfill the communication and analytical thinking requirement. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(2), Register 91, No. 23; for current requirement see Cal. Code Regs., tit. 5, § 55063(b)(1)(D)(2), Register 2007, No. 35.)

7. Open Courses (Cal. Code Regs., tit. 5, §§ 58102, 58104, and 58106)

- a. Publish a description of each course that is clear and understandable to the prospective student in the official catalog, schedule of classes, and addenda. (Cal. Code Regs., tit. 5, §§ 58102 and 58104, Register 93, No. 25.)
- b. Handle challenges to enrollment limitations made by students pursuant to title 5, section 58106(c), in a timely manner. (Cal. Code Regs., tit. 5, § 58106, Register 93, No. 42.)
- c. Waive the enrollment limitation with respect to a student that challenged an enrollment limitation, if the challenge is upheld. (Cal. Code Regs., tit. 5, § 58106, Register 93, No. 42.)
- d. Advise a student that he or she may file a formal complaint of unlawful discrimination pursuant to title 5, section 59300 et seq., upon completion of handling a challenge to an enrollment limitation made by a student alleging that an enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 58106(c)(1), Register 93, No. 42). (Cal. Code Regs., tit. 5, § 58106, Register 93, No. 42.)

V. CLAIM PREPARATION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by

productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost. Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions;" (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁴ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. Also, reimbursement for the mandate imposed by California Code of Regulations, title 5, section 53207(a), received from the Academic Senate of the California Community Colleges for the administrative costs associated with granting faculty members release or reassigned time and for hiring faculty to replace the faculty servicing as president or vice president shall be identified and deducted from this claim.

In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and the parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines.⁵ The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

⁵ Reference to “statements of decision adopted for the test claim” includes the statement of decision for the *Discrimination Complaint Procedures* (02-TC-46; and a part of 02-TC-25 and 02-TC-31) test claim for purposes of the activities associated with Education Code sections 66010.2 and 66010.7, which were severed from the parameters and guidelines for that test claim and included in the parameters and guidelines for *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31).