

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 67385, 67390 and 67391; as added or amended by Statutes 1987, Resolution Chapter 105; Statutes 1990, Chapter 423; Statutes 1991, Chapter 1068; and Statutes 1995, Chapter 758;

Filed on June 21, 2000;

By Los Angeles Community College District,  
Claimant.

No. 99-TC-12

*Sexual Assault Education Programs*

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 on October 24, 2002)*

**STATEMENT OF DECISION**

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

This Decision shall become effective on October 28, 2002.

  
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PAULA HIGASHI, Executive Director

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**STATEMENT OF DECISION**

The Commission heard and decided this test claim on September 26, 2002 during a regularly scheduled hearing. Keith Petersen appeared for claimant, Los Angeles Community College District. Susan Geanacou and Randy Katz appeared on behalf of the Department of Finance.

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

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

The Commission approved this test claim by a 4-2 vote.

**BACKGROUND**

Claimant, Los Angeles Community College District, submitted a test claim alleging that the test claim legislation constitutes a reimbursable state mandate pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The claim arose from enactments of or amendments to Education Code sections 67385, 67390 and 67391; Statutes 1987, resolution chapter 105, Statutes 1990, chapter 423; Statutes 1991, chapter 1068; and Statutes 1995, chapter 758. This legislation encourages and requires community colleges and other segments of higher education to adopt and implement sexual assault response procedures and educational programs.

Claimant seeks reimbursement for the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training, and travel to implement the following activities:

**(A) Pursuant to Statutes 1987, resolution chapter 105: ACR 46:**

- (1) Providing information to victims of alleged incidents of rape regarding available options they may pursue, and to respond promptly to, the victim's option;
- (2) Establishing and enforcing clear and consistent sexual assault policies which may be incorporated into the current disciplinary policies of each campus that (a) provide an institutional disciplinary process based on the principle of due process, which shall include a disciplinary hearing; (b) set forth and respect the rights of victims including determination of whether the hearing should be open or closed, the ability to have a person of the victim's choice accompany the victim throughout the disciplinary hearing, the right to be present during the entire hearing, the right not to have his or her past sexual history offered as evidence, with exceptions, the right to prompt relocation to another dormitory or housing alternative, and (c) take appropriate action against members of the campus community who participate directly or indirectly in a rape that occurs on the property of the institution or at a campus-related function or activity, such action to include the penalty of suspension or expulsion, or other removal from the campus, of the alleged assailant;
- (3) Adding specific language to student codes of conduct and dormitory rules and regulations prohibiting rape and other forms of sexual battery, specifying the penalties for commission of these crimes, and provide all freshmen students, dormitory, fraternity, and sorority residents with information of the legal definition of rape, rape statistics, and the penalties for rape;
- (4) For those institutions with counseling centers that receive financial support from the institution, to (a) maintain at least one staff member who has competency in the most current therapeutic approach to acquaintance rape and to offer counseling in a timely manner, and (b) develop a comprehensive data collection system to provide campus and community members with information (number of student rape victims coming to the center, whether the assailant was a stranger or an acquaintance, or a gang rape) on the incidents of sexual assault;
- (5) Publicizing and reporting the results of these new policies and procedures to the Chancellor's Office.

**(B) Pursuant to Education Code section 67385: to develop, adopt, publish, and implement written procedures to respond to incidences of rape and sexual assault on college property that includes:**

- (1) The college policy on sexual assault on campus;
- (2) Personnel to notify, and procedures for notification, with the consent of the victim;
- (3) Legal reporting requirements and procedures for fulfilling them;
- (4) Services available to the victim;
- (5) Personnel to provide response services, such as transporting a victim to the hospital, referring victims to counseling, and notifying the police, with the victims consent;
- (6) A description of both on campus and off campus resources available to the victim;
- (7) Procedures for ongoing case management, including keeping the victim informed of the status of student disciplinary proceedings in connection with the assault, the results of those proceedings, and helping the victim deal with academic difficulties stemming from the sexual assault;
- (8) Procedures guaranteeing confidentiality;

- (9) Procedures for handling requests for information from the press, concerned students, and parents;
- (10) Procedures for informing rape and other assault victims of the possibility of criminal prosecution, civil actions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance.

(C) Pursuant to Education Code section 67390: adopt and implement a rape and sexual assault education program for students and college staff which includes:

- (1) A variety of educational programs to inform all students and other college personnel about sexual assaults on campus;
- (2) Distribution of written policies, brochures and other informational materials;
- (3) Education programs and training to campus fraternal and student organizations each year before these organizations can conduct their events;
- (4) An education program and training to campus residential housing staff each semester;
- (5) Distribution of information about acquaintance rape and other types of sexual assaults at all new student orientation programs and at any campus program students are required to attend;
- (6) Sexual assault seminars for athletic coaches and administrators and members of athletic teams prior to the first team meeting;
- (7) Utilization of campus media, newspaper, radio, and television to heighten awareness of campus violence and its prevention;
- (8) Providing information and counseling to sexual assault victims;
- (9) Requiring college student professional staff members or student affairs professional staff members and campus police to participate in annual sexual assault education seminars.

The Department of Finance (DOF) originally commented that services related to Assembly Concurrent Resolution No. 46 (ACR 46) do not carry the force of law and that Statutes 1990, chapter 423 contains only intent language concerning the permissive policy declaration expressed by ACR 46, and it applies to both private and public institutions of higher education. The victim assistance activities in section 67385 are not reimbursable because subdivision (c) says they are to be completed within existing resources, and the **community** colleges receive general apportionment funds for various services, including student safety, so the activities are not a reimbursable mandate. Regarding the rape and sexual assault educational activities in sections 67390 and 67391, section 67393 exempts **community** colleges from performing any activities in those sections unless funds are made available for them. Because no funds have been provided, this activity is optional and not a state mandate.

DOF's July 25, 2002 comments agree with the part of the Commission's analysis that denies reimbursable mandates, but disputes the finding that section 67385 is a reimbursable mandate. 'DOF argues that (1) the article XIII B, section 6 analysis is not applied to the function of the claimant, but rather, to the function affected by the test claim legislation; (2) Section 67385 is unrelated to the peculiarly governmental function of educating students, but relates to procedures for treatment of sexual assault victims; (3) Section 67385 is not unique to public

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<sup>1</sup> All further statutory references are to the Education Code unless otherwise indicated.

entities because chapter 423 also created section 94385, which places the same requirements on private institutions of higher education.

DOF also asserts that federal laws (the Student Right to Know and Campus Security Act enacted in 1990, and the Campus Sexual Assault Victim's Bill of Rights, enacted in 1992) supersede section 67385. Finally, DOF contends that section 67385 consists of one-time activities completed before the eligibility period for reimbursement.

The California Community Colleges Chancellor's Office (CCC) comments that section 67385 requires districts to prepare written procedures or protocols for victims of campus sexual assaults and in so doing, requires community colleges "to perform a minimal higher level of service." As for sections 67390 - 67393, section 67393 exempts the California Community Colleges from the requirements of section 67390 unless and until funding is provided. Since the Legislature has not provided funding, and has stated that the section 67390 is not effective until funding is provided, no state-mandated costs have been imposed on community college districts by sections 67390 - 67393.

## COMMISSION FINDINGS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 175 14, the statutory language must mandate or require an activity or task on local governmental agencies. If the statutory language does not mandate or require local governments to perform a task, then compliance with the test claim statute is within the discretion of the local entity and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>2</sup> To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>3</sup> Finally, the new program or increased level of service must impose "costs mandated by the state."<sup>4</sup>

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

Article XIII B, section 6 of the California Constitution provides, with exceptions not relevant here, that "whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds." This

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<sup>2</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521,537.

<sup>3</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>4</sup> Government Code section 175 14.

constitutional provision was specifically intended to prevent the state from forcing programs on local government that require expenditure by local governments of their tax revenues.’

To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 and following in which section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is required to incur . . . as a result of any statute. . . which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or compel an activity or task on local governmental agencies. If the statutory language does not mandate school districts to perform a task, then compliance with the test claim statute is within the discretion of the district and a reimbursable state mandated program does not exist.

In addition, the legislation must constitute a “program.” The California Supreme Court defined “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” Only one of these findings is necessary to trigger article XIII B, section 6.<sup>7</sup>

The issues of whether the test claim legislation imposes requirements on community college districts and constitutes a “program” subject to article XIII B, section 6 are discussed below.

**Statutes 1987, resolution chapter 105:** Chapter 105, enacted as ACR 46, states that all institutions of higher education in the state should perform the activities specified above under Claimant’s Contentions, section “A.”

Claimant states that chapter 105 (ACR 46) acquired the force of law when Education Code section 67385 was enacted. Claimant cites Statutes 1990 chapter 423, subdivision (a), paragraph (2) of Section 1 that says, “institutions of higher education have failed to adequately respond to the provisions of [ACR 46].” Subdivision (b) of Section 1 says “It is the intent of the legislature in enacting this act to require each public postsecondary educational institution. . . to adopt and implement written procedures or protocols to ensure, to the fullest extent possible, that. . . victims of sexual assaults receive appropriate treatment and information, or appropriate referrals to local community treatment centers. ” Subdivision (c) goes on to say “It is further the intent of the Legislature that the requirements prescribed by this act shall supplement, and shall not supplant, the provisions of Assembly Concurrent Resolution 46. ”

In its original comments, DOF states that chapter 423 contains only intent language concerning the permissive policy declaration expressed by ACR 46, and that its policies would apply to both private and public institutions of higher education. As for Education Code section 67385, DOF says that it is not reimbursable because subdivision (c) says activities are to be completed strictly within existing funds and other available resources, and that community colleges

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<sup>5</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482,487; *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>6</sup> *County of Los Angeles v. State of California,, supra*, 43 Cal.3d 46, 56.

<sup>7</sup> *Camel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537.

receive general apportionment funds for performing various services, including student safety. Therefore, section 67385 is not a reimbursable mandate. CCC comments that section 67385 does require **community** colleges “to perform a **minimal** higher level of service. ”

In ordering the Secretary of State not to put a resolution on the ballot, the California Supreme Court held that legislative resolutions do not have the force of law. <sup>8</sup> Therefore, the Commission finds that chapter 105 itself does not constitute a “program” within the meaning of article XIII B, section 6 because it is a resolution without the force of law, and so cannot impose requirements on community college districts.

The Commission finds that even if the provisions of ACR 46 were incorporated into Education Code section 67385 due to the stated intention in Statutes 1990, chapter 423 to supplement and not supplant ACR 46, it does not mandate an activity. Every “resolved” provision in ACR 46 says that higher education institutions “should” perform an activity. “Should” generally denotes discretion and should not be construed as “shall. ”<sup>9</sup> Moreover, Education Code section 75 says that “shall” is mandatory and “may” is permissive. If the Legislature had intended ACR 46 to be mandatory, it **would** have used “shall” rather than “should. ” Therefore, the Commission finds that ACR 46 is not mandatory by itself or via chapter 423, and is therefore not subject to article XIII B, section 6.

**Education Code section 67385:** Enacted by Statutes 1990, chapter 423, Education Code section 67385 requires institutions of higher education, including community college districts, to adopt and implement written procedures to respond to incidences of rape and sexual assault on college property which include the items listed above under claimant’s allegations section “B.” Section 67385 imposes these requirements on community colleges. It was amended by Statutes 1995, chapter 758, but the amendment was not substantive, Therefore, the Commission finds that Statutes 1995, chapter 75 8 is not subject to article XIII B, section 6.

The question is whether the requirements of Education Code section 67385 (chapter 423) are subject to article XIII B, section 6. In its July 25, 2002 comments, DOF argues that section 67385 is not subject to article XIII B, section 6, because section 67385 is unrelated to the peculiarly governmental function of educating students. Rather, it relates to procedures or protocols and information for treatment of sexual assault victims. Thus, DOF concludes that section 67385 does not affect the provision of services to the public. DOF also argues that section 67385 is not unique to local government because of the enactment of another provision that applies the same requirements to private colleges. DOF cites *City of Richmond v. Commission on State Mandates*,<sup>10</sup> which held that test claim legislation imposed no unique requirement on local governments as it applied equally to public and private employers, in support of this argument that section 67385 is not unique to local government and therefore not a state mandate.

As stated above, for article XIII B, section 6 to apply, the legislation must constitute a program that carries out the governmental function of providing a service to the public, *or* constitute

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<sup>8</sup> *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687,709.

<sup>9</sup> Sutherland Statutory Construction, section 57.03 (5<sup>th</sup> Ed.) page 7.

<sup>10</sup> *City of Richmond v. Commission on State Mandates* (1998) 63 Cal. App.4<sup>th</sup> 1190.

laws which, to **implement** a state policy, **impose** unique requirements on local governments and do not apply generally to all residents and entities in the state.

Section 67385 relates to campus safety. As such, it concerns public safety and education, both of which are programs that carry out governmental functions of providing services to the public. The California Supreme Court has held that a community college owes a duty of care to provide a campus that is free from conditions that increase the risk of **crime**.<sup>11</sup> Because section 67385 requires a campus sexual assault policy and legal reporting procedures, it goes beyond **victim** assistance into the realm of crime prevention for future students, faculty and staff,

Moreover, section 67385 is a law that implements a state policy and imposes unique requirements on community college districts and does not apply generally to all residents and entities statewide. The state policy is to provide assistance, in the form of treatment and information, to campus victims of sexual assault. The unique requirements on community college districts are discussed above under claimant's allegations section (B).

Chapter 423 also enacted section 94835, which imposes the same requirements as section 67385 on private institutions of higher education. Thus, the issue is whether chapter 423 is a statute of general applicability within the holding of *County of Los Angeles*<sup>12</sup> or *City of Richmond*,<sup>13</sup> which held that laws of general applicability do not fall within article XIII B, section 6.

The courts have recognized that certain activities, such as fire **fighting**<sup>14</sup> and' **education**,<sup>15</sup> are --peculiarly governmental functions and unique within the meaning of article XIII B, section 6, despite private sector performance of the activities. For example, the *Carmel Valley* court held that the requirement to provide safety clothing and equipment to firefighters was a reimbursable mandate, even though it applied to private fire fighting entities, because fire protection is one of the most essential and basic functions of government, and the overwhelming number of fire fighters discharge a classical governmental function. The court stated that police and fire protection are "two of the most essential and basic functions of local government." <sup>16</sup>

Similarly, in *Long Beach Unified School District v. State of California*,<sup>17</sup> the court held,

. . . **although** numerous private schools exist, education in our society is considered to be a peculiarly governmental function. Further, public education is administered by local agencies to provide service to the public. Thus, public education constitutes a "program" within the meaning of Section 6.

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<sup>11</sup> *Peterson v. San Francisco Community College District* (1984) 36 Cal. 3d 799, 8 13.

<sup>12</sup> *County of Los Angeles v. State of California*, *supra*, 43 Cal. 3d 46, 57.

<sup>13</sup> *City of Richmond v. Commission on State Mandates*, *supra*, 63 Cal. App.4<sup>th</sup> 1190.

<sup>14</sup> *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 52 1.

<sup>15</sup> *Long Beach Unified School Dist. v. State of California*. (1990) 225 Cal.App.3d 155.

<sup>16</sup> *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 521,537.

<sup>17</sup> *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155,172.

Even though section 67385 has a counterpart statute that requires the same activities for private colleges, it still constitutes a “program” as a requirement on community college districts, which discharge the unique, peculiarly governmental function of education and also carry out public safety activities for their respective campuses.

There is nothing in the *Long Beach* case to suggest it is limited to kindergarten through twelfth grade education. Section 66700 says that community colleges “shall continue to be a part of the public school system of this state, ” Moreover, article XVI, section 8 of the California Constitution, approved by the voters as Proposition 98, establishes a minimum level of funding for public schools and community colleges and requires the state to spend any excess revenues, up to a specified maximum, for public schools and community colleges .<sup>18</sup>

Therefore, given the requirements imposed by section 67385 on community college districts, the Commission finds that section 67385, subdivisions (a) and (b), constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.

**Education Code sections 67390 – 67393:** Statutes 1991, chapter 1068 consists of three parts. The first, section 67390, consists of legislative findings and declarations regarding rape and sexual assault among college students. The second, section 67391, authorizes the governing boards of the University of California, Hastings College of Law, the California State University, and each community college district, to adopt and implement a rape and sexual assault education program for students and student services or student affairs professional staff members at each system’s campuses or facilities. The third, section 67393, states that chapter 15.7 (i.e., sections 67390 and 67391) shall not apply to community colleges unless and until the Legislature makes funds available to them for the purposes of the chapter.

Claimant contends that chapter 1068 constitutes a state-mandated program regarding the activities listed in section (C) under claimant’s allegations discussed above. DOF originally commented that since no funds have been provided for this purpose, the activities in section C remain an optional function and not a state reimbursable mandate. The CCC comments concur with DOF. Claimant responds to DOF that section 67393 does not preclude a finding that section 67390 is a cost mandated by the state. Claimant argues that DOF’s position is inconsistent because DOF also states that community colleges receive general apportionment funds for performing various services including student safety. Claimant also contends that the statutory exceptions to finding costs mandated by the state contained in Government Code section 17556 do not recognize a condition subsequent as an exception to a finding of costs mandated by the state, nor sources of funding other than concurrent funding in the same statute as that which established the mandated program, or the power to assess fees to cover the cost of the mandate, none of which apply in this case.

In examining statutes, courts apply the basic rules of statutory construction. The meaning of a statute must first be interpreted within the language in which it was framed. If the language is “plain,” then the sole judicial function is to enforce it according to its terms. There is no room

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<sup>18</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal. App. 4<sup>th</sup> 1265, 1276.

for interpretation. Courts will not determine the wisdom, desirability or propriety of statutes enacted by the Legislature.<sup>19</sup>

In the present case, DOF and CCC contend that claimant's activities are optional to community colleges until the Legislature makes such funds available to community colleges for the purposes of the chapter. Section 67393 provides:

Notwithstanding any other provision of this chapter, this **chapter shall not apply** to the California Community Colleges unless and until the Legislature makes funds available to the California Community Colleges for the purposes of this chapter (emphasis added).

Moreover, claimant admits that section 67393 exempts community colleges from the program requirements "unless and until" the Legislature makes funds available." The Commission finds that the plain language of section 67393 states that the chapter, which includes section 67390, is not applicable to community colleges until the Legislature makes funds available to them to carry out its provisions. There is no evidence in the record that such funds have been made available to community colleges for the purposes of sections 67390 - 6739 1. Thus, until such funds are made available, community colleges are not required to comply with these sections. Since they are not mandated, the Commission finds that sections 67390, 6739 1 and 67393 are not subject to article XIII B, section 6 of the California Constitution.

**Issue 2: Does Education Code section 67385 impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?**

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

**Sexual assault procedures and information:** Section 67385, subdivision (a), requires the governing board of each community college district to adopt and implement at each campus or facility a written procedure to ensure that students, faculty or staff who are victims of sexual assault committed on the grounds or facilities of each institution, or on grounds or facilities maintained by affiliated student organizations, receive treatment and information. Subdivision (b) goes on to specify the minimum contents of the information, which are stated above under the claimant's allegations, section (B) .

Prior to section 67385, there was no legal requirement for community colleges to provide written procedures and information on sexual assault.

Therefore, the Commission finds that the activities listed in section 67385 impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6, as follows:

The governing board of each community college district shall adopt and implement at each campus or facility a written procedure or protocols to ensure to the fullest extent possible that

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<sup>19</sup> *Marin Hospital Dist v. Rothman* (1983) 139 Cal. App.3d 495,498.

<sup>20</sup> Los Angeles Community College District, Test claim 99-TC-12, pages 7-8.

students, faculty or staff who are victims of sexual assault committed on the grounds or facilities of each institution, or on off-campus grounds or facilities maintained by the institutions, or on grounds or facilities maintained by affiliated student organizations, shall receive treatment and information. If appropriate on-campus treatment facilities are unavailable, the written procedure or protocols may provide for referrals to local community treatment centers. The written procedure or protocols shall contain at least the following information:

- (1) The college policy on sexual assault on campus;
- (2) Personnel on campus to notify, and procedures for notification, with the victim's consent;
- (3) Legal reporting requirements and procedures for fulfilling them;
- (4) Services available to the victim, and personnel to provide response services, such as transporting a victim to the hospital, referring victims to a counseling center, and notifying the police, with the victim's concurrence;
- (5) A description of both on campus and off campus resources available to the victim;
- (6) Procedures for ongoing case management, including keeping the victim informed of the status of student disciplinary proceedings in connection with the assault, the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties stemming from the sexual assault;
- (7) Procedures guaranteeing confidentiality and for handling requests for information from the press, concerned students, and parents;
- (8) Procedures for informing rape and other assault victims of the possibility of criminal prosecution, civil actions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance.

**Issue 3: Does section 67385 impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable, state mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.<sup>21</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 175 14 defines “costs mandated by the state” as follows:

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

In this test claim, there are three issues surrounding “costs mandated by the state.” The first is whether section 67385 constitutes costs mandated by the state given subdivision (c), which says “Each segment of higher education shall implement this chapter from existing funds and resources available to it. ” The second issue is whether federal laws supercede section 67385 so that it falls within subdivision (c) of Government Code section 17556’s exception to a state

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<sup>21</sup> **Lucia Mar Unified School Dist. v. Honig**, *supra*, 44 Cal.3d 830,835. Government Code section 175 14.

mandate. Finally, DOF raises the issue of whether the claim was filed outside the reimbursement period.

**Costs to be Absorbed:** Section 67385, subdivisions (a) and (b), require community colleges to adopt and implement at each campus or facility a written policy and procedure, as specified, for victims of sexual assault. Subdivision (c) says “Each segment of higher education shall implement this chapter from existing funds and resources available to it.”

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local governments whenever the Legislature or a state agency mandates a new program or higher level of service that results in increased costs for the local governments. Government Code section 175 14 was enacted to implement this constitutional provision. The principle of reimbursement was “enshrined in the Constitution to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”<sup>22</sup>

Two cases have held legislative declarations similar to that in subdivision (c) of section 67385 unenforceable. In *Carmel Valley Fire Protection District v. State of California*,<sup>23</sup> the court held that “Legislative disclaimers, findings and budget control language are no defense to reimbursement.” The court in *Carmel Valley* called such language “transparent attempts to do indirectly that which cannot lawfully be done directly.”<sup>24</sup>

Similarly, in *Long Beach Unified School District v. State of California*,<sup>25</sup> the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that “unsupported legislative disclaimers are insufficient to defeat reimbursement. . . . [The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right.”<sup>26</sup>

Here, the Legislature attempted to limit claimant’s reimbursement by inserting language in subdivision (c) requiring the community colleges to absorb the costs within existing resources. Adoption and implementation of sexual assault procedures is a new activity. There is nothing in the record to suggest that the Legislature repealed other programs, appropriated money for this new activity,<sup>27</sup> or otherwise attempted to mitigate its cost. Therefore, based on the evidence in the record, the Commission finds that the activity of adoption and implementation of sexual assault procedures as described above imposes costs mandated by the state on community college districts within the meaning of article XIII B, section 6 and Government Code section 17514.

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<sup>22</sup> *County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal. App. 4<sup>th</sup> at 1264.

<sup>23</sup> *Carmel Valley*, *supra*, Cal.App.3d 521, .

<sup>24</sup> *Carmel Valley*, *supra*, Cal.App.3d 521 .

<sup>25</sup> *Long Beach*, *supra*, 225 Cal.App.3d 155.

<sup>26</sup> *Id.* page 184.

<sup>27</sup> An inspection of the 2001 Budget Act (Stats. 2001, ch. 106) revealed no sexual assault program appropriations.

**Federal law:** DOJ's July 2002 comments contend that federal laws (the "Student Right to Know and Campus Security Act" enacted in 1990, and the Campus Sexual Assault Victim's Bill of Rights, enacted in 1992) supersede section 67385. DOJ argues that Government Code section 17556, subdivision (c), and language in *County of Los Angeles v. Commission on State Mandates*<sup>28</sup> support its conclusion that section 673 85 is not a mandate, regardless of whether the state law was enacted before or after the federal law.

The Student Right to Know and Campus Security Act required eligible institutions (those participating in federal grant and loan programs) to begin collecting campus crime statistics and campus security policies beginning September 1, 1991,<sup>29</sup> and to publish and distribute them beginning September 2, 1992. Rape was only one of six crimes to be reported.<sup>30</sup>

The Higher Education Amendments of 1992 applies to eligible institutions participating in federal grant programs and the Federal Family Education Loan Program. The amendments expand reporting beyond rape to include "sex offenses, forcible or nonforcible." They require campuses to distribute a policy regarding the campus sexual assault programs aimed at prevention and the procedures followed once a sex offense has occurred. The campus policy is required to address:

- (i) Education programs to promote awareness of rape, acquaintance rape, and other sex offenses;
- (ii) possible sanctions to be imposed following the final determination of on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible;
- (iii) procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported;
- (iv) procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that (I) the accuser and accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and (II) both the accuser and accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault;
- (v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student chooses;
- (vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community;

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<sup>28</sup> *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal. App.4<sup>th</sup> 808, 816.

<sup>29</sup> Later amended to August 1, 1991. (20 U.S.C. § 1092 (f)(1).)

<sup>30</sup> The others are murder, robbery, aggravated assault, burglary, and motor vehicle theft (20 U.S.C. § 1092 (f)(1)(F)(i).)

(vii) Notification of student of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.<sup>31</sup>

The Higher Education Amendments of 1992 became effective September 1, 1993 .<sup>32</sup>

The Commission disagrees with DOF that the federal law precludes a finding of costs mandated by the state. First, the federal laws cited by DOF are not federal mandates because institutions are not required to accept federal funds, i.e., are not required to participate in federal grant programs or the Federal Family Education Loan Program. Thus, the federal laws cited by DOF are not mandatory, but merely conditional on receipt of federal student aid funding.

Second, the test claim statute would need to implement the federal law in order to preclude a finding of costs mandated by the state.<sup>33</sup>

In this case, that would mean that section 67385 (Stats. 1990, ch. 423) would need to have been enacted *to implement* the federal laws cited by DOF; specifically, the federal Student Right to Know and Campus Security Act of 1990, and the federal Campus Sexual Assault Victim's Bill of Rights of 1992. Research on the legislative history of section 673 85 revealed no such intent; no federal enactments are mentioned in the legislative history. Moreover, section 67385 was chaptered on July 26, 1990, and became effective on January 1, 1991. The Student Right to Know and Campus Security Act of 1990's crime reporting provision became effective September 199 1.<sup>34</sup> The Higher Education Amendments of 1992 became effective September 1, 1993 .<sup>35</sup> That the federal law was effective after the state law makes it impossible for section 67385 to have been enacted to implement the federal laws as required by Government Code sections 175 13 and 17556 subdivision (c).

Therefore, the Commission finds that section 67385 imposes "costs mandated by the state" within the meaning of Government Code sections 175 14 and 17556, subdivision (c).

**One-time activity/reimbursement period:** DOF's final argument is as follows: section 67385 required only one-time activities completed well before the eligibility period for reimbursement. Adopting and implementing a written procedure is a one-time activity, although the test claim statute does not require the procedures to be updated or published at any time. As the test claim legislation was effective January 1, 1991, it is reasonable to expect that most campuses adopted their written procedures and protocols by January 1, 1992. Thus, colleges would not be eligible for reimbursement because the requirements of the mandate would have been fulfilled over five years before the eligibility for reimbursement. This test claim was submitted in June 2000, so the period of eligibility would not have begun until July 1998.

The statute does not say the activity is one-time or ongoing, nor does it give a timetable for implementation. There is nothing in the record regarding how long it takes to implement the requirements of this test-claim except DOF's "reasonable expectation" that the campus procedures and protocols would be adopted by January 1, 1992. Moreover, the statute requires

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<sup>31</sup> Title 20 United States Code section 1092 (f)(8).

<sup>32</sup> Public Law number 102-542, section 486 (c).

<sup>33</sup> Government Code section 17556, subdivision (c). Government Code section 175 13.

<sup>34</sup> Crime Awareness and Campus Security Act of 1990. (Pub. L.No.101-524, § 204 (c) (Nov. 8, 1990)).

<sup>35</sup> Public Law number 102-542, section 486 (c).

adoption and implementation of the procedure “at each of their respective campuses or other facilities.” Therefore, any time a campus is added to the community college system, the procedure would need to be adopted and implemented again.

As for whether the duties are one-time or ongoing, this would normally be discussed in the parameters and guidelines phase. In short, the Commission finds that DOF’s argument regarding the reimbursement period does not preclude finding section 67385 is a reimbursable mandate.

### CONCLUSION

Based on the foregoing, the Commission finds that section 67385, subdivisions (a) and (b), impose a partial reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14 that requires:

The governing board of each community college district [to] adopt and implement at each campus or facility a written procedure or protocols to ensure to the fullest extent possible that students, faculty or staff who are victims of sexual assault<sup>36</sup> committed on the grounds or facilities of each institution, or on off-campus grounds or facilities maintained by the institutions, or on grounds or facilities maintained by affiliated student organizations, shall receive treatment and information. If appropriate on-campus treatment facilities are unavailable, the written procedure or protocols may provide for referrals to local community treatment centers. The written procedure or protocols shall contain at least the following information:

- (1) The college policy on sexual assault on campus;
- (2) Personnel on campus to notify, and procedures for notification, with the victim’s consent;
- (3) Legal reporting requirements and procedures for fulfilling them;
- (4) Services available to the victim, and personnel to provide response services, such as transporting a victim to the hospital, referring victims to a counseling center, and notifying the police, with the victim’s concurrence;
- (5) A description of both on campus and off campus resources available to the victim;
- (6) Procedures for ongoing case management, including keeping the victim informed of the status of student disciplinary proceedings in connection with the assault, the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties stemming from the sexual assault;
- (7) Procedures guaranteeing confidentiality and for handling requests for information from the press, concerned students, and parents;
- (8) Procedures for informing rape and other assault victims of the possibility of criminal prosecution, civil actions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance.

The Commission finds that Statutes 1987, resolution chapter 105, Statutes 1995, chapter 758, and sections 67390, 6739 1 and 67393, are not subject to article XIII B, section 6 of the California Constitution.

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<sup>36</sup> As defined in Education Code section 67385, subdivision (d), sexual assault includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

**DECLARATION OF SERVICE BY MAIL**

I, the undersigned, declare as follows:

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

October 28, 2002, I served the:

**Adopted Statement of Decision**

*Sexual Assault Education Programs, 99-TC-12*

Los Angeles Community College District, Claimant

Education Code Sections 67385, 67390, and 67391

Statutes 1987, Resolution Chapter 105; Statutes 1990, Chapter 423;

Statutes 1991, Chapter 1068; and Statutes 1995, Chapter 758

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

Mr. Keith Petersen

SixTen & Associates

5252 Balboa Avenue, Suite 807

San Diego, CA 92117

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

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

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on October 28, 2002, at Sacramento, California.

  
VICTORIA SORIANO