



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 25, 2009

RECEIVED

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

MAR 26 2009

**COMMISSION ON
STATE MANDATES**

Dear Ms. Higashi:

We reviewed the Commission on State Mandates (Commission) December 4, 2008 draft staff analysis of the *Tuition Fee Waivers* test claim (02-TC-21) submitted by the Contra Costa Community College District. The Commission staff analysis determined that the following activities are a reimbursable state-mandate:

- **District Governing Board Rules and Regulations on Nonresident Tuition (ECS 68051)**
 - Nonresident Tuition Rules
- **Determining Residence Classification (CCR, title 5, 54024)**
 - Require applicant to supply, and district to weigh, the residence determination factors
 - Residence classification questionnaires
 - Financial independence
- **Nonresident Tuition Fee (ECS 76140)**
- **Exemptions to Determination of Nonresident (ECS 68074)**
 - Dependent of member of armed forces
 - Member of armed forces after discharge
 - Dependent of California resident for more than one year
 - Graduate of Bureau of Indian Affairs school
 - Student holding emergency permit or public school credential
 - Native American student
 - Amateur student athlete in training at U.S. Olympic Training Center
 - Federal civil service employee in state due to military mission realignment
 - Nonresident California high school graduates
 - Alien students
- **Notifying Students of Classification Decision and Appeal Procedure (CCR, title 5, 54060)**
- **Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks (ECS 68121)**
 - Surviving dependents of victims of 9/11 terrorist attacks

We agree with the Commission that in some instances the claimed activities are reimbursable state-mandated activities; however, we disagree with several of the Commissions' conclusions as noted below:

District Governing Board Rules and Regulations on Nonresident Tuition

Nonresident Tuition Rules

The Commission determined that the following one-time activities for adopting rules and regulations as required by Education Code Section 68051 are reimbursable state-mandated activities:

- Adopting rules and regulations relating to the method of calculation and payment of the amount of nonresident tuition.
- Adopting rules and regulations relating to the method and amount of refund of nonresident tuition.

We disagree with the Commission's conclusion because community college districts (Districts) are not solely required to adopt rules and regulations for calculation and payment of nonresident tuition. The rules and regulations are to be adopted by the Board of Governors of the California Community Colleges (Chancellor's Office) of the District. Specifically, Education Code Section 68051, states:

Unless otherwise provided by law, the governing board or district governing board shall adopt rules and regulations relating to the method of calculation of the amount of nonresident tuition, the method of payment, and the method and amount of refund.

According to Section 68012, subdivision (c) of the Education Code:

"Governing board" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Maritime Academy, or the Board of Governors of the California Community Colleges.

The statute indicates that either the state governing board or the district governing board must adopt rules and regulations. We believe that the annual memorandum issued by the Chancellor's Office provides adequate direction to be considered rules and regulations for the method of calculation and payment of the amount of nonresident tuition. The memorandum specifically outlines the method and calculation for determining the amount of nonresident tuition and provides a worksheet for Districts to utilize as necessary.

Therefore, we believe that the Districts have a choice to use the Chancellor's Office memorandum as rules and regulations or develop their own rules and regulations. Since a choice exists, there is no mandated activity.

The memorandum does not address refunds of nonresident tuition; therefore, we agree the Commission's conclusion that Districts would be responsible for developing rules and regulations on a one-time basis relating to the method and amount of refund of nonresident tuition.

Determining Residence Classification

Require applicant to supply, and district to weigh, the residence determination factors.

The Commission determined that requiring, and weighing, the following factors from Section 54024, subdivision (e), of the title 5 regulations is a reimbursable state-mandate because it was not required under prior law:

- Ownership of residential property or continuous occupancy of rented or leased Property in California
- Registering to vote and voting in California
- Active membership in service or social club
- Being the petitioner for a divorce in California

The Commission concluded that the new conditions of Section 54024 must be considered in conjunction with Section 54010 of title 5, which requires resident classification to be made for each student at the time of application and admission. Although weighing student residency is not new, the Commission concluded that weighing these additional conditions is a new activity and results in a mandated activity.

As the Commission notes, requiring of information on and the weighing of different factors was required prior to 1975:

The 1973 version of Section 54024 (Register 73, No. 26 (Jun. 30, 1973) p. 637) stated that "Documentary evidence, including but not limited to the foregoing [sic] may be required [to establish residence]." The "foregoing refers to the 11 factors that establish intent to make California's one's residence. This is read together with former Section 54010 requiring "residence classification of all students" to be made "for each term at college..." Thus, consideration of most of the factors regarding residence classification was required prior to 1975 (under former §§ 54010 & 54024).

We further note that Section 54024, subdivision (a), of the title 5 states: "intent to make California the home for other than temporary purpose may be manifested in many ways. No one factor is controlling [emphasis added]." Furthermore, Section 54025, subdivision (e) states: "objectives manifestations of intent to establish California residence include, but are not limited to [emphasis added]."

The phrase "but are not limited to" indicates that the regulation does not intend to list all possible conditions or scenarios that would establish California residence. The regulations appear to list

likely conditions or scenarios that would justify California residency. Adding the conditions in question was an attempt to clarify potential conditions that would justify residence since the regulation clearly indicates that other scenarios may exist. Therefore, adding the conditions in question would not impose a new or higher level service since the conditions essentially existed previously under the umbrella that other scenarios were possible.

We disagree with the Commission's conclusion because the fundamental act of weighing residency has remained constant, regardless of the potential scenarios listed in Section 54024 of title 5. The scenarios added simply attempted to clarify potential acceptable conditions since the plain language indicates that other possibilities exist.

We believe the initial activity of requiring students to supply documentation has not changed. Therefore, the requirement for students to supply and the District to weigh factors under Section 54024, subdivision (e) of title 5 regulations is not a reimbursable state-mandate.

Residence classification questionnaires

The Commission determined Section 54012, subdivisions (b), (c) and (d) of title 5 result in a reimbursable state-mandate because Districts must revise the sample residence questionnaire provided by the Chancellor's Office to incorporate the following:

- The resident questionnaire shall ask each student where the student has maintained his or her home for the last two years and whether the student has engaged in any activity listed in subsection (f) of Section 54024, which addresses conduct inconsistent with a claim of California residence such as maintaining voter registration in another state.
- The resident questionnaire shall ask each student under 19 years of age where the parent has lived for the past two years and whether the parent has engaged in any activity listed in subdivision (f) of Section 54024.
- If the student, or the student's parent if the student is under age 19, has either maintained a home outside of California at any time during the last two years, or has engaged in any activity listed in subsection (f) of Section 54024 of the title 5 regulations, the student shall be asked for additional evidence of intent to reside in California such as that identified in subsection (e) of Section 54024.1.

Because this information was not previously required, the Commission states that "this expanded information in the questionnaire requires the community college to revise the questionnaire based on the sample provided by the Chancellors Office (a one-time activity), and to weigh the information provided by the student..."

The Commission also determined that Section 54010, subdivision (e), of title 5 results in a reimbursable state-mandate because Districts must require the student to supply "under oath or penalty of perjury," and for the District to weigh that the information provided per Section 54012 as noted above.

We note that Section 54012 subdivisions (e) of title 5 states: "The Chancellor's Office shall provide a sample residence questionnaire which Districts may use in complying with this requirement."

Since the regulation clearly states that the questionnaire provided by the Chancellor's Office meets the requirements of Section 54012, we question whether Districts are required to "revise" their questionnaire. Based on the plain language of the regulation, Districts have a choice to use the questionnaire provided by the Chancellor's Office, which would not generate a higher level of service. Therefore, we disagree with the Commission's conclusion that Districts must revise their questionnaire.

We also question the Commission's conclusion that requiring a student to complete the questionnaire "under oath or penalty of perjury" as a new requirement. Section 54010 of the 1973 California Code of Regulation required resident questionnaires to be certified under penalty of perjury or certified under oath. Therefore, certifying the accuracy of the questionnaire is not a new activity nor do we believe that the substance of this activity is a new activity or requirement. Therefore, we disagree with the Commission that students' certifying the accuracy of their response to the questionnaire generates a reimbursable state-mandate.

Finally, we disagree with the Commission's conclusion that "weighing" the questionnaire or its component parts is a new requirement since the resident questionnaire existed prior to 1975. While the questionnaire has been updated, the basic act of "weighing" the questionnaire and its contents is unchanged. To assume that a requirement to "weigh" the questionnaire is a new activity implies that the previous questionnaire had no purpose, which is illogical.

Financial independence

The Commission concluded that determining financial dependence or independence for a student classified as a nonresident in the preceding term, results in a reimbursable state-mandate because it was not previously required. Specifically, the Commission states the Districts must require students to submit, and Districts must weigh, information required by Education Code Section 68044, which states:

.....A student shall be considered financially independent for purposes of this section if the applicant meets all of the following requirements: (a) has not and will not be claimed as an exemption for state and federal tax purposes by his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, (b) has not and will not receive more than seven hundred fifty dollars (\$750) per year in financial assistance from his or her parent in the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application, and (c) has not lived and will not live for more than six weeks in the home of his or her parent during the calendar year the reclassification application is made and in any of the three calendar years prior to the reclassification application.

The Commission has determined the current definition of financial independence does not resemble pre-1975 law addressing student financial dependence or independence. Specifically, former Education Code Section 22851 stated:

A student who is a minor and who provides evidence that he has been entirely self-supporting and actually present in California for more than one year immediately preceding the residence determination date shall be entitled to establish his own residence if he meets the other requirements of this chapter.

Furthermore, former Section 54031 of title 5 regulations stated:

Any minor claiming application of self-supporting exception pursuant to Education Code Section 22851 shall provide evidence to the admission officers such as: documentation showing earnings for the year immediately preceding the residence determination date for the quarter, semester or term of attendance, a statement that the student has actually been present in California for said year (short duration stays away from the state will not preclude the accumulation of time), and a statement showing all expense of the student for said year."

While the specifics of the requirements have changed, we disagree with the Commission that the current definition in Education Code Section 68044 does not resemble former Education Code Section 22851 and former title 5 regulation 54031. Requiring students to provide documentation to establish residency has always been required in determining financial independence. Moreover, the fundamental function of the college requiring and weighing the information has remained constant. Because the role of the District has not changed, we do not believe there is a higher level of service imposed; therefore, we do not believe that Education Code Section 68044 generates a reimbursable state-mandated activity.

Nonresident Tuition Fee

The Commission concluded that Education Code Section 76140 subdivision (d) is a reimbursable state-mandate because it requires Districts to notify the nonresident student of nonresident tuition fee charges during the spring term before the fall term in which the change takes effect.

The Commission concluded that Education Code Section 76140 subdivision (g) is a reimbursable state-mandate because it requires district governing boards to consider nonresident community college tuition fees in other states in determining nonresident fees and to make nonresident tuition fees increases, gradual, moderate, an predictable.

We agree with the Commission's conclusion that Education Code Section 76140 subdivisions (d) and (g) results in a reimbursable state-mandate, albeit at a de minimis cost.

Exemptions to Determination of Nonresidence

The Commission concluded that District compliance with the following exemptions to nonresident tuition requirements and related activities per applicable Education Code Sections and Title 5 regulations, as considered in conjunction Education Code 68040, result in reimbursable state-mandates:

- Dependent of member of armed forces (ECS 68074):
 - Classifying students as residents who are dependents of military personnel who retire from active duty after the residence determination date.
- Member of armed forces after discharge (ECS 68075.5):
 - Classifying students as residents who were members of the armed forces of the United States stationed in California on active duty for more than one year immediately prior to being discharged from the armed forces, for the length of time he or she lives in California after being discharged up to the minimum time necessary to become a resident.
- Dependent of California resident for more than one year (ECS 68076):
 - Classifying students as residents who: (a) have not been an adult resident of California for more than one year; and (b) is either the dependent child of a California resident who has had residence in California for more than one year, or has a parent contributing court-ordered support and has been a California resident for at least one year.
- Graduate of Bureau of Indian Affairs school (ECS 68077):
 - Classifying students as residents who graduated from any school located in California that is operated by the United States Bureau of Indian Affairs, so long as continuous attendance is maintained by the student at a community college.
- Student holding emergency permit or public school credential (ECS 68078):
 - Classifying students as residents who hold a valid emergency permit authorizing service on the public schools of California, who is employed by a school district in a full-time position requiring certification qualifications for the academic year in which the student enrolls at an institution in courses for obtaining a teacher credential.
- Native American student (ECS 68082):
 - Classifying students as residents who are Native American and attend a school administered by the Bureau of Indian Affairs located within the community college district.
- Amateur student athlete in training at U.S. Olympic Training Center (ECS 68083):
 - Classifying students as residents who are amateur student athletes in training at the United States Olympic Training Center in Chula Vista, until they have resided in California the minimum time necessary to become a resident.
- Federal civil service employee in state due to military mission realignment (ECS 68084):
 - Classifying a civil service employee and his or her natural or adopted dependent children as residents if the parent has moved to California as a result of a military mission realignment action that involves the relocation of at least 100 employees.
- Nonresident California high school graduates (ECS 68130.5, CCR tit. 5, sec. 54045.5, 54010, Chancellor's Office Revised Guidelines and Information on AB 540, May 2002.):

- Exempting students from paying nonresident tuition if they meet the following criteria: (1) High School attendance in California for three or more years; (2) Graduation from a California high school; and (3) Registration in a course offered by any college in the district not earlier than the fall semester of the 2001-02 academic year.
- Requiring the applicant to complete a questionnaire, on a form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility, in which the student affirms that they filed an application to legalize their immigration status.
- Weighing the information on the questionnaire in determining the student's eligibility for the exemption.
- Retaining indefinitely the original certified affidavit and other materials utilized by a district in meeting the certification requirements or copying, reproducing them by photograph, micrograph, or via film or electronically.
- Refunding tuition if the student is determined eligible for the exemption after they have paid nonresident tuition.
- Discarding individually printed old questionnaire forms and replacing them with newly prescribed forms, unless the district's form is part of a major preprinted document such as a Schedule of Classes.
- Alien students (CCR, tit. 5, 54045):
 - Determining whether a student who is an alien has: (1) taken appropriate steps to obtain a change of status with the Immigration and Naturalization Service to a classification which does not preclude establishing domicile; and (2) met the residence requirements related to physical presence and the intent to make California home for other than a temporary purpose.
 - Requiring a student alien to supply, and for the district to weigh, information on whether the student is precluded from establishing domicile.

The Commission notes that these nonresident exemptions themselves do not generate reimbursable state-mandates because they simply grant specified students resident status and do not impose additional burden on Districts. However, the Commission further comments that the statutes must be read in conjunction with Education Code Section 68040, which states:

Each student shall be classified as a resident or nonresident at the University of California, the California State University, or the California Maritime Academy or at a California community college.

As a result of this administrative alchemy, Districts must require students to supply, and the District must weigh, the specified documentation justifying the resident status, which results in a reimbursable state-mandate.

We disagree with the Commission's conclusion that the applicable statutes and regulations create a reimbursable state-mandate because classifying students as residents or nonresidents is not a new activity or higher level of service. Districts have historically classified students as resident or nonresident. As stated in Section 25505.2 of the 1972 California Community College Handbook of Definitions:

Each student shall provide, when applying for enrollment, all necessary information required by the district to determine whether he is a nonresident, a district resident, or a non-district resident. Such determination of residence shall be made as of the opening day of the semester, session, or quarter and shall not be changed during such semester, quarter or session except to correct false information.

Furthermore, Section 54010 of the 1973 California Code of Regulations states:

Residence classification of all students shall be made for each term at each college starting at the time processing is commenced on applications for admission, readmission, or registration. Classifications shall be based on evidence presented in, and supporting, the applicant's answers to residence questionnaires and supplemental residence questionnaires authorized by the district governing board, such further evidence of residence deemed necessary by the institution, and such further evidence of residence as the applicant wishes to submit. Applicants answering their residence questionnaires and supplemental residence questionnaires shall be required to certify them under penalty of perjury or certify them under oath before an employee of the institution authorized by the district governing board at each institution to administer such oaths, or to certify them under oath before a person authorized to administer oaths under the laws of the political entity where the oath is to be administered.

Therefore, the requirement to classifying students as a resident or nonresident has remained constant. The noted statutes and regulations granting resident status to specified students simply changes the composition of the two pools of students and does not change the fundamental requirement that Districts must determine residency for all students.

We also have specific concerns with the following mandated activity noted above:

- Refunding nonresident tuition collected when the student is subsequently determined to be eligible for the exemption. (Chancellor's Revised Guidelines and Information, May 2002)

We disagree that refunding nonresident tuition to a student that was subsequently determined to be eligible for resident tuition is a higher level of service. We do not believe that expecting a District to refund a student who has overpaid tuition fees is a higher level of service since refunding overpayment would be expected of any public or private organization that made an error. Furthermore, if the student paid nonresident fees as a result of an error by the District, we do not believe that expecting accuracy, or expecting the District to correct its errors, is a higher level of service in any professional environment. The expectation of recourse in the event of a mistake, and holding Districts accountable for accurately verifying and distributing funds to eligible recipients, is not a higher level of service.

Notifying Students of Classification Decision and Appeal Procedure

The Commission concluded that Section 54060, subdivision (a) of title 5 California Code of Regulations results in a reimbursable state-mandate. Specifically, the regulation states:

The community college district shall notify each student of the student's residence classification not later than fourteen (14) calendar days after the beginning of the session for which the student has applied, or fourteen (14) calendar days after the student's application for admission, whichever is later.

We agree with the Commission's conclusion that this regulation generates a mandated activity by requiring Districts to notify students' of residence classification by a specific timeframe.

The Commission also concluded that Section 54060, subdivision (b) of title 5 California Code of Regulations results in a reimbursable state-mandate. Specifically, the regulation states:

Any student, following a decision on residence classification by the college, may make written appeal of that decision. Each community college district shall establish procedures for appeals of residence classification.

We agree with the Commission's conclusion that this regulation generates a mandated activity by requiring Districts to establish procedures on a one-time basis for appeals of residence classification.

Tuition and Fee Waivers for Dependents of Victims of the 9/11 Terrorist Attacks

The Commission concluded that requiring community colleges to waive tuition and fees for dependents of the victims of 9/11 terrorist attacks to be a reimbursable state-mandate based on Education Code Section 68121, subdivision (a)(2), which states:

The Trustees of the California State University, the Regents of the University of California and governing board of each community college district in the state shall waive tuition and fees....[for victims of 9/11 terrorist attacks].

The Commission also notes that determining the eligibility for the waiver is the responsibility of the California Victim Compensation and Government Claims Board (VCGCB), not the community college district.

We disagree with the Commission's conclusion that Education Code Section 68121(a)(2) generates a reimbursable state-mandate because waiving tuition for dependents of 9/11 victims is not a new program or higher level of service since community colleges already have an established practice for waiving fees. Furthermore, we believe that any associated workload would be de minimus considering the ultimate responsibility for determining student eligibility lies solely on the VCGCB.

Ms. Paula Higashi
March 25, 2009
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As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 10, 2009 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Ed Hanson, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannie Oropeza". The signature is fluid and cursive, with the first name "Jeannie" written in a larger, more prominent script than the last name "Oropeza".

JEANNIE OROPEZA
Program Budget Manager

Attachment

Attachment A

DECLARATION OF ED HANSON
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-21

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the statutes, regulations and an executive order sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

3/25/09

at Sacramento, CA



Ed Hanson

PROOF OF SERVICE

Test Claim Name: Tuition Fee Waivers
Test Claim Number: CSM-02-TC-21

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7 Floor, Sacramento, CA 95814.

On 3.25.09, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Facsimile No. 445-0278

B-08
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Division of Audits
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Mr. Douglas R. Brinkley
State Center Community College District
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Mr. Doug Roberts
Contra Costa Community College District
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B-29
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A-15
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A-15
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A-15

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G-01

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B-08

Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

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 3.25.09 at Sacramento, California.



Annette Waite