

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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E-mail: csmInfo@csm.ca.gov



March 22, 2007

Mr. Floyd Shimomura
Executive Officer
State Personnel Board
801 Capitol Mall, Room 150
Sacramento, CA 95814

And Affected State Agencies and Interested Parties (see enclosed mailing list)

Re: Notice of Complete Test Claim Filing and Schedule for Comments – *Reporting Improper Governmental Activities*; 02-TC-24

Dear Mr. Shimomura:

On June 5, 2003, a test claim was filed on the above named program by SixTen & Associates, representing San Juan Unified School District and Santa Monica Community College District, Claimants. Following initial review, the Commission staff found the test claim to be complete. However, upon further review the Commission staff finds that the State Personnel Board is an affected state agency that was not included in the original mailing list. As a result, the Commission is now requesting the State Personnel Board to comment on the test claim by April 23, 2007.

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code.
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

In addition, the Commission requests that the State Personnel Board provide the following information:

- On a per year basis, beginning in January 1, 2001, the number of cases that the State Personnel Board has received under Education Code sections 87164, subdivision (c) (Stats. 2001, ch. 416, § 1).
- Beginning in January 1, 2002, the cost charged to community college school districts pursuant to Education Code section 87164, subdivision (c)(2) (Stats. 2002, ch. 81, § 1).

If the State Personnel Board files comments, all parties may file rebuttal comments no later than May 23, 2007. Under Section 1181.2 of the regulations, the Commission has updated the mailing list of parties, interested parties, and interested persons for the test claim and provided

Mr. Floyd Shimomura

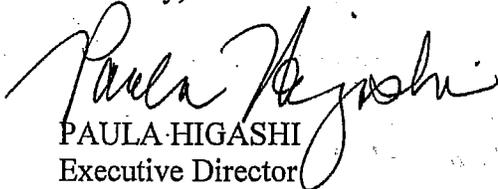
March 22, 2007

Page 2

mailing list of parties, interested parties, and interested persons for the test claim and provided the list to those included on the list, and anyone who requested a copy. Any written material filed with the Commission on this test claim must be simultaneously served on the other parties listed on the mailing list provided by the Commission.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosures:

Notice of Complete Test Claim Filing and Schedule for Comments (dated June 19, 2003)
Copy of Test Claim (State Personnel Board only)
Mailing List

COMMISSION ON STATE MANDATES

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June 19, 2003

Mr. William Duncan
West Kern Community College District
29 Emmons Park Drive
Taft, CA 93268

Mr. Thomas J. Donner
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405

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

Mr. Keith Gmeinder
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Gerald Shelton
California Department of Education
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Thomas J. Nussbaum
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814

And: Interested Parties
(see enclosed mailing list)

Re: Notice of Complete Test Claim Filing and Schedule for Comments – *Reporting Improper Governmental Activities*; 02-TC-24

On June 5, 2003, a test claim was filed on the above named program by SixTen & Associates, representing San Juan Unified School District and Santa Monica Community College District, Claimants. Following initial review, the Commission staff found the test claim to be complete. The Commission is now requesting state agencies and interested parties to comment on the test claim as specified in the enclosed notice.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosures:

Notice of Complete Test Claim Filing and Schedule for Comments
Copy of Test Claim (state agencies only)
Mailing List

MAILED: Mail List FAXED:
DATE: 6/19/08 INITIAL: VS
CHRON: FILE: WORKING BINDER:

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 44110, 44111, 44112, 44113, 44114, 87160, 87161, 87162, 87163, and 87164, as added and amended by Statutes 2000, Chapter 531 (AB 531), Statutes 2001, Chapters 159 and 416 (SB 662 and AB 647), and Statutes 2002, Chapter 81 (AB 2034)

Filed on June 5, 2003

By the San Juan Unified School District and Santa Monica Community College District, Claimants

No. 02-TC-24

Reporting Improper Governmental Activities

NOTICE OF COMPLETE TEST CLAIM FILING AND SCHEDULE FOR COMMENTS (Gov. Code § 17500 et seq.; Cal. Code Regs., Tit. 2, §§ 1183, subd.(g) & 1183.20)

**TO: West Kern Community College District
Santa Monica Community College District
Department of Finance
State Controller's Office
California Department of Education
California Community Colleges
Interested Parties**

On June 5, 2003, the San Juan Unified School District and Santa Monica Community College District filed a test claim on the above-described statutes and executive orders, alleging a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim is complete. The test claim will be heard and determined by the Commission on State Mandates pursuant to article XIII B, section 6, Government Code section 17500 et seq., and case law. The procedures for hearing and determining this claim are prescribed in the Commission's regulations, California Code of Regulations, title 2, chapter 2.5, section 1181, et seq.

COMMENT PERIOD

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?

- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

State Agency Review of Test Claim - State agencies are requested to analyze the test claim merits and to file written comments within 30 days, or no later than **July 18, 2003**. Requests for extensions of time may be filed in accordance with sections 1183.0, subdivision (c) and 1181.1, subdivision (g) of the regulations.

Claimant Rebuttal - The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.03 of the regulations. The rebuttal is due 30 days from the actual service date of written comments from any state agencies.

Mailing Lists - Under section 1181.2 of the regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed with the Commission on this claim shall be simultaneously served on the other parties listed on the mailing list provided by the Commission.

Consolidating Test Claims - Pursuant to Commission regulations, the executive director may consolidate part or all of any test claim with another test claim. See sections 1183.05 and 1183.06 of the regulations.

ADDITIONAL FILINGS ON THE SAME STATUTE OR EXECUTIVE ORDER

Under section 1183, subdivision (i) of the regulations, more than one test claim on the same statute or executive order may be filed with the Commission. The test claim must be filed within 60 days of the date the first test claim was filed. Claimants may designate a single claimant within 90 days from the date the first test claim was filed. If the Commission does not receive notice from the claimants designating a lead claimant, the executive director will designate the claimant who filed the first test claim as the lead claimant.

INFORMAL/PREHEARING CONFERENCE

An informal conference or prehearing conference may be scheduled if requested by any party. See sections 1183.04 and 1187.4 of the regulations.

HEARING AND STAFF ANALYSIS

A tentative hearing date for the test claim will be set when the draft staff analysis of the claim is being prepared. At least eight weeks before a hearing is conducted, the draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due at least five weeks prior to the hearing or on the date set by the Executive Director, pursuant to section 1183.07 of the regulations. Before the hearing, a final staff analysis will be issued.

Dismissal of Test Claims - Under section 1183.09 of the regulations, test claims may be dismissed when postponed or placed on inactive status by the claimant for more than one year. Before dismissing a test claim, the Commission will provide 60 days notice and opportunity for other parties to take over the claim.

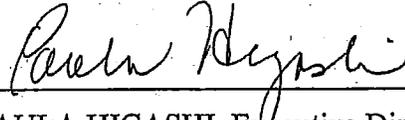
Parameters and Guidelines - If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for

reimbursing all eligible local entities. See section 1183.1 of the regulations. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Statewide Cost Estimate - The Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of a test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Dated:

June 19, 2003



PAULA HIGASHI, Executive Director

Commission on State Mandates

Original List Date: 6/18/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 06/19/2003

Mailing List

Claim Number: 02-TC-24

Issue: Reporting Improper Governmental Activities

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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

Claimant Representative

Tel: (858) 514-8605

Fax: (858) 514-8645

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Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517

Fax: (916) 446-2011

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Claimant

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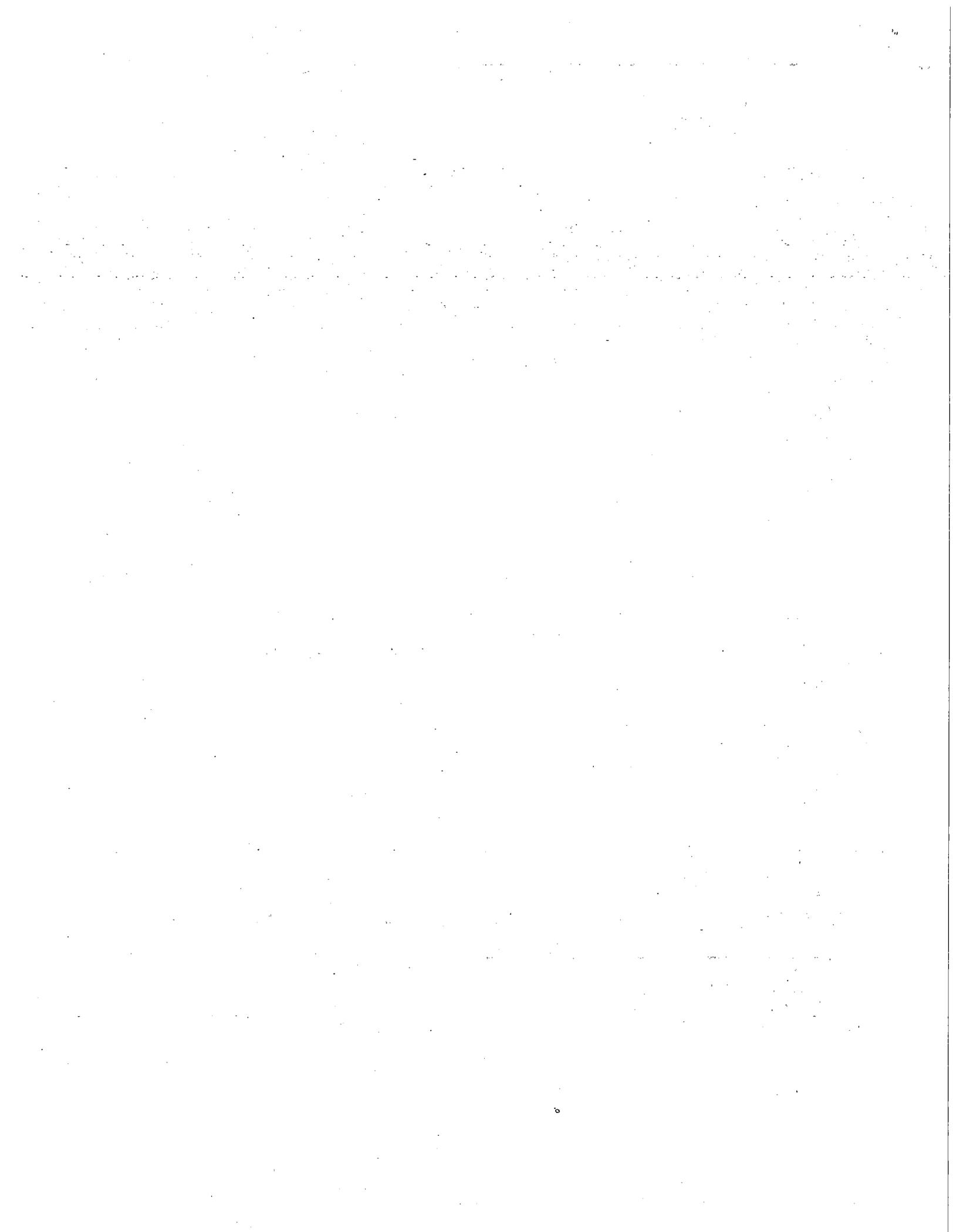
Mr. Paul Minney
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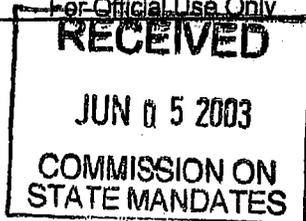
Mr. Thomas J. Donner
Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628
Tel: (310) 434-4201
Fax: (310) 434-8200

Claimant



State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only



TEST CLAIM FORM

Claim No. 02-TC24

Local Agency or School District Submitting Claim

SAN JUAN UNIFIED SCHOOL DISTRICT and SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

San Juan Unified School District
P.O. Box 477
Jarmichael, California 95809-0477

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Reporting Improper Governmental Activities**

Chapter 81, Statutes of 2002	Education Code Section 44110	Education Code Section 87160
Chapter 416, Statutes of 2001	Education Code Section 44111	Education Code Section 87161
Chapter 159, Statutes of 2001	Education Code Section 44112	Education Code Section 87162
Chapter 531, Statutes of 2000	Education Code Section 44113	Education Code Section 87163
	Education Code Section 44114	Education Code Section 87164

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative
Diana Halpenny
General Counsel
San Juan Unified School District

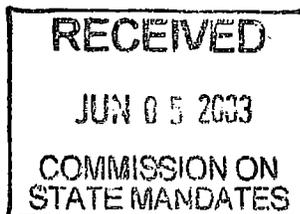
Telephone No.
(916) 971-7110

Signature of Authorized Representative

Date

x *Diana Halpenny*

May 21, 2003



State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

For Official Use Only

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

SAN JUAN UNIFIED SCHOOL DISTRICT and SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

San Juan Unified School District
P.O. Box 477
Jarmichael, California 95609-0477

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Reporting Improper Governmental Activities**

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Section 44110
Education Code Section 44111
Education Code Section 44112
Education Code Section 44113
Education Code Section 44114

Education Code Section 87160
Education Code Section 87161
Education Code Section 87162
Education Code Section 87163
Education Code Section 87164

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

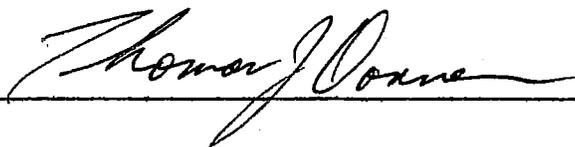
Tom Donner
Executive Vice President - Business and Administration
Santa Monica Community College District

(310) 434-4000

Signature of Authorized Representative

Date

X



May 26, 2003

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
4 5252 Balboa Avenue, Suite 807
5 San Diego, CA 92117
6 Voice: (858) 514-8605
7

8 BEFORE THE
9
10 COMMISSION ON STATE MANDATES
11
12 STATE OF CALIFORNIA
13

14 Test Claim of:)	No. CSM _____
15)	
16)	
17 San Juan Unified School District)	Chapter 81, Statutes of 2002
18)	Chapter 416, Statutes of 2001
19 and)	Chapter 159, Statutes of 2001
20)	Chapter 531, Statutes of 2000
21 Santa Monica)	
22 Community College District)	
23)	Education Code Sections 44110, 44111
24 Test Claimants)	44112, 44113, 44114, 87160, 87161,
25)	87162, 87163, 87164
26)	
27)	<u>"Reporting Improper Governmental Activities"</u>
28 _____)	

29
30 PART 1. AUTHORITY FOR THE CLAIM

31 The Commission on State Mandates has the authority pursuant to Government
32 Code section 17551(a) to "...hear and decide upon a claim by a local agency or school
33 district that the local agency or school district is entitled to be reimbursed by the state for
34 costs mandated by the state as required by Section 6 of Article XIII B of the California
35 Constitution." San Juan Unified School District and Santa Monica Community College
36 District are "school districts" as defined in Government Code section 17519.¹

¹ Government Code Section 17519, as added by Chapter 1459/84:
"School District" means any school district, community college district, or county

1 PART II. LEGISLATIVE HISTORY OF THE CLAIM

2 This test claim alleges mandated costs subject to reimbursement by the state for
3 school districts, county offices of education and community college districts to establish
4 and implement policies and procedures to comply with the "Reporting by School
5 Employees of Improper Governmental Activities Act" pursuant to Education Code
6 Sections 44110 through 44114 and for community college districts to comply with the
7 "Reporting by Community College Employees of Improper Governmental Activities Act"
8 pursuant to Education Code 87160 through 87164.

9 SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

10 Prior to January 1, 1975 there was no state statute or executive order in effect
11 which required school districts, county offices of education, or community college
12 districts to establish procedures to protect employee or employee applicant
13 "whistleblowers" or to discipline employees, officers, or administrators who intentionally
14 engaged in acts of reprisal, retaliation, threats, or coercion against an employee or
15 employee applicant for having disclosed improper governmental activity.

16 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

17 Chapter 531, Statutes of 2000, Section 1, added Article 5 to Chapter 1 of Part 25
18 of the Education Code, consisting of Sections 44110 through 44114. Section 44110²

superintendent of schools."

² Education Code Section 44110, added by Chapter 531, Statutes of 2000,
Section 1:

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 requires the article to be known as the Reporting by School Employees of Improper
2 Governmental Activities Act.

3 Section 44111³ states a legislative intent that school employees and other
4 persons disclose improper governmental activities.

5 Section 44112⁴ provides relevant definitions. Subdivision (a) defines an

"This article shall be known and may be referred to as the Reporting by School
Employees of Improper Governmental Activities Act."

³ Education Code Section 44111, added by Chapter 531, Statutes of 2000,
Section 1:

"It is the intent of the Legislature that school employees and other persons
disclose, to the extent not expressly prohibited by law, improper governmental
activities."

⁴ Education Code Section 44112, added by Chapter 531, Statutes of 2000,
Section 1:

"For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of
Section 3540.1 of the Government Code.

(b) "Illegal order" means any directive to violate or assist in violating a federal,
state, or local law, rule, or regulation or an order to work or cause others to work in
conditions outside of their line of duty that would unreasonably threaten the health or
safety of employees or the public.

(c) "Improper governmental activity" means an activity by a public school agency
or by an employee that is undertaken in the performance of the employee's official
duties, whether or not that activity is within the scope of his or her employment, and that
meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but
not limited to, corruption, malfeasance, bribery, theft of government property,
fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of
government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct,
incompetency, or inefficiency.

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 "employee" as a "public school employee," as defined in subdivision (j) of Section
2 3540.1⁵ of the Government Code. Subdivision (b) defines an "illegal order" as a
3 directive to violate a federal, state, or local law, rule, or regulation or an order to work in
4 conditions that would unreasonably threaten the health or safety of employees or the
5 public. Subdivision (c) defines "improper governmental activity" as an activity
6 undertaken in the performance of official duties that violates a state or federal law or
7 regulation, including, corruption, malfeasance, bribery, theft, fraud, coercion, conversion,
8 malicious prosecution, misuse of government property, willful omission to perform duty
9 or an activity that is economically wasteful or involves gross misconduct, incompetency,
10 or inefficiency. Subdivision (d) defines "person" as any individual, corporation, trust,
11 association, any state or local government, or their agent. Subdivision (e) defines
12 "protected disclosure" as a good faith communication that discloses improper

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code."

⁵ Subdivision (j) of Government Code Section 3540.1 defines "employee" as any person employed by a public school employer, except elected or appointed employees, management employees and confidential employees.

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 governmental activity or discloses a remedy to any condition that may significantly
2 threaten the health or safety of employees or the public. Subdivision (f) defines "public
3 school employer" as having the same meaning as in subdivision (k) of Government
4 Code Section 3540.1⁶.

5 Section 44113⁷, subdivision (a), prohibits an employee from using "official
6 authority or influence" to interfere with the right of a person to disclose improper
7 governmental activity to an official agent. Subdivision (b) defines "use of official authority

⁶ Subdivision (k) of Government Code Section 3540.1 defines "public school employer" or "employer" as the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

⁷ Education Code Section 44113, added by Chapter 531, Statutes of 2000, Section 1:

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law."

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 or influence" as promising any benefit, threatening any reprisal or taking any retaliatory
2 personnel action. Subdivision (c) defines "official agent" as a school administrator,
3 member of the governing board of a school district or county board of education, county
4 superintendent of schools, or the Superintendent of Public Instruction. Subdivision (d)
5 allows that a violator may be liable for civil damages to the offended party. Subdivision
6 (e) qualifies that this section should not be construed to authorize an individual to
7 disclose any information prohibited by law.

8 Section 44114^b, subdivision (a), provides an employee or applicant may file a

^b Education Code Section 44114, added by Chapter 531, Statutes of 2000,
Section 1:

"(a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

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1 written complaint with his or her supervisor, a school administrator, or public school

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order.

If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action."

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1 employer alleging actual or attempted improper acts as prohibited by Section 44113 and
2 also allows the offended party to file a copy of the written complaint with local law
3 enforcement within 12 months of the most recent subject of complaint. Subdivision (b)
4 defines the criminal penalties for acts prohibited by Section 44113. This conduct shall
5 also be subject to discipline by the public school employer. If no adverse action occurs,
6 local law enforcement may report the activity to the governing board of the school district
7 or the county board of education. Subdivision (c) allows the filing of a civil action and the
8 court may award damages and reasonable attorney's fees. Subdivision (e) requires, in
9 any civil action or administrative proceeding, that the initial burden of proof is on the
10 employee or applicant to prove a prohibited activity was a contributing factor in the
11 alleged retaliation. Thereafter, the burden of proof rests on the supervisor, school
12 administrator, or public school employer to provide clear and convincing evidence that
13 the alleged action would have occurred for legitimate, independent reasons. Failure to
14 do so gives the public school employee a complete affirmative defense.

15 Chapter 531, Statutes of 2000, Section 2, added Article 6 to Chapter 1 of Part 51
16 of the Education Code, consisting of Sections 87160 through 87164. Section 87160⁹
17 requires the article to be known as the Reporting by Community College Employees of

⁹ Education Code Section 87160, added by Chapter 531, Statutes of 2000,
Section 2:

"This article shall be known and may be referred to as the Reporting by
Community College Employees of Improper Governmental Activities Act."

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1 Improper Governmental Activities Act.

2 Section 87161¹⁰ states a legislative intent that community college employees and
3 other persons disclose improper governmental activities.

4 Section 87162¹¹ provides relevant definitions. Subdivision (a) defines an

¹⁰ Education Code Section 87161, added by Chapter 531, Statutes of 2000,
Section 2:

"It is the intent of the Legislature that community college employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities."

¹¹ Education Code Section 87162, added by Chapter 531, Statutes of 2000,
Section 2:

"For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code as construed to include community college employees.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a community college or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the

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1 "employee" as a "public school employee," as defined in subdivision (j) of Section 3540.1
2 of the Government Code as construed to include community college employees.
3 Subdivision (b) defines an "illegal order" as a directive to violate a federal, state, or local
4 law, rule, or regulation or an order to work in conditions that would unreasonably
5 threaten the health or safety of employees or the public. Subdivision (c) defines
6 "improper governmental activity" as an activity undertaken in the performance of official
7 duties that violates a state or federal law or regulation, including, corruption,
8 malfeasance, bribery, theft, fraud, coercion, conversion, malicious prosecution, misuse
9 of government property, willful omission to perform duty or an activity that is
10 economically wasteful or involves gross misconduct, incompetency, or inefficiency.
11 Subdivision (d) defines "person" as any individual, corporation, trust, association, any
12 state or local government, or their agent. Subdivision (e) defines "protected disclosure"
13 as a good faith communication that discloses improper governmental activity or
14 discloses a remedy to any condition that may significantly threaten the health or safety
15 of employees or the public. Subdivision (f) defines "public school employer" as having
16 the same meaning as in Government Code Section 3540.1, subdivision (k), which

following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code as construed to include community college districts."

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1 includes community college districts.

2 Section 87163¹², subdivision (a), prohibits an employee from using "official
3 authority or influence" to interfere with the right of a person to disclose these matters to
4 an official agent. Subdivision (b) defines "use of official authority or influence" as
5 promising any benefit, threatening any reprisal or taking any retaliatory personnel action.
6 Subdivision (c) defines "official agent" as a community college administrator, member of
7 the governing board of a community college district, or the Chancellor of the California
8 Community Colleges. Subdivision (d) allows that a violator may be liable for civil
9 damages to the offended party. Subdivision (e) qualifies that this section should not be
10 construed to authorize an individual to disclose information if prohibited by law.

¹² Education Code Section 87163, added by Chapter 531, Statutes of 2000,
Section 2:

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law."

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1

Section 87164¹³, subdivision (a), provides that an employee or applicant may file

¹³ Education Code Section 87164, added by Chapter 531, Statutes of 2000,
Section 2:

"(a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified

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1 a written complaint with his or her supervisor, a school administrator, or public school
2 employer alleging actual or attempted improper acts as prohibited by Section 87163 and
3 allows the offended party to file a copy of the written complaint with local law
4 enforcement within 12 months of the most recent subject of the complaint. Subdivision
5 (b) defines the criminal penalties for the acts prohibited by Section 87163. This conduct
6 shall also be subject to discipline by the public school employer. If no adverse action
7 occurs, local law enforcement may report the activity to the governing board of the
8 community college district. Subdivision (c) allows the filing of a civil action and the court
9 may award damages and reasonable attorney's fees. Subdivision (e) requires, in any

on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action."

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1 civil action or administrative proceeding, that the initial burden of proof is on the
2 employee or applicant to prove a prohibited activity was a contributing factor in the
3 alleged retaliation. Thereafter, the burden of proof rests on the supervisor, school
4 administrator, or public school employer to provide clear and convincing evidence that
5 the alleged action would have occurred for legitimate, independent reasons. Failure to
6 do so gives the public school employee a complete affirmative defense.

7 Chapter 159, Statutes of 2001, Section 68, amended Education Code Section
8 44114, effective January 1, 2002, to make technical changes.

9 Chapter 416, Statutes of 2001, Section 1, amended Education Code Section
10 87164¹⁴, effective January 1, 2002, to insert five new subdivisions (c), (d), (e), (f), and

¹⁴ Education Code Section 87164, as amended by Chapter 416, Statutes of 2001,
Section 1, effective January 1, 2002, :

"(c) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations,

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and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective

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1 (g). Subdivision (c) requires the State Personnel Board to initiate a hearing or
2 investigation of a written complaint within 10 working days. Findings shall be completed
3 within 60 working days and a copy of the findings must be provided to the complaining
4 employee or applicant and the appropriate supervisors, administrator, or employer. The
5 hearing shall be conducted in accordance with Section 18671.2¹⁵ of the Government

employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action."

¹⁵ Government Code Section 18671.2, as amended by Chapter 472, Statutes of 1996, Section 2:

"(a) The total cost to the state of maintaining and operating the hearing office of the board shall be determined by the board, in advance or upon any other basis as it may determine, utilizing information from the state agencies for which services are provided by the hearing office.

(b) The board shall be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement. The board may bill the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies, and employees of the California State University pursuant to Sections 89535 to 89542, inclusive, of the Education Code, and may bill the state departments having responsibility for the overall administration of grant-in-aid programs for the costs incurred in conducting hearings

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1 Code. Subdivision (d) allows the employer to request a hearing before the State
2 Personnel Board to overrule adverse findings. Subdivision (e) requires the State
3 Personnel Board to order appropriate relief if it is determined that a violation has
4 occurred. Subdivision (f) requires that a violation of Section 87163 shall be made in the
5 supervisor's, administrator's, or employer's official personnel records. Former
6 subdivisions (c), (d), (e), (f), and (g) were re-lettered (h), (i), (j), (k), and (l), respectively.

7 Chapter 81, Statutes of 2002, Section 1, amended Education Code Section
8 87164¹⁶, effective January 1, 2003, to split subdivision (c) into subparagraphs (1) and

involving employees not administering their own merit systems pursuant to Chapter 1
(commencing with Section 19800) of Part 2.5. All costs collected by the board pursuant
to this section shall only be used for purposes of maintaining and operating the hearing
office of the board."

¹⁶ Education Code Section 87164, as amended by Chapter 81, Statutes of 2002,
Section 1, effective January 1, 2003:

"(c) (1) The State Personnel Board shall initiate a hearing or investigation of a
written complaint of reprisal or retaliation as prohibited by Section 87163 within 10
working days of its submission.

The executive officer of the State Personnel Board shall complete findings of the
hearing or investigation within 60 working days thereafter and shall provide a copy of the
findings to the complaining employee or applicant for employment with a public school
employer and to the appropriate supervisors, administrator, or employer. This hearing
shall be conducted in accordance with Section 18671.2 of the Government Code, this
part, and the rules of practice and procedure of the State Personnel Board. When the
allegations contained in a complaint of reprisal or retaliation are the same as, or similar
to, those contained in another appeal, the executive officer may consolidate the appeals
into the most appropriate format. In these cases, the time limits described in this
subdivision paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs
associated with hearings of the State Personnel Board conducted pursuant to paragraph

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1 (2). Subparagraph (1) made technical changes. Subparagraph (2) was added to
2 provide that the costs associated with hearings shall not be charged to the Board of
3 Governors but instead to the community college district that employs the complaining
4 employee or applicant.

5 PART III. STATEMENT OF THE CLAIM

6 SECTION 1. COSTS MANDATED BY THE STATE

7 The Statutes and Education Code sections referenced in this test claim result in
8 school districts incurring costs mandated by the state, as defined in Government Code
9 section 17514¹⁷, by creating new state-mandated duties related to the uniquely
10 governmental function of providing public services and these statutes apply to school
11 districts and do not apply generally to all residents and entities in the state.¹⁸

(1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application."

¹⁷ Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means 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.

¹⁸ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

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1 The new duties mandated by the state upon school districts, county offices of
2 education and community colleges require state reimbursement of the direct and indirect
3 costs of labor, materials and supplies, data processing services and software,
4 contracted services and consultants, equipment and capital assets, staff and student
5 training and travel to implement the following activities:

6 I) School Districts and County Offices of Education:

- 7 A) Pursuant to the Reporting by School Employees of Improper
8 Governmental Activities Act (Education Code Sections 44110 through
9 44114) to establish policies and procedures, and to periodically update
10 those policies and procedures, to implement the act.
- 11 B) Pursuant to Education Code Section 44114, subdivision (a), to receive, file
12 and maintain written complaints filed by school employees or applicants for
13 employment alleging actual or attempted acts of reprisal, retaliation,
14 threats, coercion or similar improper acts for having disclosed improper
15 governmental activities or for refusing to obey an illegal order.
- 16 C) Pursuant to Education Code Section 44114, subdivision (b), to investigate,
17 or to cooperate with law enforcement investigations of, written complaints

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) 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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1 filed by school employees or applicants for employment alleging actual or
2 attempted acts of reprisal, retaliation, threats, coercion or similar improper
3 acts for having disclosed improper governmental activities or for refusing
4 to obey an illegal order.

5 D) Pursuant to Education Code Section 44114, subdivision (b), to discipline,
6 as may be required by law or the district's collective bargaining agreement,
7 any employee, officer or administrator, who is found to have engaged in
8 actual or attempted acts of reprisal, retaliation, threats, coercion or similar
9 improper acts for having disclosed improper governmental activities or for
10 refusing to obey an illegal order.

11 E) Pursuant to Education Code Section 44114, subdivision (c), to respond,
12 appear and defend in any civil action, directly or derivatively, when named
13 as a party or otherwise required by the collective bargaining agreement,
14 brought by a person alleging an employee or officer of the district has
15 engaged in actual or attempted acts of reprisal, retaliation, threats,
16 coercion or similar improper acts for having made a protected disclosure.

17 F) Pursuant to Education Code Section 44114, subdivision (c), to pay
18 damages, directly or derivatively, including attorney's fees, when ordered
19 by the court based upon the liability of the district, or as otherwise defined
20 by the collective bargaining agreement .

21 II) Community Colleges:

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- 1 A) Pursuant to the Reporting by Community College Employees of Improper
2 Governmental Activities Act (Education Code Sections 87160 through
3 87164) to establish policies and procedures, and to periodically update
4 those policies and procedures, to implement the act.
- 5 B) Pursuant to Education Code Section 87164, subdivision (a), to receive, file
6 and maintain written complaints filed by school employees or applicants for
7 employment alleging actual or attempted acts of reprisal, retaliation,
8 threats, coercion or similar improper acts for having disclosed improper
9 governmental activities or for refusing to obey an illegal order.
- 10 C) Pursuant to Education Code Section 87164, subdivision (b), to investigate,
11 or to cooperate with law enforcement investigations of, written complaints
12 filed by school employees or applicants for employment alleging actual or
13 attempted acts of reprisal, retaliation, threats, coercion or similar improper
14 acts for having disclosed improper governmental activities or for refusing
15 to obey an illegal order.
- 16 D) Pursuant to Education Code Section 87164, subdivision (b), to discipline,
17 as may be required by law or the district's collective bargaining agreement,
18 any employee, officer or administrator, who is found to have engaged in
19 actual or attempted acts of reprisal, retaliation, threats, coercion or similar
20 improper acts for having disclosed improper governmental activities or for
21 refusing to obey an illegal order.

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- 1 E) Pursuant to Education Code Section 87164, subdivision (h), to respond,
2 appear and defend in any civil action, directly or derivatively, when named
3 as a party or otherwise required by the collective bargaining agreement,
4 brought by a person alleging an employee or officer of the district has
5 engaged in actual or attempted acts of reprisal, retaliation, threats,
6 coercion or similar improper acts for having made a protected disclosure.
- 7 F) Pursuant to Education Code Section 87164, subdivision (h), to pay
8 damages, directly or derivatively, including attorney's fees, when ordered
9 by the court based upon the liability of the district, or as otherwise defined
10 by the collective bargaining agreement .
- 11 G) Pursuant to Education Code Section 87164, subdivision (c), for
12 Community College Districts to appear and participate in hearings and
13 investigations initiated by the State Personnel Board when complaints
14 alleging actual or attempted acts of reprisal, retaliation, threats, coercion or
15 similar acts for having made a protected disclosures have been filed with
16 the Board.
- 17 H) Pursuant to Education Code Section 87164, subdivision (d), for
18 Community College Districts to request a hearing before the State
19 Personnel Board when the adverse findings of the hearing officer are
20 incorrect.
- 21 I) Pursuant to Education Code Section 87164, subdivision (e), for

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1 Community College Districts when, after a hearing, the State Personnel
2 Board determined that a violation has occurred, or if no hearing is
3 requested and the findings of the hearing officer conclude improper activity
4 has occurred, to comply with any ordered relief including, but not limited to,
5 reinstatement, backpay, restoration of lost service credit, and the
6 expungement of any adverse records of the employee or employee
7 applicant who was the subject of the acts of misconduct.

8 J) Pursuant to Education Code Section 87164, subdivision (f), for Community
9 College Districts, when the State Personnel Board determines that a
10 supervisor, administrator or employer has violated Section 87163, to cause
11 an entry to that effect to be made in the supervisor's, administrator's or
12 employer's official personnel records.

13 K) Pursuant to Education Code Section 87164, subdivision (c)(2), to
14 reimburse the State Personnel Board for all of the costs associated with its
15 hearings conducted pursuant to subdivision (c)(1).

16 **SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT**

17 None of the Government Code Section 17556¹⁹ statutory exceptions to a finding

¹⁹ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced code sections, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.²⁰

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

²⁰ Government Code section 17565, added by Chapter 879, Statutes of 1986:

"If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Test Claim of San Juan Unified School District
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Chapter 81/02 Reporting Improper Governmental Activities

1 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

2 No funds are appropriated by the state for reimbursement of these costs
3 mandated by the state and there is no other provision of law for recovery of costs from
4 any other source.

5 PART IV. ADDITIONAL CLAIM REQUIREMENTS

6 The following elements of this claim are provided pursuant to Section 1183, Title
7 2, California Code of Regulations:

8 Exhibit 1: Declaration of Diana Halpenny
9 General Counsel
10 San Juan Unified School District
11

12 Declaration of Tom Donner
13 Executive Vice President - Business and Administration
14 Santa Monica Community College District
15

16 Exhibit 2: Copies of Statutes Cited
17
18 Chapter 81, Statutes of 2002
19 Chapter 416, Statutes of 2001
20 Chapter 159, Statutes of 2001
21 Chapter 531, Statutes of 2000
22

23 Exhibit 3: Copies of Code Sections Cited
24 Education Code Section 44110
25 Education Code Section 44111
26 Education Code Section 44112
27 Education Code Section 44113
28 Education Code Section 44114

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1

2

Education Code Section 87160

3

Education Code Section 87161

4

Education Code Section 87162

5

Education Code Section 87163

6

Education Code Section 87164

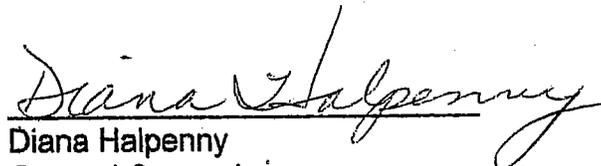
7

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

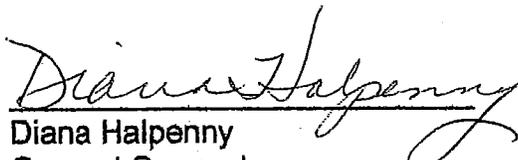
Executed on May 21, 2003, at Carmichael, California by:


Diana Halpenny
General Counsel
San Juan Unified School District

Voice: (916) 971-7110
Fax: (916) 971-7704

PART VI. APPOINTMENT OF REPRESENTATIVE

San Juan Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.


Diana Halpenny
General Counsel

5/21/03
Date

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on May 26, 2003, at Santa Monica, California by:



Tom Donner
Executive Vice President
Santa Monica Community College District

Voice: (310) 434-4000
Fax: (310) 434-4386

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



Tom Donner
Executive Vice President

5/26/03
Date

**EXHIBIT 1
DECLARATIONS**

DECLARATION OF DIANA HALPENNY

San Juan Unified School District

Test Claim of San Juan Unified School District
and of Santa Monica Community College District

COSM No. _____

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Sections 44110
Education Code Sections 44111
Education Code Sections 44112
Education Code Sections 44113
Education Code Sections 44114

Education Code Sections 87160
Education Code Sections 87161
Education Code Sections 87162
Education Code Sections 87163
Education Code Sections 87164

Reporting Improper Government Activities

I, Diana Halpenny, General Counsel, San Juan Unified School District, make the following declaration and statement.

In my capacity as General Counsel to San Juan Unified School District, I am responsible for the district's compliance with the reporting of improper governmental activities. I am familiar with the provisions and requirements of the Statutes and Education Code Sections enumerated above.

These Statutes and Education Code sections require the San Juan Unified School District to:

- A) Pursuant to the Reporting by School Employees of Improper

Governmental Activities Act (Education Code Sections 44110 through 44114) to establish policies and procedures, and to periodically update those policies and procedures, to implement the act.

- B) Pursuant to Education Code Section 44114, subdivision (a), to receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- C) Pursuant to Education Code Section 44114, subdivision (b), to investigate or cooperate with law enforcement written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- D) Pursuant to Education Code Section 44114, subdivision (b), to discipline any employee, officer or administrator, as may be required by law or the district's collective bargaining agreement, who is found to have engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- E) Pursuant to Education Code Section 44114, subdivision (c), to respond,

appear and defend in any civil action, directly or derivatively, when named as a party or otherwise required by the collective bargaining agreement, brought by a person alleging an employee or officer of the district has engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having made a protected disclosure.

- F) Pursuant to Education Code Section 44114, subdivision (c), to pay damages, directly or derivatively, including attorney's fees, when ordered by the court based upon the liability of the district, or as otherwise defined by the collective bargaining agreement .

It is estimated that the San Juan School District, to the extent improper activities may be reported, will incur approximately \$1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

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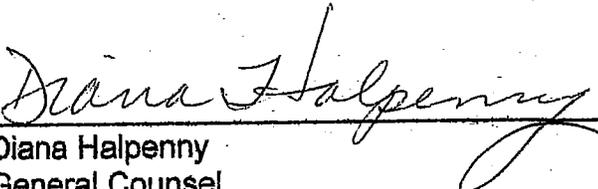
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Declaration of Diana Halpenny

Test Claim: Chapter 81/02 Reporting Improper Governmental Activities

foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 21 day of May, 2003, at Carmichael, California.



Diana Halpenny
General Counsel
San Juan Unified School District

DECLARATION OF TOM DONNER

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Test Claim of San Juan Unified School District
and of Santa Monica Community College District

COSM No. _____

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Sections 44110
Education Code Sections 44111
Education Code Sections 44112
Education Code Sections 44113
Education Code Sections 44114

Education Code Sections 87160
Education Code Sections 87161
Education Code Sections 87162
Education Code Sections 87163
Education Code Sections 87164

Reporting Improper Governmental Activities

I, Tom Donner, Executive Vice President - Business and Administration, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President - Business and Administration, I am responsible for the district's compliance with the reporting of improper governmental activities. I am familiar with the provisions and requirements of the Statutes and Education Code Sections enumerated above.

These Statutes and Education Code sections require the Santa Monica Community College District to:

- A) Pursuant to the Reporting by Community College Employees of Improper Governmental Activities Act (Education Code Sections 87160 through 87164) to establish policies and procedures, and to periodically update those policies and procedures, to implement the act.
- B) Pursuant to Education Code Section 87164, subdivision (a), to receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- C) Pursuant to Education Code Section 87164, subdivision (b), to investigate or cooperate with law enforcement written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- D) Pursuant to Education Code Section 87164, subdivision (b), to discipline any employee, officer or administrator, as may be required by law or the district's collective bargaining agreement, who is found to have engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.

- E) Pursuant to Education Code Section 87164, subdivision (h), to respond, appear and defend in any civil action, directly or derivatively, when named as a party or otherwise required by the collective bargaining agreement, brought by a person alleging an employee or officer of the district has engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having made a protected disclosure.
- F) Pursuant to Education Code Section 87164, subdivision (h), to pay damages, directly or derivatively, including attorney's fees, when ordered by the court based upon the liability of the district, or as otherwise defined by the collective bargaining agreement .
- G) Pursuant to Education Code Section 87164, subdivision (c), for Community College Districts to appear and participate in hearings and investigations initiated by the State Personnel Board when complaints alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar acts for having made a protected disclosures have been filed with the Board.
- H) Pursuant to Education Code Section 87164, subdivision (d), for Community College Districts to request a hearing before the State Personnel Board when adverse findings of the hearing officer are incorrect.
- I) Pursuant to Education Code Section 87164, subdivision (e), for

Test Claim: Chapter 81/02 Reporting Improper Governmental Activities

Community College Districts when, after a hearing, the State Personnel Board determined that a violation has occurred, or if no hearing is requested and the findings of the hearing officer conclude improper activity has occurred, to comply with any ordered relief including, but not limited to, reinstatement, backpay, restoration of lost service credit, and the expungement of any adverse records of the employee or employee applicant who was the subject of the acts of misconduct.

- J) Pursuant to Education Code Section 87164, subdivision (f), for Community College Districts, when the State Personnel Board determines that a supervisor, administrator or employer has violated Section 87163, to cause an entry to that effect to be made in the supervisor's, administrator's or employer's official personnel records.
- K) Pursuant to Education Code Section 87164, subdivision (c)(2), to reimburse the State Personnel Board for all of the costs associated with its hearings conducted pursuant to subdivision (c)(1).

It is estimated that the Santa Monica Community College District, to the extent improper activities may be reported, will incur approximately \$1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain

Declaration of Tom Donner

Test Claim: Chapter 81/02 Reporting Improper Governmental Activities

reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 26 day of May, 2003, at Santa Monica, California



Tom Donner
Executive Vice President
Business and Administration
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

~~COLLEGES AND UNIVERSITIES—COMMUNITY COLLEGES—~~
~~REPORTING IMPROPER GOVERNMENTAL ACTIVITIES~~

CHAPTER 81

A.B. No. 2034

AN ACT to amend Section 87164 of the Education Code, relating to community colleges.

[Filed with Secretary of State June 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2034, Horton. Community colleges: Reporting by Community College Employees of Improper Governmental Activities Act.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state.

Existing law, known as the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee may report improper governmental activities or make a protected disclosure to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts. Existing law, known as the Reporting by Community College Employees of Improper Governmental Activities Act, enacts provisions, applicable to community college campuses, that are similar to the California Whistleblower Protection Act, including procedures for the investigation and determination of complaints by the State Personnel Board.

This bill would require the hearings to be conducted in accordance with the statutes governing community colleges and the rules of practice and procedure of the State Personnel Board. The bill would also require that no costs associated with hearings of the State Personnel Board conducted pursuant to a cited provision of the Reporting by Community College Employees of Improper Governmental Activities Act shall be charged to the board of governors. The bill would instead require that all of the costs associated with those hearings shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

The people of the State of California do enact as follows:

SECTION 1. Section 87164 of the Education Code is amended to read:

87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the

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Additions or changes indicated by underline; deletions by asterisks * * *

written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c)(1) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code, this part, and the rules of practice and procedure of the State Personnel Board. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant

for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

COLLEGES AND UNIVERSITIES—WHISTLEBLOWERS—
IMPROPER GOVERNMENT ACTIVITIES

CHAPTER 416

A.B. No. 647

AN ACT to amend Section 87164 of the Education Code, relating to whistleblower protection.

[Filed with Secretary of State October 2, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 647, Horton. Whistleblower protection: Reporting by Community College Employees of Improper Governmental Activities Act.

Existing law, the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee may report improper governmental activities or make a protected disclosure to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts. Existing law defines any employee of the California State University as a state employee and the California State University employee to file a written complaint with his or her supervisor or manager, or any other designated university officer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure. It is a misdemeanor for any person to intentionally engage in acts of retaliation, reprisal, threats, coercion, or similar acts against an employee of the California State University for having made a protected disclosure under these provisions.

Existing law establishes the Reporting by Community College Employees of Improper Governmental Activities Act, which enacts provisions similar to the California Whistleblower Protection Act, that are applicable to community college campuses.

This bill would amend the Reporting by Community College Employees of Improper Governmental Activities Act to include procedures for the investigation and determination of complaints by the State Personnel Board that are currently contained in the California Whistleblower Protection Act.

The people of the State of California do enact as follows:

SECTION 1. Section 87164 of the Education Code is amended to read:

Additions or changes indicated by underline; deletions by asterisks: * * *

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87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be

malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

MAINTENANCE OF CODES

CHAPTER 159

S.B. No. 662

AN ACT to amend Sections 27, 113, 130, 144, 350, 1647.11, 2570.6, 2570.8, 2570.19, 2995, 3059, 3364, 3403, 4059, 4312, 4980.80, 4980.90, 4996.6, 5111, 5536, 6403, 6716, 6730.2, 6756, 7092, 7533.11, 8027, 8773.4, 10167.2, and 21702 of the Business and Professions Code, to amend Sections 1748.10, 1748.11, 1810.21, 2954.4, 2954.5, and 3097 of, and to amend and renumber Section 1834.8 of, the Civil Code, to amend Sections 403.020, 645.1, 674, and 699.510 of the Code of Civil Procedure, to amend Sections 9323, 9331, and 9408 of the Commercial Code, to amend Sections 2200, 6810, 17540.3, 25102, 25103, and 25120 of the Corporations Code, to amend Sections 313, 406, 426, 427, 11700, 17071.46, 17210, 17317, 17610.5, 22660, 22950, 25933, 33126.1, 37252, 37252.2, 37619, 41329.1, 42239, 44114, 45023.1, 48664, 52054, 52270, 52485, 54749, 56045, 56845, 69432.7, 69434.5, 69437.6, 69439, 69613.1, 87164, and 92901 of, and to amend and renumber Sections 45005.25 and 45005.30 of, the Education Code, to amend Sections 1405, 8040, 9118, and 15375 of the Elections Code, to amend Section 17504 of the Family Code, to amend Sections 761.5, 4827, 16024, 16501, and 18586 of the Financial Code, to amend Sections 1506, 2921, and 8276.3 of the Fish and Game Code, to amend Sections 492, 6046, and 75131 of the Food and Agricultural Code, to amend Sections 3543.4, 3562.2, 3533.5, 6254, 6516.6, 6599.2, 7074, 18935, 20028, 20300, 20392, 21006, 21547.7, 30064.1, 31461.3, 31681.55, 31835.02, 38773.6, 55720, 65584, 65585.1, and 75059.1 of the Government Code, to amend Sections 444.21, 1358.11, 11836, 11877.2, 17922, 25358.6.1, 39619.6, 104170, 105112, 111656.5, 111656.13, 114145, 123111, and 124900 of, to amend and renumber Section 104320 of, and to amend and renumber the heading of Article 10.5 (commencing with Section 1399.801) of Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 789.8, 1215.1, 1871, 1872.83, 10123.135, 10178.3, 10192.11, 10231.2, 10236, 10506.5, 11621.2, 11784, 11786, 11787, and 12698 of the Insurance Code, to amend Sections 90.5, 129, 230.1, 4455, and 4609 of the Labor Code, to amend Section 1048 of the Military and Veterans Code, to amend Sections 272, 417.2, 646.94, and 3058.65 of the Penal Code, to amend Sections 1813 and 16062 of the Probate Code, to amend Sections 10129 and 20209.7 of the Public Contract Code, to amend Sections 5090.51, 14581, 36710, and 42923 of the Public Resources Code, to amend Sections 383.5, 2881.2, 7943, 9608, 9610, and 12702.5 of, and to amend and renumber Section 399.15 of, the Public Utilities Code, to amend Sections 75.11, 75.21, 97.3, 214, 23622.8, 23646, 44006, and 45153 of the Revenue and Taxation Code, to amend Section 1110 of the Unemployment Insurance Code, to amend Section 4000.37 of the Vehicle Code, to amend Sections 1789.5, 4098.1, 5614, 8102, 10082, 14005.28, 14005.35, 14008.6, 14087.32, and 14105.26 of the Welfare and Institutions Code, and to amend Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), Section 1 of Chapter 352 of the Statutes of 2000, Section 1 of Chapter 661 of the Statutes of 2000, Section 2 of Chapter 693 of the Statutes of 2000, Sections 5 and 6 of the Naval Training Center San

Additions or changes indicated by underline; deletions by asterisks * * *

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SEC. 68. Section 44114 of the Education Code is amended to read:

44114. (a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer * * * and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (a) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 8540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

(e) The meetings of the Bipartisan California Commission on Internet Political Practices shall be open and public. The commission members shall receive one hundred dollars (\$100) per diem for each day of attendance at a meeting of the commission, not to exceed 10 meetings.

(f) The Bipartisan California Commission on Internet Political Practices shall report its findings and recommendations to the Legislature not later than December 1, 2001. The commission shall cease to exist on January 1, 2002.

SEC. 207. Section 3 of Chapter 975 of the Statutes of 2000 is amended to read:

Sec. 3. The sum of two hundred twenty thousand dollars (\$220,000) is hereby appropriated from the General Fund to the Controller for allocation to the Bipartisan California Commission on Internet Political Practices to defray the costs of the commission in conducting the study and preparing the report required by this act.

SEC. 208. Any section of any act enacted by the Legislature during the 2001 calendar year that takes effect on or before January 1, 2002, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2001 calendar year and takes effect on or before January 1, 2002, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

**SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOL
EMPLOYEES—WRITTEN COMPLAINTS**

CHAPTER 531

A.B. No. 2472

AN ACT to add Article 5 (commencing with Section 44110) to Chapter 1 of Part 25 of, and to add Article 6 (commencing with Section 87160) to Chapter 1 of Part 51 of, the Education Code, relating to public school employees.

[Filed with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2472, Romero. Public school employees: disclosure of improper governmental activities.

Under the California Whistleblower Protection Act, the State Auditor is authorized to conduct an investigative audit upon receiving confirmation that an employee or state agency, as defined, has engaged in an improper governmental activity. The act prohibits an employee from using his or her official authority or influence to intimidate, threaten, coerce, or command any person in order to interfere with that person's right to make a disclosure under the act. The act protects employees who, among other things, make disclosures to anyone of information that may evidence an improper governmental activity, refusal to obey an illegal order, or any condition that may significantly threaten the health or safety of employees or the public if the disclosure is made for the purpose of remedying the condition.

The act also provides that a state employee who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts because he or she has made a protected disclosure under the act, may also file a copy of the written complaint with the State Personnel Board, as specified. Any person who engages in the above-specified acts is guilty of a misdemeanor and subject to a \$10,000 fine, and is also subject to civil liability, as specified, except for any action or inaction that is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

This bill would enact the Reporting by School Employees of Improper Governmental Activities Act and the Reporting by Community College Employees of Improper Governmental Activities Act which would enact provisions similar to the California Whistleblower Protection Act applicable to employees of any public school employer, as defined, and would add provisions by which a public school employee is authorized to file a written complaint with the local law enforcement agency, as specified, alleging acts or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts. By expanding the scope of an existing crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 44110) is added to Chapter 1 of Part 25 of the Education Code, to read:

Additions or changes indicated by underline; deletions by asterisks * * *

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Article 5. Reporting by School Employees of Improper Governmental Activities

44110. This article shall be known and may be referred to as the Reporting by School Employees of Improper Governmental Activities Act.

44111. It is the intent of the Legislature that school employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

44112. For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a public school agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code.

44113. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

44114. (a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or

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Additions or changes indicated by underline; deletions by asterisks * * *

the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

SEC. 2. Article 6 (commencing with Section 87160) is added to Chapter 1 of Part 51 of the Education Code, to read:

Additions or changes indicated by underline; deletions by asterisks * * *

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Article 6. Reporting by Community College Employees
of Improper Governmental Activities

87160. This article shall be known and may be referred to as the Reporting by Community College Employees of Improper Governmental Activities Act.

87161. It is the intent of the Legislature that community college employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

87162. For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code as construed to include community college employees.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a community college or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code as construed to include community college districts.

87163. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

SEC. 3. Nothing in this act is intended to supersede or limit the application of the privilege of subdivision (b) of Section 47 of the Civil Code to informants and proceedings conducted pursuant to Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1

Additions or changes indicated by underline; deletions by asterisks * * *

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of Title 2 of the Government Code, as confirmed in *Braun v. Bureau of State Audits* (1998) 67 Cal.App.4th 1382.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

EDUCATION CODE

§ 44110. Short title

This article shall be known and may be referred to as the Reporting by School Employees of Improper Governmental Activities Act.

(Added by Stats.2000, c. 581 (A.B.2472), § 1.)

§ 44111. Legislative intent

It is the intent of the Legislature that school employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

(Added by Stats.2000, c. 581 (A.B.2472), § 1.)

§ 44112. Definitions

For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a public school agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code.

(Added by Stats.2000, c. 581 (A.B.2472), § 1.)

§ 44113. Use or attempt to use official authority or influence to interfere with protected disclosures; prohibitions; civil liability

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

(Added by Stats.2000, c. 581 (A.B.2472), § 1.)

EDUCATION CODE

§ 44114. Written complaints; filing with local law enforcement agency; penalties; other rights and remedies

(a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer * * * and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

(Added by Stats.2000, c. 531 (A.B.2472), § 1. Amended by Stats.2001, c. 159 (S.B.662), § 68.)

§ 87160. Short title

This article shall be known and may be referred to as the Reporting by Community College Employees of Improper Governmental Activities Act.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

§ 87161. Legislative intent

It is the intent of the Legislature that community college employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

§ 87162. Definitions.

For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code as construed to include community college employees.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a community college or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code as construed to include community college districts.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

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§ 87163. Use or attempt to use official authority or influence to interfere with protected disclosures; prohibitions; civil liability

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

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§ 87164. Written complaints; filing with local law enforcement agency; penalties; other rights and remedies

(a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c)(1) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code, this part, and the rules of practice and procedure of the State Personnel Board. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment

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with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

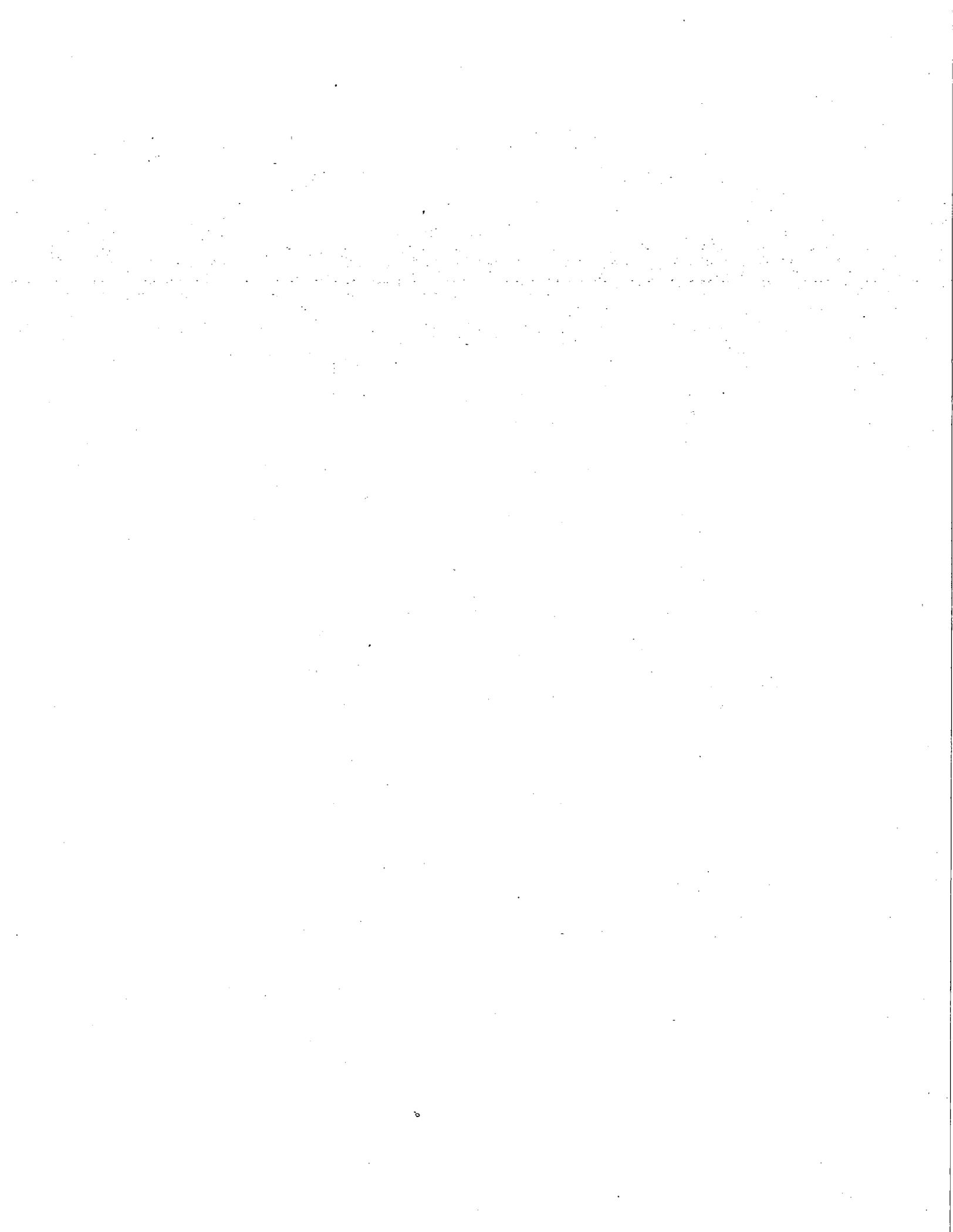
(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

(Amended by Stats.2002, c. 81 (A.B.2034), § 1.)



Commission on State Mandates

Original List Date: 6/18/2003 Mailing Information: Other
Last Updated: 7/19/2006
List Print Date: 03/22/2007
Claim Number: 02-TC-24
Issue: Reporting Improper Governmental Activities

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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