

COMMISSION ON STATE MANDATES

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May 17, 2011

Mr. Keith Petersen
SixTen and Associates
P.O. Box 340430
Sacramento, CA 95834-0430

And Interested Parties and Affected State Agencies (See Mailing List)

Re: Proposed Statement of Decision and Hearing Date
Minimum Conditions for State Aid, 02-TC-25 and 02-TC-31
Los Rios Community College District, Santa Monica Community College District, and
West Kern Community College District Co-Claimants

Dear Mr. Petersen:

The proposed statement of decision on the above-named matter is enclosed.

Hearing

This matter is set for hearing on Thursday, **May 26, 2011**, at 9:30 a.m. **Please note that the hearing will be conducted in the offices of the Department of Finance, 915 L Street, Redwood Room, Sacramento, California 95814.** Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission office at least three to five *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-8218 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan".

Drew Bohan
Executive Director

Commission on State Mandates

Original List Date: 6/22/2010
Last Updated: 5/17/2011
List Print Date: 05/17/2011
Claim Number: 02-TC-25,02-TC-31
Issue: Minimum Conditions for State Aid (CCD)

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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ITEM 4

TEST CLAIM

PROPOSED STATEMENT OF DECISION

Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7

Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176;

Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977;

Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371;

Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514;

Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198;

Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023;

Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169

California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410

Register 71, number 27; Register 76, number 10; Register 77, number 45;

Register 78, number 51; Register 81, number 52; Register 82, number 31;

Register 83, number 18; Register 83, number 29; Register 83, number 53;

Register 84, number 26; Register 85, number 20; Register 88, number 20;

Register 88, number 42; Register 90, number 37; Register 90, number 49;

Register 91, number 23; Register 91, number 45; Register 91, number 46;

Register 92, number 4; Register 92, number 7; Register 92, number 15; Register 92, number 17;

Register 92, number 34; Register 93, number 25; Register 93, number 42;

Register 94, number 18; Register 94, number 38; Register 98, number 7; Register 98, number 14;

Register 2000, number 26; Register 2000, number 50; Register 2001, number 43;

Register 2002, number 8; Register 2002, number 26; and Register 2003, number 18.

Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); "Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

Minimum Conditions for State Aid

02-TC-25 and 02-TC-31

Los Rios Community College District
Santa Monica Community College District, and
West Kern Community College District, Co-Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates (Commission) is whether the proposed statement of decision accurately reflects any decision made by the Commission at the May 26, 2011 hearing on the above named test claim.¹

Recommendation

Staff recommends that the Commission adopt the proposed statement of decision, beginning on page two, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final statement of decision.

If the Commission's vote on item 3 modifies the staff analysis, staff recommends that the motion to adopt the proposed statement of decision reflect those changes, which will be made before issuing the final statement of decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed statement of decision be continued to the July 28, 2011 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7

Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169

California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763,

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

Minimum Conditions for State Aid

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

*(Proposed for Adoption on
May 26, 2011)*

55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410

Register 71, number 27; Register 76, number 10; Register 77, number 45; Register 78, number 51; Register 81, number 52; Register 82, number 31; Register 83, number 18; Register 83, number 29; Register 83, number 53; Register 84, number 26; Register 85, number 20; Register 88, number 20; Register 88, number 42; Register 90, number 37; Register 90, number 49; Register 91, number 23; Register 91, number 45; Register 91, number 46; Register 92, number 4; Register 92, number 7; Register 92, number 15; Register 92, number 17; Register 92, number 34; Register 93, number 25; Register 93, number 42; Register 94, number 18; Register 94, number 38; Register 98, number 7; Register 98, number 14; Register 2000, number 26; Register 2000, number 50; Register 2001, number 43; Register 2002, number 8; Register 2002, number 26; and Register 2003, number 18.

Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); "Program and Course Approval Handbook" Chancellor's Office California Community Colleges (September 2001)

Filed on June 5, 2003 (02-TC-25), and June 23, 2003 (02-TC-31)

By Los Rios Community College District
Santa Monica Community College District,
and West Kern Community College District,
Claimants.

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. [Witness list will be included in the final statement of decision.]

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

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final statement of decision] to partially approve this test claim.

Summary of Findings

This consolidated test claim filed by Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District addresses Education Code sections, title 5 regulations, and an executive order that prescribe standards for the formation and basic operation of the California Community Colleges, and set forth minimum conditions, satisfaction of which entitles community college districts to receive state aid.

These conditions and standards cover various areas of operation and formation of community colleges including, but not limited to, the following: (1) standards of scholarship; (2) degrees and certificates; (3) open courses; (4) comprehensive or master plans for academics and facilities; (5) student fees; (6) approval of new colleges and educational centers; (7) accreditation; (8) counseling programs; and (9) investigation and enforcement of the minimum conditions by the Chancellor and the Board of Governors.

In addition, this test claim addresses regulations which provide that community college districts adopt policies or provide students with information or notices regarding: (1) student directory information, (2) student representation fees, (3) the provision of course materials, and (4) possible consequences of failing to pay a proper financial obligation due to the district or college.

The Commission makes the following findings:

- The “Handbook of Accreditation and Policy Manual” Does Not Constitute an Executive Order

The Handbook of Accreditation and Policy Manual is issued by the Accrediting Commission for Community and Junior Colleges (ACCJC). The “Handbook of Accreditation and Policy Manual” sets forth the eligibility requirements and standards for accreditation with the ACCJC.

The claimants argue that the Handbook of Accreditation and Policy Manual constitutes an executive order. However, the ACCJC is one of three commissions that make up the Western Association of Schools and Colleges (WASC), a *non-governmental* corporate entity whose commissions evaluate and accredit public and private educational institutions. Thus, the “Handbook of Accreditation and Policy Manual” does not constitute an executive order issued by any agency, department, board, or commission of *state* government. As a result, the “Handbook of Accreditation and Policy Manual” does not constitute an executive order subject to article XIII B, section 6, and therefore, is not within the Commission’s jurisdiction.

- The “Program and Course Approval Handbook” Constitutes an Executive Order
- The Program and Course Approval Handbook is issued by the Chancellor’s Office and is intended to assist California community college administrators, staff, and faculty who are responsible for designing and submitting new programs or courses to the Chancellor’s Office for approval.

The Program and Course Approval Handbook provides that colleges are expected to follow the procedures and instructions contained in the Handbook in order to have proposed courses and programs approved by the Chancellor’s Office. As provided in statute and regulation, community colleges are required to offer courses of instruction and programs. As a result, community college districts, which are required to offer courses and programs, are also required to follow the procedures and instructions contained in the Handbook when it is necessary to obtain the approval of the Chancellor’s

Office. However, to the extent that the Handbook provides guidelines and explanations of statutes and regulations, community college districts are not required to comply with the Handbook because these guidelines and explanations are not law. Therefore, the procedures and instructions contained in the Handbook constitute an executive order subject to article XIII B, section 6 of the California Constitution, and thus, subject to the Commission's jurisdiction.

- Delineation of Functions (Ed. Code, §§ 70901, 70901.5, and 70902)

This section addresses Education Code sections 70901, 70901.5, and 70902, which delineate the roles and functions of the state and the local community college districts in postsecondary education.

Many of the title 5 regulations pled in this test claim were adopted by the Board of Governors pursuant to Education Code section 70901 and fulfill the duty of the Board of Governors to establish standards regarding the operation of community colleges and the duty to establish conditions, satisfaction of which entitle districts to receive state aid. Education Code sections 70901 and 70901.5 do not impose any activities on community college districts. Instead, as described above, sections 70901 and 70901.5 impose activities on the Board of Governors, and as a result, do not impose reimbursable state mandated activities subject to article XIII B, section 6 of the California Constitution.

In the claimants' response to the draft staff analysis, the claimants allege for the first time that Education Code section 70902 imposes affirmative duties resulting in reimbursable state-mandated activities. Specifically, the claimants allege that Education Code section 70902, subdivisions (b)(1), (2), (3), (7), (9), and (14), impose affirmative duties on community college districts, and suggest that these duties impose new programs or higher levels of service. For ease of discussion, whether Education Code section 70902, subdivisions (b)(1), (2), (3), (7), (9), and (14), and the title 5 regulations pled in this test claim constitute reimbursable state-mandated new programs or higher levels of service will be addressed throughout the rest of the test claim analysis.

- Minimum Conditions Entitling Community College Districts to State Aid and Investigation and Enforcement of Minimum Conditions (Cal. Code Regs., tit. 5, §§ 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, and 51102)

The title 5 regulations in this section set forth the minimum conditions, satisfaction of which entitles community college districts to receive state aid. These conditions cover the following areas of basic operation: standards of scholarship, degrees and certificates, open courses, comprehensive plans, student fees, approval of new colleges and educational centers, accreditation, counseling programs, objectives, curriculum, instructional programs, faculty, staff, students, matriculation services, full-time/part-time faculty, and transfer centers. In addition, the regulations set forth the role of Chancellor's Office in investigating and enforcing the minimum conditions.

The claimants have pled all of the Education Code sections and title 5 regulations as minimum conditions, satisfaction of which entitles a community college district to state aid. In addition the claimants allege that the minimum conditions impose state-mandated activities that are reimbursable under article XIII B, section 6 of the California constitution.

The California Supreme Court held in *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* that when analyzing state mandate claims, the

Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.² The court also held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion where "'certain and severe ... penalties', such as 'double ... taxation' and other 'draconian' consequences,'"³ would result if the local entity did not comply with the program.

Based on the plain language of the code sections and title 5 regulations the Commission finds that only title 5 sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, and 51027 constitute minimum conditions, satisfaction of which entitles a community college district to state aid. However, because community college districts perform the activities in the title 5 regulations as conditions for entitlement to state aid and there is no evidence in the record that districts are legally or practically compelled to become entitled to state aid, the Commission finds that the title 5 regulations do not impose activities mandated by the state pursuant to *Kern High School Dist.*

Title 5, sections 51100 and 51102, require the Chancellor's Office to engage in activities; however, they do not impose any activities on community college districts.

- Approval of New Colleges and Educational Centers (Cal. Code Regs., tit. 5, §§ 55825, 55827, 55828, 55829, 55830, and 55831)
The title 5 regulations set forth the process to obtain the Board of Governors' approval of a community college district's proposed new college or educational center.

The initial decision to create a new college or educational center, which triggers the activities required by section 55825-55831, is left to the discretion of the community college district. As a result, pursuant to *Kern High School Dist.* the Commission finds that California Code of Regulations, title 5, sections 55825, 55827, 55828, 55829, 55830, and 55831 do not impose state-mandated activities subject to article XIII B, section 6 of the California Constitution.

- Master Plans for Academics (Ed. Code, § 70902, subd. (b)(1), and Cal. Code Regs., tit. 5, §§ 55401, 55402, 55403, and 55404)
Education Code section 70902, subdivision (b)(1), and the title 5 regulations address the preparation of a community college district's education master plan. This includes activities such as establishing policies for current and long-range educational plans and programs for each community college in the district, updating these plans, and submitting these plans to the Chancellor.

The claimants have pled Education Code section 70902, subdivision (b)(1), as added in 1988, and title 5 sections 55401, 55402, 55403, and 55404 as added in 1971 and last amended in 1991. However, the language of sections 55401, 55402, 55403, and 55404 has remained unchanged since the adoption of the sections in 1971. In addition, the provisions of Education Code section 70902, subdivision (b)(1), do not impose any activities that are not required by title 5 sections 55401, 55402, 55403, and 55404. As a result, the Commission finds that the activities mandated by Education Code section 70902, subdivision (b)(1), and California Code of Regulations, title 5, sections 55401,

² *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

³ *Id.* at p. 751.

55402, 55403, and 55404 do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

- Faculty, Staff, and Student Participation in District and College Governance (Ed. Code, § 70902, subds. (b)(7) and (b)(14), and Cal. Code Regs., tit. 5, §§ 53200, 53202-53204, and 53207)

Education Code section 70902, subdivisions (b)(7) and (b)(14), and the title 5 regulations address faculty, staff, and student participation in district and college governance. The activities that arise include the establishment of procedures to ensure faculty, staff, and students the opportunity to participate in district governance, the recognition of academic senates formed within colleges or districts, the adoption of policies for the delegation of authority and responsibility to the academic senates, consultation with the academic senate, and the release of college faculty that are elected to serve on the state-wide academic senate.

To constitute a “new program or higher level of service” the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy. In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public. To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment. The requirement to recognize the college or district-wide academic senate formed in colleges or districts is not a new program or higher level of service.

However, the remaining state-mandated activities found in this section of the analysis constitute a reimbursable new program or higher level of service. These activities include: (1) establishing procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level; (2) participating the consultation process established by the Board of Governors; and (3) adopting policies for the appropriate delegation of authority and responsibility to its college or district academic senate.

- Full-time/Part-time Faculty Ratio (Ed. Code, §§ 87482.6 and 87482.7; and Cal. Code Regs., tit. 5, §§ 53300-53302, 53308-53312, and 53314)

The Education Code sections and title 5 regulations address the attempt of the Legislature and the Board of Governors to achieve the goal of the Board of Governors that community college districts have a full-time faculty percentage of 75 percent. The Legislature and the Board of Governors established a statutory and regulatory scheme in which community college districts are to use specified funds for the purpose of achieving a full-time faculty percentage of 75 percent. If a district fails to do so, the funds provided for this purpose will be withheld and redirected to community college districts for the purpose of promoting equal employment opportunity in districts.

Thus, if a district chooses not to increase its full-time faculty percentage it will forgo funds that were to be used toward achieving the 75 percent standard. As a result, community college districts only forgo funds provided for this program, and do not face a substantial penalty independent of the program funds at issue. As a result, under *Kern High School Dist.*, the Education Code sections and title 5 regulations not impose any state-mandated activities.

- Matriculation (Ed. Code, §§ 78211.5, 78212, 78213, 78214, 78215, and 78216; and Cal. Code Regs., tit. 5, §§ 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, and 55534)

This section addresses the provision of matriculation programs by community college districts pursuant to the Seymour-Campbell Matriculation Act of 1986 and its implementing regulations. As defined by the code sections and title 5 regulations, “matriculation” is a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student’s educational goals through the college’s established programs, policies, and requirements.

Compliance with the provisions of the Act and its implementing regulations is triggered by the underlying discretionary decisions made by community colleges or districts to participate in the Act in order to receive funds under the Act. Therefore, community colleges and districts are not legally compelled to comply with the provisions of the Act or its implementing regulations. Thus, the Commission finds that the Education Code sections and title 5 regulations do not impose any state-mandated activities upon community college districts, and therefore, do not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

- Transfer Centers (Ed. Code, §§ 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, and 71027)

This section addresses the transfer system between the three segments of California’s higher education system and the functions of various entities involved in the transfer system. The activities that arise in this section include: the distribution of the current transfer core curriculum to community college students; designing and implementing policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University; maintaining student transfer counseling centers; and the development of discipline-specific articulation agreements between the community colleges and the campuses of the University of California and the California State University.

Although some of the activities claimed by the claimants are not mandated by the code sections, some of the code sections impose reimbursable state-mandated new programs or higher levels of service. These new programs or higher levels of service include: (1) directing the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum; (2) distributing a copy of the current transfer core curriculum to each student; and (3) recognizing student matriculation from community colleges through the University and California State University as a central institutional priority of all segments of higher education.

- Vocational Education (Ed. Code, §§ 78015 and 78016; and Cal. Code Regs., tit. 5, §§ 55600-55603, 55605, 55607, 55620, and 55630)

This section addresses the activities that must be done prior to and after the establishment of vocational or occupational training programs, the appointment of a vocational education advisory committee for each community college district, and the ability of community college districts to contract with private postsecondary schools, activity centers, work activity centers, or sheltered workshops to provide vocational skill training.

Pursuant to *Kern High School Dist.*, districts are not required to comply with the title 5 regulations that impose contracting requirements because community college districts are not required to contract with private postsecondary schools to provide vocational skills training.

In addition, the appointment of a vocational education advisory committee does not constitute a new program or higher level of service, because districts were required to appoint the advisory committee in 1973.

The remaining state-mandated activities found in this section of the analysis constitute a reimbursable new program or higher level of service, including: (1) conducting a job market study of the labor market area; (2) making copies of each job market study available to the public; and (3) determining whether or not the job market study justifies the proposed vocational education program.

- Standards of Scholarship (Ed. Code, § 70902, subd. (b)(3), and Cal. Code Regs., tit. 5, §§ 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, and 55765)

This section addresses a statute and regulations that set forth standards addressing the basic operation of community college districts regarding standards of scholarship, including but not limited to the following areas of scholarship: grading practices, credit-no credit options, advanced placement examinations, standards for probation, academic record symbols, and grade point average.

Although some of the title 5 regulations do not impose state-mandated activities, the state-mandated activities imposed by Education Code section 70902, subdivision (b)(3), and the title 5 regulations constitute a reimbursable new program or higher level of service. This includes the following activities: (1) publishing regulations regarding standards of scholarship in the college catalog under appropriate headings, (2) file a copy of the regulations with the Chancellor, and (3) determining a uniform grading practice for the district based on sound academic principles.

- Curriculum (Ed. Code, § 70902, subd. (b)(2), and Cal. Code Regs., tit. 5, §§ 55000-55002.5, 55004-55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200-55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320-55322, 55340, and 55350; and “Program and Course Approval Handbook,” Chancellor’s Office California Community Colleges (September 2001))

This section addresses Education Code section 70902, subdivision (b)(2), and title 5 regulations and the “Program and Course Approval Handbook” (Handbook) addressing the requirements and procedures for securing approval of courses and programs proposed by community colleges or community college districts. The process for course approval begins with a recommendation for approval by the community college curriculum or district curriculum committee to the district governing board. The recommended course then needs approval by the district governing board, followed by the approval of the Chancellor.

Community college districts have broad discretion over the governance of community colleges. This discretion extends to the courses and programs the community colleges offer. However, as provided in statute, the primary mission of community college districts is to provide academic and vocational instruction. In addition, community college districts by definition are degree-granting institutions. Thus, although community college districts maintain discretion in the curriculum the districts’ offer, districts at a minimum must offer courses, and as a result, districts must comply with the regulations and procedures necessary to offer courses.

The Education Code section and some of the title 5 regulations do not impose state-mandated activities or do not constitute a new program or higher level of service. In addition, the Handbook does not impose a new program or higher level of service. However, the other state-mandated activities imposed by the title 5 regulations constitute a reimbursable new program or higher level of service. This includes: (1) establishing policies for and approve educational programs; (2) establishing a college or district curriculum committee by mutual agreement of the college or district administration and

the academic senate; and (3) making available to students through college publications specified facts regarding each course.

- Degrees and Certificates (Cal. Code Regs., tit. 5, §§ 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, and 55809)

This section addresses regulations pertaining to the award of degrees, certificates, and diplomas by community college districts upon the completion of standards specified by the Board of Governors and the governing board of the community college district. The activities that arise in this section include the establishment of criteria to determine which courses may be used in implementing the district philosophy on General Education, conferring a degree on students who have successfully completed the requirements established by the district, and designing specific courses that are needed to receive a degree.

Some of the title 5 regulations do not impose state-mandated activities. In addition, the requirement to confer a degree upon a student is not a new program or higher level of service. However, the other state-mandated activities imposed by the title 5 regulations constitute a reimbursable new program or higher level of service, including: (1) adopting a policy consistent with the Board of Governors regulations regarding Degrees and Certificates; (2) reviewing the policy and criteria of General Education; and (3) offering specified areas of study in general education.

- Open Courses (Cal. Code Regs., tit. 5, §§ 58102, 58104, 58106, 58107, and 58108)

This section addresses regulations that set forth standards regarding the provision of courses open to enrollment by any student admitted to the community college. Many of the regulations pled in this section do not impose any state-mandated activities. However, the regulations do impose some reimbursable state-mandated new program or higher level of service on community districts including: (1) publishing a description of each course that is clear and understandable to the prospective student in the official catalog, schedule of classes, and addenda; and (2) handling challenges to enrollment limitations made by students.

- Student Fees (Ed. Code, § 70902, subd. (b)(9))

This section addresses the establishment of student fees. The code section provides that community college districts are to establish student fees as required by law. However, the claimants have not pled any statutes or regulations that require the establishment of student fees, and the code section on its own does not impose any activities on community college districts.

- Notice to Students (Cal. Code Regs., tit. 5, 54626, 54805, 59404, and 59410)

This section addresses the adoption of policies or the provision of notices to students regarding various issues related to the operation and governing of community colleges and community college districts, including: (1) student directory information; (2) student representation fees; (3) the provision of instructional or other materials; and (4) the possible consequences of failing to pay a proper financial obligation due to the district or college.

The title 5 regulations either are not new or do not impose state-mandated activities on community college districts.

For the reasons discussed in the analysis, the Commission finds that the activities listed under the “Conclusion” section constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and 17556. The Commission notes that some of the activities

found to be reimbursable are broad and could be interpreted as including a wide range of activities in order to be implemented. However, these broad activities do not include activities that have been specifically denied in this analysis. Where necessary, the scope of the approved activities will be limited in the parameters and guidelines.

Finally, the Commission finds that all other test claim statutes, regulations, and alleged executive orders do not constitute a reimbursable state-mandated program because they either do not require any activities of community college districts, are voluntary or are downstream of a voluntary activity, or are not new as compared to the legal requirements in effect immediately prior to their enactment.

BACKGROUND

This claim addresses 27 statutes, 141 title 5 regulations, and two alleged executive orders that prescribe minimum standards for the formation and basic operation of community colleges and community college districts.^{4 5} Some of the standards also constitute minimum conditions, satisfaction of which entitles community college districts to receive state aid. In addition, some of the administrative regulations address the adoption of policies or notification of students by community colleges of information related to the operation and governing of community colleges and community college districts.

On June 23, 2003 Santa Monica Community College District filed the *Minimum Conditions for State Aid* (02-TC-31) test claim, seeking reimbursement for costs associated with statutes, title 5 regulations, and alleged executive orders that prescribe standards for the formation and basic operation of the California Community Colleges, and set forth minimum conditions, satisfaction of which, entitles community college districts to receive state aid.

These conditions and standards cover various areas of operation and formation of community colleges including, but not limited to, the following: (1) standards of scholarship, (2) degrees and certificates, (3) open courses, (4) comprehensive or master plans for academics and facilities, (5) student fees, (6) approval of new colleges and educational centers, (7) accreditation, (8) counseling programs, (9) objectives for instructional programs, (10) curriculum, (11) instructional programs, (12) course articulation, (13) academic freedom, (14) staff, faculty, and student participation in district and college governance, (15) matriculation, (16) full-time/part-time faculty ratio, (17) transfer centers, and (18) investigation and enforcement of the minimum conditions by the Chancellor and the Board of Governors.⁶

On June 5, 2003 Los Rios Community College District filed the *Notice to Students* (02-TC-25) test claim seeking reimbursement for costs associated with statutes and title 5 regulations, many

⁴ On June 22, 2010, the Commission severed a portion of the consolidated test claim *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31), and consolidated the severed portion with the *Discrimination Complaint Procedures* (02-TC-46) test claim.

⁵ References to “title 5” are to the California Code of Regulations, unless otherwise stated.

⁶ West Kern Community College District filed the *Disabled Student Programs and Services* (02-TC-22) test claim alleging costs associated with the provision of services to disabled students within the California community colleges system. The 02-TC-22 test claim was heard and decided on September 26, 2008. However, prior to being heard and decided, title 5, sections 55522 and 55602.5, which address student matriculation and vocational education programs, were severed from the 02-TC-22 test claim and consolidated with the *Minimum Conditions for State Aid* (02-TC-22 and 02-TC-31) test claim on April 2, 2008.

of which were pled in 02-TC-31.⁷ In addition, Los Rios Community College District seeks reimbursement for administrative regulations which provide that community college districts adopt policies or provide students with information or notices regarding: (1) student directory information, (2) student representation fees, (3) the provision of course materials, and (4) possible consequences of failing to pay a proper financial obligation due to the district or college.

On January 9, 2008 the 02-TC-25 and 02-TC-31 test claims were consolidated into the *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim due to the fact that both claims pled many of the same statutes and administrative regulations that prescribe standards for the formation and basic operation of community college districts, some of which also entitle community college districts to receive state aid when satisfied.

On January 19, 2011 and May 6, 2011 the Commission severed a portion of *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) related to community college construction⁸ and consolidated the severed portion with the *Community College Construction* (02-TC-47) test claim. This severance occurred because both test claims pled code sections relating to community college construction plans and the submission of these plans to the Board of Governors, and it was determined that it would be more efficient to analyze the severed code sections in the *Community College Construction* (02-TC-47) test claim.

Because the test claim statutes, regulations, and alleged executive orders pled in this test claim deal with some of the basic functions of community colleges, it is helpful to have a brief overview of the role and governance of community colleges in California in order to address the various issues that arise in this test claim analysis.

A. Overview of the role and governance of community colleges in California

In California, community colleges were originally established as extensions of local high schools.⁹ In 1907, high schools were authorized to provide courses that were equivalent to the first two years of a collegiate curriculum.¹⁰ In 1917, community colleges were designated, along with high schools and technical schools, as part of the secondary school system of the state.¹¹ The duties of high school boards that elected to offer community college courses included: (1) adopting regulations governing the organization of community college courses, (2) keeping attendance records of students enrolled in community college courses as required by the regulations of the state board of education, (3) including the average daily attendance of students in community college courses in the annual report of the average daily attendance of the high school district which was used in apportioning state high school funds, and (4) receiving approval for courses by the state board of education in order to receive funding for students attending those courses.¹²

⁷ Education Code sections 66281.5 and 66721.5, and California Code of Regulations, title 5, sections 51006, 54805, 55005, 55202, 55530, 55534, 55750, 55752, 55753, 55758, 55759, 55760, 55761, 55762, 55764, 55765, 55800, 58102, 58104, 59404, and 59410.

⁸ Education Code sections 70902, subdivision (b)(1) (as it applies to facility plans), and 81820, 81821, and 81823.

⁹ Former Political Code section 1681, as added by Statutes 1907, chapter 69.

¹⁰ *Ibid.*

¹¹ Former Political Code section 1720, as added by Statutes 1917, chapter 304.

¹² Former Political Code section 1750b, as added by Statutes 1917, chapter 304.

In regard to the curriculum offered by a community college, the state authorized high school boards to prescribe a variety of courses, providing:

[Community college] courses of study may include such studies as are required for the junior certificate at the University of California, and such other courses of training in the mechanical and industrial arts, household economy, agriculture, civic education and commerce as the high school board may deem it advisable to establish.¹³

Rapidly increasing enrollments and a need to differentiate the functions of the segments of higher education prompted the Legislature to request the preparation of a master plan for the development, expansion, and integration of the facilities, curriculum, and standards of higher education in community colleges, state colleges, the University of California, and other institutions of higher education of the state.¹⁴ In preparing this master plan a study titled, “A Master Plan for Higher Education in California, 1960-75” (Master Plan) was created. The Master Plan was originally prepared in 1959, and its recommendations were approved in principle by the affected governing boards of the higher education segments.

In 1960, legislation was enacted to implement some of the recommendations in the Master Plan, including the Donahoe Higher Education Act.¹⁵ The Donahoe Higher Education Act addressed the mission and governance of California’s public higher education system.¹⁶ With the adoption of the Donahoe Higher Education Act, which defined public higher education to include all public community colleges, state colleges, and the University of California, the place of community colleges in the public education system shifted from secondary education to postsecondary education.¹⁷ The role of and services provided by community colleges in public education, however, remained largely the same.¹⁸ In addition to delineating the role of community colleges in higher education, the Donahoe Higher Education Act assigned to the State Board of Education the duty to exercise general supervision over community colleges and to prescribe minimum standards for the formation and operation of community colleges.¹⁹ In 1967, the Legislature transferred the supervision and the establishment of minimum standards for the community colleges from the State Board of Education to the Board of Governors of the

¹³ *Ibid.*

¹⁴ Assembly Concurrent Resolution No. 88, Statutes 1959 (1959-1960 Reg. Sess.) resolution chapter 200, pp. 5769-5770.

¹⁵ Education Code sections 66000 – 67400, formerly Education Code sections 22500-22705 (Stats. 1960, 1st Ex. Sess., ch.49); renumbered Education Code sections 66000 – 67007 (Stats. 1976, c. 1010).

¹⁶ Former Education Code sections 22500-22705, as added by Statutes 1960, chapter 49.

¹⁷ Former Education Code section 22500, *supra*.

¹⁸ Former Education Code section 22651, as added by Statutes 1960, chapter 49, providing that community colleges are to “offer instruction through but not beyond the 14th grade level, which instruction may include, but shall not be limited to, ... the following categories: (1) standard collegiate courses for transfer to higher institutions; (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degree.”

¹⁹ Former Education Code sections 22650, as added by Statutes 1960, chapter 49.

California Community Colleges (Board of Governors) and the California Community Colleges Chancellor's Office (Chancellor's Office).^{20 21}

After the creation of the original Master Plan in 1959, reviews of the Master Plan and the higher education system continued. These reviews resulted in the reaffirmation of the principles and achievements of the original Master Plan and set forth new recommendations to improve higher education.²² As with the original Master Plan, legislation necessary to implement some of the recommendations was enacted largely through amendments to the Donahoe Higher Education Act.²³ As will be discussed in the test claim analysis below, some of the legislation enacted during these reviews of the Master Plan amended certain activities that were previously expressed as intent language or suggestions into *required* activities.

Although primary authority over public education is vested in the Legislature, the Legislature has ceded substantial discretionary control to local school districts as authorized by the California Constitution.²⁴ In 1976 the Legislature utilized its authority under article IX, section 14 of the California Constitution to authorize community college districts to initiate and carry on any program, activity, or to otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.²⁵ This general authority that is embodied in current Education Code section 70902 became known as the "permissive code" concept under which a district's governing board can act under its general authority without specific statutory authorization.²⁶ While local districts possess great authority in the governance of community colleges within the districts, the state has maintained general supervision of the governance of community colleges.²⁷ Much of this supervision can be found in the test claim statutes and title 5 regulations pled in this test claim.

²⁰ Former Education Code section 197, as added Statutes 1967, chapter 1549.

²¹ The Chancellor's Office is the administrative branch of the California Community Colleges system and is responsible for allocating state funding to the community colleges and districts. The Chancellor's Office operates under the direction of the state chancellor who is guided by the Board of Governors.

²² Joint Committee on the Master Plan for Higher Education "Report of the Joint Committee on the Master Plan for Higher Education" (Sept. 1973); Postsecondary Education Commission for the Review of the Master Plan for Higher Education "The Master Plan Renewed: Unity, Equity, Quality, and Efficiency in California" (July 1987); and Joint Committee for the Review of the Master Plan for Higher Education "California Faces...California's Future: Education for Citizenship in a Multicultural Democracy," (Mar. 1989).

²³ See Education Code section 66002, subdivision (b), setting forth legislative findings regarding the history of the Donahoe Higher Education Act.

²⁴ *Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1017.

²⁵ Former Education Code section 72233, as added by Statutes 1976, chapter 1010. See also, article IX, section 14 of the California Constitution, which provides, "The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

²⁶ *Barnhart v. Cabrillo Community College* (1999) 76 Cal.App.4th 818, 824-825.

²⁷ See Education Code section 70901.

It is in the context of the long established provision of postsecondary education by local educational districts, the broad authority given to community college districts to engage in any activity not inconsistent with state law and regulations, and the general supervision of community college districts by the Board of Governors that the Commission must determine whether the activities addressing various areas of operation of community college districts are state-mandated new programs or higher levels of service.

B. Claimants' Position

Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District's consolidated test claim sets out a list of activities spanning over 220 pages²⁸ alleged to be newly required by 30 California Education Code sections, 143 California Code of Regulation sections, and two alleged executive orders.²⁹ The claimants allege that the state has required community college districts to "comply with a variety of state code and regulatory requirements (minimum requirements) the satisfaction of which entitles a college district to receive state aid and for which noncompliance results in fiscal and other penalties."³⁰

In addition, the claimants assert that meeting the new requirements of some of the test claim statutes and regulations required increased costs to establish and implement policies and procedures, and periodically update those policies and procedures, for the notification of students regarding various issues related to the operation and governing of community colleges.³¹

The claimants acknowledge that community college districts may have received funding for some of the claimed activities, but argue that if funding has been received it is not enough to fully fund the state-mandated new programs or higher levels of service alleged.³²

The claimants filed comments, dated April 19, 2004, May 5, 2004, and September 21, 2004, in rebuttal to the Chancellor's Office comments in response to the test claim filing. In addition, the claimants filed comments in response to the draft staff analysis, dated April 21, 2011. The claimants' comments on the draft staff analysis generally: (1) disagree with the standard of review the Commission uses to determine whether a program is new or imposes a higher level of service; (2) disagree with all of the minimum conditions analysis; and (3) disagree with some of the individual findings that recommend a denial of reimbursement.³³

C. California Community Colleges-Chancellor's Office Position (Chancellor's Office)

On March 11, 2004 and March 16, 2004 the Chancellor's Office submitted comments on the *Minimum Conditions for State Aid* (02-TC-31) and *Notice to Students* (02-TC-25) test claims, respectively. The Chancellor's Office asserts generally for both claims that community college

²⁸ Test Claim 02-TC-25, pgs. 12 – 19; see also, Test Claim 02-TC-31, pgs. 164 – 381.

²⁹ Prior to the severance and consolidation with the *Discrimination Complaint Procedures* (02-TC-46) test claim, the consolidated *Minimum Conditions for State Aid* (02-TC-25 and 02-TC-31) test claim addressed 61 California Education Code sections, 159 California Code of Regulation sections, and 3 alleged executive orders.

³⁰ Test Claim 02-TC-31, p. 4.

³¹ Test Claim 02-TC-25, p. 12.

³² *Id* at pgs. 385 – 386.

³³ Claimants' response to draft staff analysis, dated April 21, 2011.

districts are not entitled to reimbursement for any of the pled activities, and that the test claims should be rejected in their entirety.

Regarding the *Minimum Conditions for State Aid* (02-TC-31) test claim, the Chancellor's Office argues: (1) If the claimants have complied with the challenged provisions in order to receive state aid and have received state aid, claimants have already been compensated for compliance and no further reimbursement is warranted, (2) the claimants are not required to collect state aid and to the extent that the claimants choose to do so that choice negates the finding of a state mandate for activities that are necessary to make claimants eligible for state aid, (3) minimum standards (statutes and regulations) are not eligible for reimbursement if they were required by legislative action that predated January 1, 1975, (4) a number of the regulations address areas that are already required by federal laws, and (5) a number of the regulations address areas of general law that are not based on a claimant's status as a local governmental body.

Regarding the *Notice to Students* (02-TC-25) test claim, the Chancellor's Office provides many of the same arguments provided for the *Minimum Conditions for State Aid* (02-TC-31) test claim.³⁴ However, the Chancellor's Office additionally argues that the notice requirements regarding educational programs do not carry out the governmental function of providing services to the public and therefore do not constitute a "program" under article XIII B of the California Constitution. In addition, the Chancellor's Office argues that the costs of the notices can be covered by funds already received from the state.³⁵

The Chancellor's Office has not file any comments in response to the draft staff analysis.

D. Department of Finance's Position (Finance)

On November 9, 2007, Finance submitted comments on the *Notice to Students* (02-TC-25) test claim, but has chosen to reserve comments on the *Minimum Conditions for State Aid* (02-TC-31) test claim until after a draft staff analysis is issued. In regard to the *Notice to Students* (02-TC-25) test claim, Finance concurs with the Chancellor's Office conclusion that the test claim should be denied in its entirety. Finance argues the following:

- Any costs associated with Education Code section 66721.5 are "relatively minor, and fall well within the established purposes of each community college districts [*sic*] current general purpose funding provided in Schedule (1) of Item 6870-101-0001 of the annual Budget Act, pursuant to Chapter 5, of Part 50, of Division 7, of Title 3 of the Education Code."³⁶
- In regard to the regulations, "[c]ommunity college districts receive general purpose funding from the state to support broad instructional services and programs of study for their students. As such, this source of funding is available and appropriate to support any costs of implementing the requirements set forth by the regulations. As in *Kern*, these are "reasonable" expenses that can be incurred. We further contend that the activities outlined in these notice regulations are more than just a general framework. These regulations provide a guideline for fundamental activities that are integral to providing instructional services and operating instructional programs, and in our view are fully supported by general purpose apportionment funding allocated annually to community

³⁴ Chancellor's Office Comments on 02-TC-25, dated March 16, 2004, p. 4-6.

³⁵ *Id.* at p. 6-26.

³⁶ Finance Comments, dated November 9, 2007, p. 2.

colleges in Schedule (1) Apportionments, of Item 6870-101-0001 of the Budget Act pursuant to [Chapter 5, of Part 50, of Division 7, of Title 3 of the Education Code].”³⁷

Finance has not filed any comments in response to the draft staff analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution³⁸ recognizes the state constitutional restrictions on the powers of local government to tax and spend.³⁹ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁴⁰ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁴¹ In addition, the required activity or task must be new, constituting a “new program,” and it must create a “higher level of service” over the previously required level of service.⁴²

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁴³ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.⁴⁴ A “higher level of service” occurs when there is “an increase in the actual level or

³⁷ *Id.* at p. 3.

³⁸ California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

³⁹ *Kern High School Dist.*, *supra*, 30 Cal.4th at 735.

⁴⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁴¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁴² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁴³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

⁴⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

quality of governmental services provided.”⁴⁵ Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁴⁶

In the claimants’ April 21, 2011 comments, the claimants assert that the correct standard of review is to compare the statutes pled on the effective date of the test claim filing to the status of the law as of December 31, 1974, thus ignoring any intervening laws that were adopted.⁴⁷ The claimants base this argument on the definition of “costs mandated by the state” contained in Government Code section 17514.

However, the California Supreme Court in *San Diego Unified School Dist.* defined “new program or higher level of service” to mean “new in comparison with the preexisting scheme in view of the circumstances that they did not exist prior to the enactment of” statutes pled in the test claim.⁴⁸ Thus, pursuant to the Supreme Court’s decision in *San Diego Unified School Dist.*, the Commission must compare the test claim statutes and executive orders pled with the legal requirements in effect immediately before the enactment.

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴⁹ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵⁰

A. The “Handbook of Accreditation and Policy Manual” does not constitute an executive order subject to article XIII B, section 6 and therefore is not within the Commission’s jurisdiction. The “Program and Course Approval Handbook” constitutes an executive order subject to article XIII B, section 6, and is within the Commission’s jurisdiction.

The claimants have pled the “Handbook of Accreditation and Policy Manual” and “Program and Course Approval Handbook” as “executive orders” and argue that these documents impose reimbursable state-mandated activities. However, in order to make this determination, it must be determined if these documents are executive orders such that the Commission has jurisdiction over them.

Pursuant to Government Code section 17551, the Commission hears and decides claims for reimbursement of costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as increased costs a school district is required to incur as a result of an enacted statute or an issued executive order which mandates a new program or higher level of service. An “executive order” is defined as any order, plan, requirement, rule, or regulation

⁴⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

⁴⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

⁴⁷ Claimants’ Comments on Draft Staff Analysis, *supra*, p. 2.

⁴⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 878.

⁴⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁵⁰ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

issued by: (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.⁵¹

(1) “Handbook of Accreditation and Policy Manual”

The claimants assert that community college districts incur reimbursable costs resulting from the “Revised Summer 2002” edition of the “Handbook of Accreditation and Policy Manual” issued by the Accrediting Commission for Community and Junior Colleges (ACCJC). The “Handbook of Accreditation and Policy Manual” sets forth the eligibility requirements and standards established by the ACCJC for accreditation with the ACCJC. The ACCJC is one of three commissions that make up the Western Association of Schools and Colleges (WASC), a *non-governmental* corporate entity whose commissions evaluate and accredit public and private educational institutions.⁵² Thus, the “Handbook of Accreditation and Policy Manual” does not constitute an executive order issued by any agency, department, board, or commission of *state* government.⁵³ As a result, the “Handbook of Accreditation and Policy Manual” does not constitute an executive order subject to article XIII B, section 6, and therefore, is not within the Commission’s jurisdiction.

The claimants argue that although the “Handbook of Accreditation and Policy Manual” was not issued by a nongovernmental agency, there is an independent basis for the mandate.⁵⁴ The claimants base this on the title 5 “minimum condition” regulations below, specifically section 51016. However, as discussed below, the “minimum condition” regulations, including section 51016, do not impose state-mandated activities. Thus, there is no independent basis for the alleged requirement to comply with the “Handbook of Accreditation and Policy Manual.”

(2) “Program and Course Approval Handbook”

The September 2001 “Program and Course Approval Handbook” (Handbook) issued by the Chancellor’s Office is a document “intended to assist California community college administrators, staff, and faculty who are responsible for designing and submitting new programs or courses to the Chancellor’s Office for approval.”⁵⁵ The Chancellor’s Office issued the Handbook pursuant to California Code of Regulations, title 5, section 55000.5, which provides:

The Chancellor shall prepare, distribute, and maintain a detailed handbook for use by the local educational agencies. The handbook shall contain course approval criteria, implementation plans for administrative regulations, and procedures for securing course and program approvals.

In compliance with this duty, the Handbook includes guidelines and explanations of statutory and regulatory requirements and duties of both the state and community college districts. In

⁵¹ Government Code section 17516.

⁵² Western Association of Schools and Colleges indicates that it is a 501(c)(3) nonprofit organization at <<http://www.wascweb.org/>> as of September 15, 2010. “501(c)(3) organization” refers to Title 26 of the United States Code section 501(c)(3), which exempts from taxation specific types of corporations, community chests, funds, or foundations.

⁵³ The Commission notes that California Code of Regulations, Title 5, section 51016 assigns the ACCJC the duty to determine accreditation of California Community Colleges, and will address this issue in the “Minimum Conditions Entitling Community College Districts to State Aid” section of this analysis.

⁵⁴ Claimants’ Response to Draft Staff Analysis, dated April 21, 2011, p. 14.

⁵⁵ Test Claim 02-TC-31, “Program and Course Approval Handbook.”

addition, the Handbook includes the procedures and forms for the approval process of new programs and courses.

The introduction to the Handbook provides that “[s]tatements in this handbook are not law, except for the regulations and statutes quoted in it.”⁵⁶ The Handbook also provides that colleges are expected to follow the procedures and instructions contained in the Handbook in order to have proposed courses and programs approved by the Chancellor’s Office.⁵⁷ As provided in statute and regulation, community colleges are required to offer courses of instruction and programs.⁵⁸ As a result, community college districts, which are required to offer courses and programs, are also required to follow the procedures and instructions contained in the Handbook when it is necessary to obtain the approval of the Chancellor’s Office. However, to the extent that the Handbook provides guidelines and explanations of statutes and regulations, community college districts are not required to comply with the Handbook because these “statements ... are not law.” Therefore, the procedures and instructions contained in the Handbook constitute an executive order subject to article XIII B, section 6 of the California Constitution, and thus, subject to the Commission’s jurisdiction.

Because the Handbook is subject to the Commission’s jurisdiction it is necessary to determine whether or not the Handbook imposes a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. This discussion will occur below in the “Curriculum” section of this analysis.

B. The executive order, test claim statutes, and regulations impose some state-mandated new programs or higher levels of service on community college districts subject to article XIII B, section 6 of the California Constitution

To be subject to article XIII B, section 6 of the California Constitution, the test claim statutes, regulations, and executive order must (1) mandate a new activity upon the claimant, which (2) constitutes a new program or higher level of service.

To meet the first prong, the language of the test claim statutes and regulations must mandate an activity or task on a local governmental entity or school district. If the language does not mandate or require the claimant to perform a task, article XIII B, section 6, does not apply.

In statutory construction cases, our fundamental task is to ascertain the intent of lawmakers so as to effectuate the purpose of the statute. [Citations.] We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citations.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.⁵⁹

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Education Code section 66010.4, subdivision (a)(1), as amended by Statutes 1996, chapter 1057. California Code of Regulations, title 5, section 55180, subdivision (a) (Register 2008, No. 25); California Code of Regulations, title 5, section 55000, subdivision (g) (Register 2007, No. 35).

⁵⁹ *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

This rule of statutory construction is applicable to administrative regulations, as courts have held that, in general, the same rules of construction apply when interpreting administrative regulations as apply when interpreting statutes.⁶⁰

In addition, the California Supreme Court held in *Kern High School Dist.* that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.⁶¹ The court also held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion; where certain and severe penalties, such as double taxation and other draconian consequences would result if the local entity did not comply with the program.⁶²

In order to meet the second prong, the state-mandated activities must constitute a "new program or higher level of service." To constitute a "new program or higher level of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.⁶³ In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.⁶⁴ To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.⁶⁵

When making this comparison courts have held:

When a statute, although new in form, re-enacts an older statute without substantial change, even though it repeals the older statute, the new statute is but a continuation of the old. There is no break in the continuous operation of the old statute, and no abatement of any of the legal consequences of acts done under the old statute. Especially does this rule apply to the consolidation, revision, or codification of statutes, because, obviously, in such event the intent of the Legislature is to secure clarification, a new arrangement of clauses, and to delete superseded provisions, and not to affect the continuous operation of the law.⁶⁶

For ease of discussion, the test claim statutes, regulations, and executive orders will be analyzed pursuant to the following sections: (1) delineation of functions of the Board of Governors of the California Community Colleges and the governing boards of community college districts; (2) minimum conditions entitling community colleges to state aid and the investigation and enforcement of minimum conditions; (3) approval of new colleges and educational centers; (4) comprehensive or master plans for academics and facilities; (5) faculty participation in district and college governance; (6) full-time/part-time faculty ratio; (7) matriculation; (8) transfer centers; (9) vocational education; (10) standards of scholarship; (11) curriculum; (12) degrees and certificates; (13) open courses; and (14) notices to students.

⁶⁰ *Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292.

⁶¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

⁶² *Id.* at p. 751.

⁶³ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

⁶⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

⁶⁵ *Ibid.*

⁶⁶ *In re Dapper* (1969) 71 Cal.2d 184, 189-190, quoting *Sobey v. Molony* (1940) 40 Cal.App.2d 381, 385.

(1) Delineation of Functions of the Board of Governors of the California Community Colleges and the Governing Boards of Community College Districts (Ed. Code, §§ 70901, 70901.5, and 70902)

This section addresses Education Code sections 70901, 70901.5, and 70902. Section 70901 sets forth the duties and authority given to the Board of Governors of the California Community Colleges and section 70902 sets forth the broad duties and general authority given to the governing boards of local community college districts. In doing so, the Legislature delineates the roles and functions of the state and the local community college districts in postsecondary education. Education Code section 70901.5 sets forth the rulemaking process which the Board of Governors must engage in to adopt regulations.

Included in the duties and authority set forth in Education Code section 70901 is the duty of the Board of Governors to provide general supervision over community college districts. In furtherance of this duty, the Board of Governors is directed to establish minimum standards for various areas of operation for community colleges including student academic standards, employment of academic and administrative staff, the formation of community colleges and districts, and faculty, student and staff participation in the district and college governance. In addition, the Board of Governors is directed to adopt minimum conditions entitling districts to receive state aid for the support of community colleges.

Many of the title 5 regulations pled in this test claim were adopted by the Board of Governors pursuant to Education Code section 70901 and fulfill the duty of the Board of Governors to establish standards regarding the operation of community colleges and the duty to establish conditions, satisfaction of which entitle districts to receive state aid. Education Code sections 70901 and 70901.5 do not impose any activities on community college districts. Instead, as described above, sections 70901 and 70901.5 impose activities on the Board of Governors, and as a result, do not impose reimbursable state mandated activities subject to article XIII B, section 6 of the California Constitution.

In the claimants' response to the draft staff analysis, the claimants allege for the first time that Education Code section 70902 imposes affirmative duties resulting in reimbursable state-mandated activities.⁶⁷ Specifically, the claimants allege that Education Code section 70902, subdivisions (b)(1), (2), (3), (7), (9), and (14), impose affirmative duties on community college districts, and suggests that these duties impose new programs or higher levels of service.⁶⁸ For ease of discussion, whether Education Code section 70902, subdivisions (b)(1), (2), (3), (7), (9), and (14), and the title 5 regulations pled in this test claim constitute reimbursable state-mandated new programs or higher levels of service will be addressed throughout the rest of the test claim analysis.

⁶⁷ Claimants' Response to Draft Staff Analysis, dated April 21, 2011, pgs. 7, 12, 13, 15, 17, 20-23. In the test claim filing and attachments for 02-TC-31, the claimants' allegations for costs associated with alleged reimbursable state-mandated new programs and higher levels of service begin on page 164 and end on page 381 of the test claim filing. Between pages 164 and 381, the claimants do not allege costs associated with Education Code section 70902.

⁶⁸ Claimants' Response to Draft Staff Analysis, *supra*, at pgs. 7, 12, 13, 15, 17, and 20-23.

(2) Minimum Conditions Entitling Community College Districts to State Aid and Investigation and Enforcement of Minimum Conditions (Cal. Code Regs., tit. 5, §§ 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, and 51102)

This section addresses California Code of Regulations, title 5, sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, and 51027, which set forth minimum conditions, satisfaction of which entitles community college districts to receive state aid. In addition, this section addresses title 5, sections 51100 and 51102, which address the investigation and enforcement of the minimum conditions.

As discussed above, the Board of Governors is required to establish “minimum conditions” *and* “minimum standards.” The claimants and the Chancellor’s Office disagree as to the scope of what constitutes a “minimum condition” established pursuant to Education Code section 70901, subdivision (b)(6), and what constitutes a “minimum standard” established pursuant to Education Code section 70901, subdivision (b)(1). The claimants assert that the whole of this test claim addresses “minimum conditions” and the Chancellor’s Office asserts that the whole of this test claim deals with “minimum standards” or makes no distinction between the two. In addition, the Chancellor’s Office argues as a general matter that community college districts have a pre-existing duty to comply with “minimum conditions” or “minimum standards” established by the Board of Governors, and therefore none of the “minimum conditions” or “minimum standards” constitute a new program or higher level of service regardless of the content of the “minimum conditions” or “minimum standards.”

The following discussion will first address what title 5 regulations constitute “minimum conditions” established pursuant to Education Code section 70901, subdivision (b)(6). Second, the discussion will address whether the title 5 regulations that constitute “minimum conditions” impose state-mandated activities on community college districts. Third, the discussion will address whether the title 5 regulations addressing the investigation and enforcement of the “minimum conditions” impose state-mandated activities on community college districts. Finally, the discussion will address whether a pre-existing duty to comply with “minimum standards” adopted by the Board of Governors precludes a finding of a new program or higher level of service regardless of the content of the “minimum standards.”

- a. Not all of the test claim statutes and administrative regulations pled by the claimants constitute “minimum conditions” established pursuant to Education Code section 70901, subdivision (b)(6)

The claimants have pled 27 Education Code sections, 141 regulations, and two alleged executive orders alleging state-mandated costs resulting from these statutes, regulations, and executive orders. The claimants have pled all of the Education Code sections, most of the administrative regulations,⁶⁹ and the alleged executive orders as “minimum conditions” established pursuant to Education Code section 70901, subdivision (b)(6).⁷⁰

⁶⁹ Excluding California Code of Regulations, title 5, sections 54626, 54805, 59404, and 59410, which were the regulations pled in 02-TC-25 that did not overlap with the regulations pled in 02-TC-31.

⁷⁰ Test Claim 02-TC-25, p. 25; Test Claim 02-TC-31; see also Claimant Response to Chancellor’s Office Comments on Test Claim, 02-TC-31, dated May 5, 2004, p. 8 – 13.

Education Code section 70901 provides in relevant part:

[¶] ... [¶]

(b) ... the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

[¶] ... [¶]

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

[¶] ... [¶].

When discussing the regulations pled by the claimants, the Chancellor's Office makes no distinction between "minimum standards" adopted under Education Code section 70901, subdivision (b)(1) and "minimum conditions" adopted under Education Code section 70901, subdivision (b)(6).⁷¹ The claimants, however, argue that there is a distinction between the establishment of "minimum conditions" and the establishment of "minimum standards."⁷²

Generally, when interpreting statutory language the plain meaning of the language governs.⁷³ In addition, where the Legislature uses a different word or phrase in one part of a statute than it does in other sections or in a similar statute concerning a related subject, it must be presumed that the Legislature intended a different meaning.⁷⁴ "Standard" is defined as, "A degree or level of requirement, excellence, or attainment."⁷⁵ In contrast, "condition" is defined as, "A

⁷¹ Chancellor's Office Comments on Test Claim 02-TC-31, dated March 11, 2004, p. 4.

⁷² Claimant Response to Chancellor's Office Comments on Test Claim, 02-TC-31, *supra*, p. 8.

⁷³ *Estate of Griswold*, *supra*, 25 Cal.4th at pgs. 910-911.

⁷⁴ *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 497.

⁷⁵ American Heritage Dictionary (new college ed. 1979) p. 1256.

proposition upon which another proposition depends; the antecedent of a conditional proposition.”⁷⁶ The Legislature’s decision to use “standard” in one section and “condition” in another, and the different meanings of these words, lead to the presumption that a distinction exists between “minimum standards” and “minimum conditions” as used in section 70901, subdivisions (b)(1) and (b)(6).

In addition to the distinction between “minimum standards” and “minimum conditions,” the claimants further assert that the “minimum standards” established by the Board of Governors under Education Code section 70901, subdivision (b)(1), “are *only* applicable to” the areas of community college operation set forth by subdivisions (b)(1)(A) – (E).⁷⁷ The claimants appear to argue that the test claim statutes and executive orders claimed in this test claim do not constitute “minimum standards,” rather “[t]his test claim is about the ‘minimum conditions’ for the receipt of state aid which were established in 1988.”⁷⁸

Although the Commission agrees that there is a distinction between the “minimum standards” established pursuant to subdivision (b)(1) and the “minimum conditions” established pursuant to subdivision (b)(6), the claimants’ broad interpretation of subdivision (b)(6) is contrary to the plain language of Education Code section 70901 and the plain language of the regulations implementing subdivision (b)(6).

Subdivision (b)(1) provides, in relevant part, that the Board of Governors shall “[e]stablish minimum standards as required by law, *including, but not limited to*, [subdivision (b)(1)(A) – (E)].”⁷⁹ Thus, contrary to the claimants’ assertion that the minimum standards established pursuant to Education Code section 70901, subdivision (b)(1), “are only applicable to” the areas of community college operation set forth in subdivisions (b)(1)(A) – (E), subdivision (b)(1) provides the Board of Governors with broad authority to establish “minimum standards” regarding the general operation of community colleges.

Although the language of Education Code section 70901, subdivision (b)(6), also provides the Board of Governors with broad authority to establish “minimum conditions” entitling districts to receive state aid, within the regulations that implement subdivision (b)(6) the Board of Governors has chosen to limit the scope of what constitutes a “minimum condition.” California Code of Regulations, title 5, section 51000, which sets forth the scope of what constitutes minimum conditions established by the Board of Governors pursuant to Education Code section 70901, subdivision (b)(6), provides:

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and *comprise* the rules and regulations fixing and affirming the *minimum conditions*, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges. (Emphasis added.)

Based on the plain language of section 51000, the scope of what “comprise[s] the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district...to receive state aid...” is limited to the “provisions of this Chapter.” The “Chapter” referenced in section 51000, consists of California Code of Regulations, title 5, sections 51000,

⁷⁶ American Heritage Dictionary (new college ed. 1979) p. 277.

⁷⁷ *Id.* at p. 12. (Emphasis added.)

⁷⁸ *Id.* at p. 13.

⁷⁹ Education Code section 70901, subdivision (b)(1). (Emphasis added.)

51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020-51025, 51027, 51100, and 51102. As a result, pursuant to the plain language of section 51000, 121 of the 141 California Code of Regulation sections, the 27 Education Code sections⁸⁰ and the executive order pled by the claimants do not constitute “minimum conditions” established pursuant to Education Code section 70901, subdivision (b)(6). According to the plain language of section 51000, only California Code of Regulations, title 5, sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, 51020 – 51027, 51100, and 51102 comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a community college district to receive state aid.

The Office of Administrative Law, however, issued a Nomenclature Cross-Reference for title 5 of the California Code of Regulations,⁸¹ effective April 1, 1990, that provides:

Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross-Reference Table for the new organizational headings used in this Title.⁸²

The Cross-Reference Table then provides that “Part” should be read as “Division,” “Division” as “Chapter,” “Chapter” as “Subchapter,” “Subchapter” as “Article,” “Article” as “Subarticle,” and “Section” remains as “Section.”

California Code of Regulations, title 5, sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, 51020-51027, 51100, and 51102, are located under “Chapter 2. Community College Standards.” “Chapter 2. Community College Standards” consists of two subchapters, “Subchapter 1. Minimum Conditions,” and “Subchapter 2. Investigation and Enforcement of Minimum Conditions.” “Subchapter 1. Minimum Conditions” consists of sections 51000, 51002, 51004, 51006, 51008, 51010, 51012, 51014, 51016, 51018, and 51020-51027. “Subchapter 2. Investigation and Enforcement of Minimum Conditions” consists of sections 51100 and 51102.

From a plain reading of section 51000 it is unclear whether the Board of Governors has implemented the changes in hierarchical headings in section 51000. As a result, an ambiguity arises as to whether the provisions of “Chapter 2. Community College Standards” (Cal. Code Regs. §§ 51000 – 51102), or only the provisions of “Subchapter 1. Minimum Conditions,” (Cal. Code Regs. §§ 51000-51027), “comprise the rules and regulations fixing and affirming the minimum conditions”

In order to determine whether the Board of Governors implemented the changes in hierarchical headings, it is necessary to look at the hierarchical headings and the language used in section 51000 prior to and after the effective date of the Nomenclature Cross-Reference for title 5. Immediately prior to the effective date of the Nomenclature Cross-Reference for title 5,

⁸⁰ The Education Code sections pled by the claimants also cannot constitute “minimum conditions” established by the Board of Governors because the Board of Governors lack the authority to adopt Education Code sections.

⁸¹ Nomenclature Cross-Reference was issued under the authority of the Office of Administrative Law pursuant to Government Code sections Government Code section 11344.

⁸² Office of Administrative Law, *Nomenclature Cross Reference*, effective April 1, 1990.

section 51000 was part of “Chapter 1. Minimum Standards,” while sections 51100 and 51102 were part of “Chapter 2. Investigation and Enforcement of Minimum Standards.”⁸³

In 1991, “Chapter 1. Minimum Standards” and “Chapter 2. Investigation and Enforcement of Minimum Standards” were brought under “Chapter 2. Community College Standards” and were renamed to “Subchapter 1. Minimum Conditions” and “Subchapter 2. Investigation and Enforcement of Minimum Conditions” by the Office of Administrative Law.⁸⁴ However, the language of section 51000 continued to provide, before and after the effective date of the Nomenclature Cross-Reference, “The provisions of this *chapter*”⁸⁵ As a result, it is evident that the Board of Governors has not implemented the changes in hierarchical headings in regard to section 51000, and thus, pursuant to the Nomenclature Cross-Reference for title 5, “Chapter” should be read as “Subchapter,” and thus, limiting the scope of what constitutes a “minimum condition” established pursuant to Education Code section 70901, subdivision (b)(6), to “Subchapter 1. Minimum Conditions.”

Therefore, the Commission finds that the scope of what constitutes a “minimum condition,” pursuant to Education Code section 70901, subdivision (b)(6), is limited to California Code of Regulations, title 5, Chapter 2, Subchapter 1, sections 51000 – 51027. Title 5, sections 51100 and 51102, which address the enforcement of the minimum conditions by the Chancellor’s Office, are outside the scope of what constitutes a “minimum condition” pursuant to Education Code section 70901, subdivision (b)(6) and will be discussed later in this analysis. Similarly, the remaining title 5 regulations pled by the claimants are outside of the scope of what constitutes a “minimum condition.” Instead, these title 5 regulations were adopted under the broad authority to adopt minimum standards provided by Education Code section 70901, subdivision (b)(1), or by other legislation requiring the adoption of implementing regulations. These regulations and the test claim statutes and executive order will be discussed later in this analysis.

- b. California Code of Regulations, title 5, sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, and 51027 do not impose any state-mandated activities.

This section addresses California Code of Regulations, title 5, sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, and 51027. These regulations, established pursuant to Education Code section 70901, subdivision (b), set forth the minimum conditions, satisfaction of which entitles community college districts to receive state aid. These conditions cover the following areas of basic operation: standards of scholarship, degrees and certificates, open courses, comprehensive plans, student fees, approval of new colleges and educational centers, accreditation, counseling programs, objectives, curriculum, instructional programs, faculty, staff, students, matriculation services, full-time/part-time faculty, and transfer centers.

In reference to sections 51000-51027, section 51000 provides:

The provisions of this [Subchapter] [sections 51000-51027] are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and

⁸³ California Code of Regulations, title 5, sections 51000 and 51100 (Register 83, No. 29 (July 16, 1983)).

⁸⁴ California Code of Regulations, title 5, section 51000 and 51100 (Register 91, No. 23 (June 7, 1991)).

⁸⁵ California Code of Regulations, title 5, section 51000 has underwent subsequent amendments, and still provides that the “provisions of this *chapter*”

regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of its community colleges.⁸⁶

The Chancellor's Office and the claimants both describe the language of section 51000 as providing that most of the regulations pled by the claimants⁸⁷ establish minimum conditions *for the receipt of* state aid.⁸⁸ Read in this manner, section 51000 conditions the receipt of state aid by community college districts on compliance with the minimum conditions. The resulting implication is that a failure to comply with the minimum conditions results in forgoing the receipt of state aid.

Contrary to the plain language of section 51000 and Education Code section 70901, subdivision (b)(6), the Chancellor's Office response to the 02-TC-25/02-TC-31 test claim appears to have interpreted the language of section 51000 as requiring compliance with the minimum conditions in order to *receive* state aid.⁸⁹ It is generally recognized that an agency's interpretation of its own regulations becomes of controlling weight unless the agency's interpretation is plainly erroneous or inconsistent with the regulation.⁹⁰ In addition, an agency does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language which it aims to implement.⁹¹ California Code of Regulations, title 5, section 51000 paraphrases Education Code section 70901, subdivision (b)(6), which provides that the Board of Governors are to, "[e]stablish minimum conditions *entitling* districts to receive state aid for support of community colleges."⁹² However, contrary to the plain language of section 51000 and Education Code section 70901, subdivision (b)(6), the Chancellor's Office response to the test claim appears to have interpreted the language of section 51000 as requiring compliance with the minimum conditions in order to *receive* state aid.⁹³

When interpreting regulations, if the terms of the regulation are unambiguous, the plain meaning of the language governs, and an intent that cannot be found in the words of the regulation cannot be found to exist.⁹⁴ Additionally, an interpretation of a regulation should not render any language mere surplusage, and the language must be considered in the context of the regulatory framework as a whole.⁹⁵

The plain language of section 51000 indicates that sections 51000-51027 are minimum conditions, "satisfaction of which *entitles*" a community college district to state aid. The

⁸⁶ California Code of Regulations, title 5, section 51000 (Register 95, No. 15 (April 14, 1995)).

⁸⁷ Chancellor's Office Comments on 02-TC-31, *supra*; Chancellor's Office Comments on 02-TC-25, *supra*, pages 8-10; and Test Claim Filing and Attachments for 02-TC-31.

⁸⁸ Chancellor's Office Comments on 02-TC-31, dated March 11, 2004; Chancellor's Office Comments on 02-TC-25, dated March 16, 2004, p. 8 -10; Test Claim 02-TC-31.

⁸⁹ Chancellor's Office Comments on 02-TC-31, dated March 11, 2004.

⁹⁰ *U.S. v Larionoff* (1977) 431 U.S. 864, 872.

⁹¹ *Gonzales v. Oregon* (2006) 546 U.S. 243, 257.

⁹² Emphasis added.

⁹³ Chancellor's Office Comments on 02-TC-31, *supra*.

⁹⁴ *Riebe v. Budget Financial Corp.* (1968) 264 Cal.App.2d 576, 585.

⁹⁵ *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

language does not provide that a community college district which has not satisfied the minimum conditions, and therefore is not *entitled* to state aid, will not receive state aid. This intent cannot be found to exist absent language indicating such intent. In addition, interpreting section 51000 as providing that sections 51000-51027 constitute minimum conditions *for the receipt* of state aid would render the language of section 51000 that provides, “satisfaction of which entitles,” unnecessary and mere surplusage. Giving effect to the usual and ordinary import of this language leads to an interpretation of section 51000 as providing that satisfaction of the minimum conditions leads to an *entitlement* to state aid by a community college district.

The plain language interpretation of section 51000 is also consistent with the regulatory scheme regarding minimum conditions. California Code of Regulations, title 5, section 51102, which addresses enforcement of the minimum conditions by the Chancellor, provides that after the Chancellor has notified a district of the Chancellor’s finding of the district’s noncompliance, and the district has responded or the time for a response has lapsed, the Chancellor shall take one or more of the following actions:

- (1) accept in whole or part the district’s response regarding noncompliance;
- (2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;
- (3) withhold all or part of the district’s state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.

The Chancellor has discretion on which action or actions to take upon a finding that a community college district is not in compliance with the “minimum conditions.” Each of these actions that the Chancellor is authorized to take allow for the possible provision of state aid to a community college district. Accordingly, even if the Chancellor finds a community college district to be in noncompliance with title 5, sections 51000-51027, a community college district may receive state aid. Thus, compliance with the minimum conditions (Cal. Code Regs., tit. 5, §§ 51000-51027) is a downstream activity of becoming *entitled* to receive state aid. As a result, pursuant to *Kern High School Dist.*, the underlying issue that must be addressed to determine whether title 5, sections 51000-51027, mandate any activities is whether community college districts are mandated to become *entitled* to receive state aid, and not whether community college districts are mandated to *receive* state aid as discussed by the Chancellor’s Office and the claimants.⁹⁶

Pursuant to *Kern High School Dist.*, the Commission must look at the underlying program to determine if a claimant’s participation in the underlying program is legally compelled. In addition, the court in *Kern High School Dist.* left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties as a result of noncompliance with a program that is not legally compelled. The court in *Dept of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, explained further that a finding of “practical compulsion” requires a concrete showing in the

⁹⁶ Chancellor’s Office Comments on 02-TC-31, *supra*, p. 2; Chancellor’s Office Comments on 02-TC-25, *supra*, p. 9 – 10; Claimant Response to Chancellor’s Office Comments on Test Claim, 02-TC-25, *supra*, p. 13; and Claimant Response to Chancellor’s Office Comments on Test Claim, 02-TC-31, *supra*, pgs. 3-7.

record that a failure to engage in the activity/activities at issue will result in certain and severe penalties.⁹⁷

The claimants argue that a “*Kern* analysis” is unnecessary and not relevant, because districts are legally compelled to comply with the minimum conditions.⁹⁸ However, there is nothing in the governing statutes, regulations, or in the record that community college districts are required to become entitled to state aid. As a result, community college districts do not face *legal* compulsion to become entitled to state aid.

In addition, even if the Chancellor finds a community college district to be in noncompliance with the minimum conditions (Cal. Code Regs., tit. 5, §§ 51000-51027), and therefore not entitled to receive state aid, the district may still receive state aid. This was the situation faced by San Mateo County Community College District, an example cited to by the claimants in response to the staff analysis for the *Discrimination Complaint Procedures* (02-TC-46) test claim.⁹⁹ In 2001 and 2002, San Mateo County Community College District appointed the Chancellor-Superintendent of the District without complying with section 51010, which requires as a condition to become entitled to state aid that community college districts substantially comply with the equal employment opportunity regulations (Cal. Code Regs., tit. 5, § 53000 et seq.). The claimants note that “the Chancellor recommended a penalty of \$550,513 for the perceived noncompliance in this one instance.”¹⁰⁰

However, in ultimately settling the matter the San Mateo County Community College District and the Chancellor’s Office came to an agreement in which San Mateo County Community College District agreed to increased monitoring. The District did not lose *any* state aid.¹⁰¹ Thus, there is no concrete evidence that a failure to comply with the minimum conditions results in certain and severe consequences.

The claimants argue that the need for a “concrete showing” pursuant to *Department of Finance v. Commission on State Mandates (POBRA)*, is unnecessary because title 5, section 51000, “is, by itself, legally compelling.”¹⁰² In addition, the claimants question the level of certainty needed when applying *POBRA* to this test claim.¹⁰³ Although there is evidence of the possible results of not becoming entitled to state aid, as discussed above, there is no evidence of the certainty or severity of any consequence. The idea of practical compulsion was borrowed by the court in *Kern High School Dist.* from the federal mandates analysis in *City of Sacramento*,¹⁰⁴ and the court in *POBRA* clarified the need for a concrete showing of certain and severe penalties.¹⁰⁵

⁹⁷ *POBRA, supra*, 170 Cal.App.4th at pgs. 1366-1369.

⁹⁸ Claimant Comments on Draft Staff Analysis for *Discrimination Complaint Procedures* (02-TC-46), dated March 1, 2011, p. 8-9.

⁹⁹ *Id.* at p. 9.

¹⁰⁰ *Ibid.*

¹⁰¹ “Agreement” in the Matter between Chancellor of the California Community Colleges and the San Mateo County Community College District.

¹⁰² Claimants’ Response to Draft Staff Analysis, dated April 21, 2011, p. 5.

¹⁰³ *Id.* at pgs. 5-6.

¹⁰⁴ *Kern High School Dist., supra* at p. 751, quoting *City of Sacramento, supra*, 50 Cal.3d at p. 74.

¹⁰⁵ *POBRA, supra*, 170 Cal.App.4th at pgs. 1367.

In *City of Sacramento* if the state failed to conform to federal law the certain result would be either double taxation of businesses within the state or the complete termination of the state's unemployment system, which the court determined to constitute certain and severe penalties.¹⁰⁶ In *Hayes v. Commission on State Mandates*, which is cited to in the federal mandates analyses below, the court found a federal mandate in a situation where districts had been sued in the past and faced future litigation with no real defense as an actual consequence of failing to comply with federal law that codified the equal protection rights of handicapped children, and thus compliance with the federal law would ultimately be compelled.¹⁰⁷ In making this finding the court noted that parents and organized groups representing handicapped children were becoming increasingly litigious in their efforts to secure appropriate education for handicapped children.¹⁰⁸ As an added consequence, districts that failed to comply with the federal law faced the possible loss of federal funds.

Here, there is only a possible loss of funding, but no evidence of the certainty of this loss, as exemplified by San Mateo County Community College District. In addition, there is no evidence that districts face any other certain and severe consequence of not becoming entitled to state aid, such as litigation without any defense. Thus, pursuant to *POBRA* community college districts do not face *practical* compulsion to comply with the minimum conditions. As a result, the Commission finds that California Code of Regulations, title 5, sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, and 51027, do not impose any state-mandated activities upon community college districts, and therefore do not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.¹⁰⁹

- c. The regulations providing for the investigation and enforcement of minimum conditions do not impose any state-mandated activities (Cal. Code Regs., tit. 5, §§ 51100 and 51102)

This section addresses the investigation and enforcement of the minimum conditions, satisfaction of which entitles a district to receive state aid for the support of its community colleges.

Section 51100, subdivision (a), requires the Chancellor to review each community college at least once every seven years "to determine whether it has met the minimum conditions contained in Subchapter 1 (commencing with Section 51000) of Chapter 2." Subdivision (b) requires the Chancellor to inform the chief executive officer of a district if the Chancellor determines that a visit to a college in the district is necessary to investigate compliance. In addition, the Chancellor is required to specify the particular minimum conditions which will be investigated.

The plain language of section 51100 does not require community college districts or community colleges to engage in any activities. Rather, the plain language sets forth the duty of the Chancellor to review whether each community college has met the minimum conditions

¹⁰⁶ *City of Sacramento, supra*, 50 Cal.3d at p. 74.

¹⁰⁷ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1589-1592 (*Hayes*).

¹⁰⁸ *Id.* at p. 1592.

¹⁰⁹ Throughout the claimants' response to the draft staff analysis, dated April 21, 2011, the claimants note that the "minimum condition" regulations are not analyzed on an individual basis. This is unnecessary due to the fact that regardless of the content and subject matter of the individual "minimum condition" regulations, each regulation is a minimum condition satisfaction of which entitles a district to state aid, and therefore does not impose any state-mandated activities on community college districts.

satisfaction of which entitles a district to receive state aid for the support of its community colleges. As a result, the Commission finds that California Code of Regulations, title 5, section 51100 does not impose any state-mandated activities on community college districts or colleges.

Section 51102 requires the Chancellor to notify the chief executive officer of a district in writing if a review conducted pursuant to section 51100 discloses that a college in the district is not in compliance “with the provisions of Subchapter 1 (commencing with Section 51100¹¹⁰) of Chapter 2.” In addition, the Chancellor is required to request an official written response from the district by a date which the Chancellor is to specify. Subdivision (b) of section 51102 provides that after the Chancellor has received the district’s response or if the time for a response has lapsed, the Chancellor is required to take one or more of the following actions:

- (1) accept in whole or part the district’s response regarding noncompliance;
- (2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;
- (3) withhold all or part of the district’s state aid. The amount of withholding shall be related to the extent and gravity of noncompliance and shall require approval of the Board of Governors.¹¹¹

Subdivision (c) of section 51102 requires the Chancellor to report to the Board of Governors on any of the above actions taken. If the Chancellor decides to withhold all or a portion of a district’s state aid, the Chancellor shall inform and obtain the approval of the Board prior to the withholding.

The claimants allege that community college districts are required to: (1) adopt and implement policies and procedures to comply with any enforcement orders that the Chancellor may issue to the district regarding district compliance with the “minimum conditions” (pursuant to Cal. Code Regs., tit. 5, § 51102); (2) prepare and submit to the Chancellor an official written response by a date specified by the Chancellor (pursuant to Cal. Code Regs., tit. 5, § 51102, subd. (a)); and (3) prepare, submit, and implement a plan and timetable for achieving compliance as a condition for continued receipt of state aid if the Chancellor requires (pursuant to Cal. Code Regs., tit. 5, § 51102, subd. (b)).¹¹² The claimants argue that although the activities alleged to be required by section 51102 are not stated in the section, they are reasonable and necessary.¹¹³

However, based on the plain language of section 51102, community college districts are not required to engage in any of the activities alleged by the claimants. Upon a plain reading of section 51102, there is no language in the section that requires community college districts to implement policies and procedures to comply with enforcement orders that the Chancellor may issue. Thus, section 51102 does not impose a state mandate to implement policies and procedures to comply with enforcement orders that the Chancellor may issue.

In addition, although section 51102, subdivision (a), requires that the Chancellor request an official written response from a district found to be in noncompliance with the “minimum

¹¹⁰ The intended citation is to California Code of Regulations, title 5, section 51000, as “Subchapter 1 of Chapter 2” does not commence with section 51100. In addition, there are no activities in section 51100 directed at community college districts such that a district would be required to comply with its provisions.

¹¹¹ California Code of Regulations, title 5, section 51102, subdivision (b).

¹¹² Test Claim 02-TC-31, p. 381.

¹¹³ Claimants’ response to draft staff analysis, *supra*, p. 20.

conditions,” the plain language of section 51102 does not include a requirement on districts to prepare and submit an official written response to the Chancellor. In fact, subdivision (b) of section 51102 provides that the Chancellor can only take action “[a]fter receiving the district’s written response, *or after the time for response has lapsed . . .*”¹¹⁴ Thus, not only does the language of section 51102 not require community college districts to prepare and submit an official written response, the language of section 51102 acknowledges the possibility of a district’s failure to submit an official written response. As a result, section 51102 does not impose a state mandate to prepare and submit an official written response to the Chancellor.

Also, the plain language of section 51102, subdivision (b), does not impose any activities on community college districts. Instead, section 51102 provides the Chancellor authority to pursue various courses of actions if the Chancellor makes a determination that a community college district is not in compliance with the minimum conditions. No actual action by a community college district is required by section 51102, subdivision (b).

As a result, the Commission finds that California Code of Regulations, title 5, section 51102 does not impose any state-mandated activities on community college districts or colleges.

- d. The pre-existing duty of community college districts to comply with the “minimum standards” adopted by the Board of Governors does not preclude a finding of a new program or higher level of service regarding a new regulation adopted as a “minimum standard” that requires new activities.

The Chancellor’s Office argues that the “...minimum standards of the Board of Governors do not constitute a new program or higher level of service if the Board of Governors was statutorily obligated to set minimum standards in these areas prior to 1975.”¹¹⁵ The Chancellor’s Office cites as its authority the California Attorney General’s opinion number 99-1214.¹¹⁶ As relevant to this discussion, opinion number 99-1214 addresses the following question:

When a local agency brings a particular juvenile facility into compliance with the minimum standards established by the Board of Corrections, is the state required to reimburse the local agency for the costs incurred in meeting the standards?

The Attorney General found that local agencies are not entitled to reimbursement, pursuant to article XIII B, section 6 of the California Constitution, for bringing a juvenile detention facility into compliance with the “minimum standards” established by the Board of Corrections.¹¹⁷ The Attorney General reasoned that the minimum standards adopted by the Board of Corrections establish what constitutes a “suitable” place for the detention of minors. In addition, counties have been required to maintain a “suitable” place for the detention of minors prior to 1975, and setting the minimum standards for what is “suitable” does not create a “higher” level of service because it has long been the level of service that has been required of local agencies.¹¹⁸ The Attorney General notes that the minimum standards set by the Board of Corrections for local detention facilities reflect constitutional requirements.¹¹⁹

¹¹⁴ California Code of Regulations, title 5, section 51102, subdivision (b).

¹¹⁵ Chancellor’s Office Comments on 02-TC-31, *supra*, pgs. 3-5.

¹¹⁶ 83 Ops.Cal.Atty.Gen. 111 (2000).

¹¹⁷ *Ibid.*

¹¹⁸ *Id.* at p. 119.

¹¹⁹ *Ibid.*

The Chancellor's Office argues that similarly the Board of Governors were required to establish "minimum standards" for the formation, operation, and governing of a community college prior to 1975, and that community college districts have been obligated to adhere to these "minimum standards" prior to 1975.¹²⁰ The Chancellor's Office concludes that pursuant to the Attorney General's analysis, "such minimum standards cannot be the basis for a mandate claim."¹²¹

Although an opinion of the Attorney General is entitled to great weight, it is not controlling legal authority.¹²² Without making a finding on the specific statutes analyzed by the Attorney General, the application of the Attorney General's opinion in this instance would be contrary to the intent of article XIII B, section 6 of the California Constitution and prior case law.

Article XIII B, section 6 of the California Constitution was intended to preclude the state from shifting to local agencies and school districts the financial responsibility for providing public services in view of the restrictions on the taxing and spending power of local entities under article XIII B and article XIII A of the California Constitution.¹²³ The intent of article XIII B, section 6, would be violated if the state, through the Board of Governors, could avoid reimbursing community college districts for individual regulations that impose a "new program or higher level of service" by simply adopting those regulations as part of the "minimum standards."

In addition, in *Long Beach Unified School Dist.*, the Long Beach Unified School District sought reimbursement for regulations which required certain school districts to develop and adopt plans for the alleviation and prevention of racial and ethnic segregation of minority students in the district.¹²⁴ The state argued that the regulations did not mandate a new program or higher level of service because school districts have a pre-existing constitutional duty to make an effort to eliminate racial segregation in public schools.¹²⁵ The court, however, found that specific requirements imposed by the state to ensure compliance with this constitutional duty constituted a "higher level of service."¹²⁶ Thus, even with a pre-existing duty to adhere to constitutional requirements or minimum standards established by a state governing agency, a new specific requirement added to the constitutional requirements or minimum standards could result in a reimbursable state mandate if the new requirement increases the level of service to the public.

To the extent that any of the remaining regulations pled by the claimants constitute "minimum standards" and impose any state-mandated increases to the level of service to the public, the Commission finds that the pre-existing duty of community college districts to comply with the "minimum standards" adopted by the Board of Governors does not preclude a finding of a new program or higher level of service.

¹²⁰ Chancellor's Office Comments on 02-TC-31, *supra*, at pgs. 3-4.

¹²¹ *Id.* at p. 5.

¹²² *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2002) 100 Cal.App.4th 1066, 1075.

¹²³ *Lucia Mar*, *supra*, 44 Cal.3d 830, 835-836.

¹²⁴ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d 155.

¹²⁵ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d at pgs. 172-173.

¹²⁶ *Id.* at p. 173.

(3) Approval of New Colleges and Educational Centers (Cal. Code Regs., tit. 5, §§ 55825, 55827, 55828, 55829, 55830, and 55831)

This section addresses title 5, sections 55825 and 55827-55831. These regulations set forth the process to obtain the Board of Governors' approval of a community college district's proposed new college or educational center.

In claimants' response to the draft staff analysis, the claimants allege for the first time that Education Code section 70902, subdivision (b)(1), imposes duties on community college districts in relation to the approval of new colleges and educational centers.¹²⁷ Education Code section 70902, subdivision (b)(1), as it relates to facility plans was severed after the claimants' response to the draft staff analysis.¹²⁸ As a result, the Commission makes no findings on Education Code section 70902, subdivision (b)(1), in this section of the analysis.

- a. Title 5, sections 55825, 55827, 55828, 55829, 55830, and 55831, do not impose state-mandated activities.

Section 55825 sets forth the responsibilities of a district's governing board seeking approval of a proposed new college or educational center. Section 55825 provides:

The governing board of a community college district planning the formation of a new college or educational center as defined in section 55827 shall employ and comply with the standards contained in sections 55829, 55830 and 55831.

Section 55827 sets forth the definitions of "college" and "educational center" as used by sections 55825-55831. Section 55828 sets forth the responsibilities of the Chancellor's Office and Board of Governors in the approval process. In addition, section 55828 further specifies the responsibilities of community college districts that are planning the formation of a new college or educational center. If a community college district is planning a new college or educational center, section 55828 requires the district to prepare and submit to the Chancellor's Office a proposal that "should contain at least" the following elements: (1) an assessment of needs and preferences, (2) an identification of objectives, and (3) an analysis of alternative delivery systems. Sections 55829, 55830 and 55831 specify what these three elements must contain.

Read in the context of the whole regulatory scheme rather than individual parts or words standing alone,¹²⁹ sections 55825, 55827, 55828, 55829, 55830, and 55831 do not impose any mandated activities on community college districts. As noted above, section 55825 et seq. sets forth requirements for a community college district planning the formation of a new college or educational center. However, pursuant to *Kern High School Dist.* a requirement resulting from an underlying discretionary decision does not constitute a state-mandated activity. Here, the initial decision to create a new college or educational center, which triggers any activities required by section 55825-55831, is left to the discretion of the community college district. As a result, the Commission finds that California Code of Regulations, title 5, sections 55825, 55827,

¹²⁷ Claimants' response to draft staff analysis, *supra*, p. 13.

¹²⁸ Notice of severance and consolidation of Education Code section 70901, subdivision (b)(1), as applicable to facility plans, from Minimum Conditions for State Aid (02-TC-25 and 02-TC-31) to Community College Construction (02-TC-47), dated May 6, 2011.

¹²⁹ *Fontana Unified School Dist. v. Burman*, *supra*, 45 Cal.3d at p. 218.

55828, 55829, 55830, and 55831 do not impose state-mandated activities subject to article XIII B, section 6 of the California Constitution.¹³⁰

(4) Master Plans for Academics (Ed. Code, § 70902, subd. (b)(1), and Cal. Code Regs., tit. 5, §§ 55401, 55402, 55403, and 55404)

This section addresses a statute and regulations regarding the preparation of a community college district's educational master plan.

In the claimant's April 21, 2011 response to the draft staff analysis, the claimants argue that this analysis does not analyze Education Code sections 81821-81823, which address a community college district's plan for capital construction, and thus, the analysis should be revised to include an analysis of whether these sections constitute a new program or higher level of service for community colleges. On January 19, 2011, Commission staff issued a notice of severance of Education Code sections 81821-81823 from this test claim and into the *Community College Construction* (02-TC-47) test claim. As a result, these code sections will not be analyzed here.

In addition, Education Code section 70902, subdivision (b)(1), as it relates to facility plans was severed from this test claim.¹³¹ As a result, any discussion regarding section 70902, subdivision (b)(1) will only address academic plans and programs.

- a. Not all of the statutes and regulations in the "Master Plans for Academics" impose state-mandated activities.

Educational Master Plan (Ed. Code, § 70901, subd. (b)(1), and Cal. Code Regs., tit. 5, §§ 55401, 55402, 55403, and 55404)

Education Code section 70902, subdivision (b)(1), and title 5 sections 55401-55404 address the establishment of a community college district's current and long range educational plans for each community college within the district and for the district as a whole. The plain language of Education Code section 70902, subdivision (b)(1), and title 5 sections 55401-55404 require community college districts to engage in the following activities:

1. Establish policies for, and approve, current and long range educational plans and programs for each community college that the district maintains and for the district as a whole. (Ed. Code, § 70902, subd. (b)(1), and Cal. Code Regs., tit. 5, § 55401.)
2. Submit to the chancellor an educational master plan for each community college that it maintains and for the district as a whole on or before November 1 of each year. (Ed. Code, § 70902, subd. (b)(1), and Cal. Code Regs., tit. 5, § 55402.)
3. Modify and bring up to date annually each educational master plan. (Cal. Code Regs., tit. 5, § 55402.)
4. Submit each educational master plan on a form provided by the Chancellor and with information required by the Chancellor. (Cal. Code Regs., tit. 5, § 55403.)

¹³⁰ In claimants' response to the draft staff analysis, the claimants continue to disagree with the finding that schools and community college districts are not required to build new instructional facilities as has been found in prior Commission decisions. See, Claimants' response to the draft staff analysis, *supra*, p. 13.

¹³¹ Notice of severance and consolidation of Education Code section 70901, subdivision (b)(1), as applicable to facility plans, from Minimum Conditions for State Aid (02-TC-25 and 02-TC-31) to Community College Construction, dated May 6, 2011.

5. Include in each educational master plan the educational objectives of the community college or district and the future plans for transfer programs, occupational programs, continuing education courses, and remedial and developmental programs. (Cal. Code Regs., tit. 5, § 55404.)
6. Include in each educational master plan, plans for the development and expansion of ancillary services, including services in the library and for counseling, placement, and financial aid on the basis of current and future enrollment. (Cal. Code Regs., tit. 5, § 55404.)
 - b. The activities mandated by Education Code section 70902, subdivision (b)(1), and California Code of Regulations, title 5, section 55401, 55402, 55403, and 55404, do not constitute a reimbursable new program or higher level of service

In order to be reimbursable under article XIII B, section 6, of the California Constitution, Education Code section 70902, subdivision (b)(1), and title 5 sections 55401, 55402, 55403, and 55404 have to have been adopted on or after 1975.¹³² The claimants have pled Education Code section 70902, subdivision (b)(1), as added in 1988,¹³³ and title sections 55401, 55402, 55403, and 55404 as added in 1971 and last amended in 1991. However, the language of title 5 sections 55401, 55402, 55403, and 55404 has remained unchanged since the adoption of the sections in 1971, and Education Code section 70902, subdivision (b)(1), does not impose any additional duties on community college districts that are not present in title 5 sections 55401, 55402, 55403, and 55404.

The claimants agree that the language of sections 55401, 55402, 55403, and 55404, has remained the same since 1971, but argue that title 5 section 51008, which is a “minimum condition,” is the source of the mandate.¹³⁴ As discussed above, section 51008 does not impose any state-mandated activities on community college districts. However, even if section 51008 imposed a state-mandate to engage in the activities required by sections 55401, 55402, 55403, and 55404, these requirements were in place since 1971.

As a result, the Commission finds that the activities mandated by Education Code section 70902, subdivision (b)(1), and California Code of Regulations, title 5, sections 55401, 55402, 55403, and 55404 do not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

**(5) Faculty, Staff, and Student Participation in District and College Governance
(Ed. Code, § 70902, subds. (b)(7) and (b)(14); and Cal. Code Regs., tit. 5, §§
53200, 53202-53204, and 53207)**

This section discusses Education Code section 70902, subdivisions (b)(7) and (b)(14), and title 5, sections 53200, 53202-53204, and 53207, relating to faculty, staff, and student participation in district and college governance. Section 53200 contains the definitions of terms used in the title 5 regulations pled in this section of the analysis. Sections 53202 and 53203 provide for the formation of academic senates and the adoption of policies by the district delegating authority and responsibilities to an academic senate. Section 53204 sets forth the Board of Governors’ intent in regard to the title 5 regulations pled in this section of the analysis. Section 53207

¹³² Government Code section 17514.

¹³³ Test Claim 02-TC-31, p. 9, citing to Statutes 1988, chapter 973.

¹³⁴ Claimants’ response to draft staff analysis, *supra*, p. 12.

addresses the release of faculty members to serve on the Academic Senate of the California Community Colleges (ASCCC).

- a. Education Code section 70902, subdivisions (b)(7) and (b)(14), and Title 5, sections 53202, 53203, and 53207, impose state-mandated activities

Polices to Ensure Staff, and Student Opportunities to Participate in College Governance (Ed. Code, § 70902, subds. (b)(7) and (b)(14))

Education Code section 70902, subdivision (b)(7), requires community college districts to establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards. The procedures that community college districts are required to establish must be consistent with the minimum standards established by the Board of Governors. The minimum standards regarding faculty are set forth in title 5, sections 53200-53207, discussed below. In contrast, the minimum standards established by the Board of Governors addressing staff and student participation are set forth in title 5, sections 51023.5 and 51023.7, which the Board of Governors established as minimum conditions, satisfaction of which entitles a district to state aid. As a result, although the requirements of title 5, sections 51023.5 and 51023.7, do not independently impose state-mandated activities, Education Code section 70902, subdivision (b)(7), requires that community college districts establish policies to ensure staff and students the opportunity to participate in college governance, that are consistent with sections 51023.5 and 51023.7.

Education Code section 70902, subdivision (b)(14), requires community college districts to participate in the consultation process established by the Board of Governors for the development and review of policy proposals. This activity refers to the process established by the Board of Governors pursuant to Education Code section 70901, subdivision (e). Education Code section 70901, subdivision (e), requires the Board of Governors to establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals before adoption by the Board of Governors.

Thus, the Commission finds that Education Code section 70902, subdivisions (b)(7) and (b)(14), impose the following state-mandated activities:

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

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

2. Participate in the consultation process established by the Board of Governors for the development and review of policy proposals pursuant to Education Code section 70901, subdivision (e). (Ed. Code, § 70902, subd. (b)(14) (Stats. 1988, Ch. 973).)

Formation and Powers of an Academic Senate (Cal. Code Regs., tit. 5, §§ 53202 and 53203)

In order to provide faculty with a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, title 5,

section 53201, authorizes the formation of academic senates at the college or district level.¹³⁵ Section 53202 provides that the formation of an academic senate occurs by a vote to form an academic senate by the full-time faculty of a community college or district.¹³⁶ After the formation of the college or district academic senate, the district must recognize the academic senate and authorize the academic senate to engage in specific activities. Section 53203, requires community college districts to establish policies for the delegation of specific authority and responsibilities to the academic senates upon the formation of the academic senates. Reading section 53201 in context with section 53202, it is clear that the initial decision to establish a college or district academic senate lies with the faculty of the colleges and is not a decision made by the district itself. As a result, if the faculty of a college chooses to establish an academic senate, the district is mandated by the plain language of the regulations to recognize the academic senate and establish policies for the delegation of specific authority and responsibilities.

Pursuant to the above discussion, the Commission finds that title 5, sections 53202 and 53203, impose the following state-mandated activities:

1. Recognize the college or district-wide academic senate formed by the full-time faculty (or part-time faculty in the absence of any full-time faculty in the college) and authorize the faculty to:
 - a. Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate, and
 - b. Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate. (Cal. Code Regs., tit. 5, § 53202 (Register 90, No. 49).)
2. Adopt policies for appropriate delegation of authority and responsibility to its college or district academic senate.

Policies must provide, at a minimum, that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. (Cal. Code Regs., tit. 5, § 53203, subd. (a) (Register 94, No. 38).)
3. Consult collegially with representatives of the academic senate when adopting the policies for appropriate delegation of authority and responsibility to its college or district academic senate pursuant to California Code of Regulations, title 5, section 53202, subd. (a). (Cal. Code Regs., tit. 5, § 53203, subd. (b) (Register 94, No. 38).)
4. Adopt procedures for responding to recommendations of the academic senate that incorporate the following:
 - a. In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic

¹³⁵ The claimants have not pled section 53201 in this test claim.

¹³⁶ California Code of Regulations, title 5, section 53202, subdivision (e), provides for the formation of an academic senate by part-time faculty in the event that a college does not have any full-time faculty.

senate, shall promptly communicate its reasons in writing to the academic senate. (Cal. Code Regs., tit. 5, § 53203, subd. (d)(1) (Register 94, No. 38).)

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

Scope of Regulations (Cal. Code Regs., tit. 5, § 53204)

Title 5, section 53204, provides the Board of Governors' intent to limit the application of title 5, section 53200 et seq. Specifically, section 53204 provides:

Nothing in [Cal. Code Regs., tit. 5, § 53200 et seq.] shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to the academic senate pursuant to these regulations.

As can be seen by the language quoted above, section 53204 does not impose any mandated activities on community college districts.

Release or Reassignment of Faculty Members to the Academic Senate of the California Community Colleges (ASCCC) (Cal. Code Regs., tit. 5, § 53207)

The ASCCC has been established through ratification by local academic senates, and that the ASCCC is recognized by the Board of Governors as the representative of community college academic senates before the Board of Governors.¹³⁷ The purpose of the ASCCC is to provide community college faculty with a formal and effective procedure for participating in the formation of *state* policies on academic and professional matters.

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

This section shall only be operative during any fiscal year in which sufficient funds are provided therefore to the ASCCC in the annual Budget Act for that fiscal year or other legislation.”¹³⁸

The claimants note that the sufficiency of the amount provided to the ASCCC is determined by the state, and that when funding is provided it is unclear whether reimbursements provided

¹³⁷ California Code of Regulations, title 5, section 53206.

¹³⁸ California Code section 53207, subdivision (f). During the fiscal year in which the reimbursement period for this test claim begins (2001-2002 fiscal year), \$497,000 was provided for reimbursement per California Code of Regulations, title 5, section 53207 (see, the 2001-02 Budget Act line-item 6870-101-0001, schedule (13)).

pursuant to section 53207 fully reimburse all costs for releasing faculty members.¹³⁹ The Commission agrees. Thus, the Commission finds that title 5 section 53207 requires community college districts to engage in the following state-mandated activities, subject to offsets for reimbursement provided by the ASCCC for release and reassignment time:

1. Grant faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges release or reassigned time from their terms of office. This activity is subject to offsetting revenue from reimbursement of release or reassigned time and administrative costs for hiring faculty to replace the faculty serving as president or vice president pursuant to title 5 section 53207, subdivision (b) (Register 2003, No. 18). (Cal. Code Regs., tit. 5, § 53207, subd. (a) (Register 2003, No. 18).)
2. Identify release or reassigned time prior to September of each year for employees elected to serve as president and vice president of the Academic Senate of the California Community Colleges for reimbursement at the part-time replacement cost. (Cal. Code Regs., tit. 5, § 53207, subd. (c) (Register 2003, No. 18).)
3. If the release or reassigned time need identified by the district is 100 percent and the position is in a hard to replace discipline area, certify this to the Chancellor by August 1 for reimbursement at the full-time temporary replacement cost of the employee released. (Cal. Code Regs., tit. 5, § 53207, subd. (c) (Register 2003, No. 18).)
 - b. The activities mandated by Education Code section 70902, subdivisions (b)(7) and (b)(14), and California Code of Regulations, title 5, sections 53202, 53203, and 53207, constitute new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution.

To constitute a “new program or higher level of service” the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.¹⁴⁰ In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.¹⁴¹ To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.¹⁴²

The activities mandated by Education Code section 70902, subdivisions (b)(7) and (b)(14), and title 5, sections 53202, 53203, and 53207, constitute a “program” within the meaning of article XIII B of the California Constitution by carrying out the governmental function of education through providing an avenue for faculty to participate in the formation of state policies on academics and professional matters.

The claimants have pled title 5, section 53202, as last amended in 1990.¹⁴³ Section 53202 mandates community college districts to engage in the following activity:

¹³⁹ Claimants’ response to draft staff analysis, *supra*, p. 22.

¹⁴⁰ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

¹⁴¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁴² *Ibid.*

¹⁴³ Test Claim 02-TC-31, page 89. This date coincides with Register 90, number 49.

Recognize the college or district-wide academic senate formed by the full-time faculty (or part-time faculty in the absence of any full-time faculty in the college) and authorize the faculty to:

- a. Fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate, and
- b. Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate. (Cal. Code Regs., tit. 5, § 53202 (Register 90, No. 49).)

However, since 1974, community college districts have been required to engage in this activity, and as a result, the activity mandated by title 5, section 53202, does not constitute a new program or higher level of service.¹⁴⁴ The claimants argue that prior to 1975, section 53202 did not require community college districts to “recognize” the academic senate.¹⁴⁵ However, in 1974, former title 5 section 53203 required districts to consider and respond to the views and recommendations of the academic senate.¹⁴⁶ In addition, former title 5 section 53204 required community college districts to meet and confer with the academic senates upon request by the academic senate. Thus, pursuant to former title 5 sections 53203 and 53204, community college districts were required to recognize academic senates.

The claimants have pled Education Code section 70902, subdivisions (b)(7) and (b)(14), as added in 1988.¹⁴⁷ Immediately prior to 1988, community college districts were not required to engage in the activities mandated by section 70902, subdivisions (b)(7) and (b)(14). As a result, the activities mandated by section 70902, subdivisions (b)(7) and (b)(14), constitute new programs or higher levels of service.

Title 5, section 53203, as added in 1990 and last amended in 1994; and section 53207, as added in 2003.¹⁴⁸ Immediately prior to 1990 and 2003, community college districts were not required to engage in the activities mandated by sections 53203 and 53207, respectively. As a result, the activities mandated by title 5, sections 53203 and 53207, constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

(i) Summary of state-mandated new program or higher level of service

Pursuant to the above discussion, the Commission finds that the following activities relating to faculty participation in district and college governance constitute a state-mandated new program or higher level of service:

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

¹⁴⁴ California Code of Regulations, title 5, section 53202, as added by Register 74, number 17 (April 27, 1974).

¹⁴⁵ Claimants’ response to draft staff analysis, *supra*, p. 22.

¹⁴⁶ Former California Code of Regulations, title 5, sections 53203 and 53204 (Register 74, No. 17 (April 27, 1974).)

¹⁴⁷ Test Claim 02-TC-31, p. 9.

¹⁴⁸ Test Claim 02-TC-31, pages 89-90. These dates coincide with Register 90, number 49; Register 94, number 38; and Register 2003, number 18.

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

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

2. Participate in the consultation process established by the Board of Governors for the development and review of policy proposals pursuant to Education Code section 70901, subdivision (e). (Ed. Code, § 70902, subd. (b)(14) (Stats. 1988, Ch. 973).)
3. Adopt policies for appropriate delegation of authority and responsibility to its college or district academic senate.

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

4. Consult collegially with representatives of the academic senate when adopting the policies for appropriate delegation of authority and responsibility to its college or district academic senate pursuant to California Code of Regulations, title 5, section 53202, subd. (a). (Cal. Code Regs., tit. 5, § 53203, subd. (b) (Register 94, No. 38).)
5. Adopt procedures for responding to recommendations of the academic senate that incorporate the following:
 - a. In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate. (Cal. Code Regs., tit. 5, § 53203, subd. (d)(1) (Register 94, No. 38).)
 - b. In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons. (Cal. Code Regs., tit. 5, § 53203, subd. (d)(2) (Register 94, No. 38).)
6. Grant faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges release or reassigned time from their terms of office. This activity is subject to offsetting revenue from reimbursement of release or reassigned time and administrative costs for hiring faculty to replace the faculty serving as president or vice president pursuant to title 5 section 53207, subdivision (b) (Register 2003, No. 18). (Cal. Code Regs., tit. 5, § 53207, subd. (a) (Register 2003, No. 18).)
7. Identify release or reassigned time prior to September of each year for employees elected to serve as president and vice president of the Academic Senate of the California

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

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

(6) Full-time/Part-time Faculty Ratio (Ed. Code, §§ 87482.6 and 87482.7; and Cal. Code Regs., tit. 5, §§ 53300-53302, 53308-53312, and 53314)

In 1988, the Legislature adopted Assembly Bill 1725 (A.B. 1725)¹⁴⁹ with the intent to reform and improve community college education programs and the allocation of education funds to community colleges. Included as part of these improvements was the initiation of “program-based funding,” (Ed. Code, § 84750 et seq.) which the Legislature declared would more adequately and accountably fund the costs of providing community college education.¹⁵⁰ The Legislature noted, however, that program-based funding would not be implemented until fiscal year 1991-1992. As a result of the delayed implementation of program-based funding and the number of reforms community colleges were to face, the Legislature provided transitional funding for program improvements and mandates imposed as part of the A.B. 1725 reform that could operate until program-based funding was implemented.¹⁵¹

One of the reforms to be funded by the transitional program improvement funds addressed the policy of the Board of Governors to have at least 75 percent of the hours of credit instruction in the California Community Colleges, as a system, should be taught by full-time instructors.¹⁵² To effectuate the reform the Legislature adopted Education Code sections 87482.6 in 1988 and 87482.7 in 1991.¹⁵³ Education Code section 87482.6 requires the Board of Governors to adopt regulations governing the percentage of full-time instructors employed by a district and specifies the content of the regulations.¹⁵⁴ Education Code section 87482.7 addresses a related issue, requiring community college districts to adopt minimum condition regulations regarding the percentage of hours of credit instruction taught by full-time instructors.¹⁵⁵

¹⁴⁹ Statutes 1988, chapter 973.

¹⁵⁰ Education Code section 84755.

¹⁵¹ *Ibid.*

¹⁵² Education Code sections 87455, subdivision (b)(12); and 87482.6, added by Statutes 1988, chapter 973.

¹⁵³ Education Code sections 87482.6 (Stats. 1988, ch. 973); and section 87482.7 (Stats. 1991, ch. 1038).

¹⁵⁴ Education Code section 87482.6, subdivision (b).

¹⁵⁵ Education Code section 87482.7, subdivision (a). The Commission notes that Education Code section 87482.7 directs the Board of Governors to establish “minimum standards” pursuant to “paragraph (6) of subdivision (b) of Section 70901;” however, section 70901, subdivision (b)(6), directs the Board of Governors to adopt “minimum conditions.” Courts have held that, “where the context of a statute, or other considerations arising therefrom, show that a word was erroneously used by the legislature for another word which, if substituted, will harmonize the statute with its obvious purpose and intent, the statute will be read as though the intended word had been used.” (*Southern Pac. Co. v. Riverside County* (1939) 35 Cal.App.2d. 380, 388. Here, Education Code section 87482.7 cites directly to Education Code section 70901, subdivision

In 1990, the Board of Governors adopted California Code of Regulations, title 5, sections 53300 et seq. to implement Education Code section 87482.6.¹⁵⁶ These regulations largely restated the content of Education Code section 87482.6, by providing for the Chancellor’s calculation of full-time faculty to be hired by districts using specific funding, and a specific reduction of funding for failing to hire the calculated amount. In 1991, the Board of Governors adopted California Code of Regulations, title 5, section 51025, to implement Education Code section 87482.7.¹⁵⁷ By 2001, title 5, sections 51025 and 53300 et seq., had been amended to be read in conjunction with one another. In effect, section 51025 directs community college districts to use growth and program improvement allocations to secure full-time faculty. The number of faculty is to be determined by the Chancellor using the methods of calculation set forth in title 5, sections 53300-53314, which use the percentage of credit instruction hours taught by faculty as a factor.¹⁵⁸

- a. Education Code sections 87482.6 and 87482.7, and California Code of Regulations, title 5, sections 53300-53302, 53308-53312, and 53314, do not impose any state-mandated activities

In section 87482.6 the Legislature established a scheme governing the percentage of credit instruction taught by full-time instructors and linked the program improvement funds received by community college districts with the maintenance of the percentage. Subdivision (a) of section 87482.6 directs community college districts that have less than 75 percent of their hours of credit instruction taught by full-time instructors to apply a portion of the program improvement allocation as follows:

- (1) Districts which, in the prior fiscal year, had between 67 percent and 75 percent of their hours of credit instruction taught by full-time instructors shall apply up to 33 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 33 percent of the district's program improvement allocation.

(b)(6), which addresses “minimum conditions.” In addition, Education Code section 87482.6, which was enacted prior to Education Code section 87482.7, directed the Board of Governors to adopt regulations governing the percentage of credit instruction taught by full-time faculty, but did not require these regulations to be adopted as minimum conditions. Interpreting Education Code section 87482.7 as requiring the Board of Governors to adopt “minimum standards” instead of “minimum conditions” would be duplicative of Education Code section 87482.6. Thus, in context with the above it is clear that the Legislature intended Education Code section 87482.7 to direct the Board of Governors to adopt “minimum conditions.”

¹⁵⁶ California Code of Regulations, title 5, section 53300 et seq. (Register 90, Nos. 32-37).

¹⁵⁷ California Code of Regulations, title 5, section 51025 (Register 91, No. 46). California Code of Regulations, title 5, section 51025, has been found to not constitute a reimbursable state-mandated new program or higher level of service in the “Minimum Conditions Entitling Community College Districts to State Aid” section of this analysis.

¹⁵⁸ The Commission notes that it has already found that title 5, section 51025, does not impose any state-mandated activities on community college districts, however, it is helpful to include a discussion of section 51025 for purposes of the below analysis. See the “Minimum Conditions Entitling Community College Districts to State Aid” section of the test claim analysis.

(2) Districts which, in the prior fiscal year, had less than 67 percent of their hours of credit instruction taught by full-time instructors shall apply up to 40 percent of their program improvement allocation as necessary to reach the 75 percent standard. If a district in this category chooses instead not to improve its percentage, the board of governors shall withhold 40 percent of the district's program improvement allocation. Districts which maintain 75 percent or more of their hours of credit instruction taught by full-time instructors shall otherwise be free to use their program improvement allocation for any of the purposes specified in Section 84755.¹⁵⁹

Under *Kern High School Dist.*, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.¹⁶⁰ In addition, in order to make a finding of practical compulsion the claimant must face certain and severe penalties independent of the program funds at issue, and that a loss of the program funds at issue does not constitute a severe penalty.¹⁶¹

The plain language of subdivision (a) of section 87482.6 directs how community college districts, which have less than 75 percent of their hours of credit instruction taught by full-time instructors, are to expend program improvement funds. However, as shown by the plain language of the subdivisions (a)(1) and (a)(2) of section 87482.6, districts have the ability to choose "instead not to improve its percentage." If a district chooses not to improve its full-time instructor percentage it will forgo the percentage of its program improvement funds that were to be used toward achieving the 75 percent standard. Thus, the claimants only face the loss of funding for an optional program, and do not face a "substantial penalty independent of the program funds at issue."¹⁶² As a result, under *Kern High School Dist.*, subdivision (a) of section 87482.6 does not impose any state-mandated activities.

Title 5, section 51025, which implements Education Code section 87482.6, contains provisions similar to subdivision (a) of section 87482.6. Specifically, title 5, section 51025, directs community college districts that have a full-time faculty percentage under 75 percent to use specified amounts of growth and program improvement allocations to increase the number of full-time faculty in the districts. If a district chooses not to increase its full-time faculty it is subject to a reduction of revenue equal to the average replacement cost of the faculty not hired, which would have been covered by the growth and program improvement allocations provided by the state. The revenue that is taken from community college districts is then redirected back to community college districts for purposes of faculty and staff diversity. Thus, like Education Code section 87482.6, the claimants do not face a "substantial penalty independent of the program funds at issue."¹⁶³ As a result, consistent with the finding in the "Minimum Conditions Entitling Community College Districts to State Aid" section of this test claim analysis, title 5, section 51025, does not impose any state-mandated activities on community college district in implementing the discretionary program set forth in Education Code section 87482.6.

Subdivision (b) of section 87482.6 provides, "The board of governors shall adopt regulations for the effective administration of this section [Ed. Code, § 87482.6]. Unless and until amended by

¹⁵⁹ Education Code section 87482.6, subdivision (a), as added by Statutes 1988, chapter 973.

¹⁶⁰ *Kern High School Dist.*, *supra*, 30 Cal 4th 727, 743.

¹⁶¹ *Id.* at pgs.731 and 751-754.

¹⁶² *Id.* at p. 731.

¹⁶³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

the board of governors, the regulations shall provide as follows” Subdivision (b) proceeds to set forth the content of the regulations that the Board of Governors must adopt unless and until the Board of Governors decides to amend the content. Subdivision (b) does not impose any activities on community college districts. Instead, the plain language of subdivision (b) directs the Board of Governors to engage in a specified activity (i.e. adopt regulations to implement Ed. Code, § 87482.6). In addition, pursuant to the language of section 87482.6, subdivision (b), the provisions of subdivision (b) are no longer operative due to the Board of Governors’ adoption of title 5, sections 53300 et seq. As a result, the Commission finds that Education Code section 87482.6 does not impose any state-mandated activities on community college districts.

In response to the draft staff analysis, the claimants argue that subdivision (b)(4) of section 87482.6, and former title 5, section 53320, indicate that a community college district faces an additional penalty, on top of losing a percentage of its program improvement allocation, if the district chooses not to increase its full-time instructor percentage.¹⁶⁴ Subdivision (b)(4) provides for a reduction of a district’s base budget by an amount equivalent to the average replacement cost times the deficiency in the number of full-time faculty that the Chancellor determined a district was to retain with its program improvement allocation. Former title 5, section 53320, mirrored these provisions. The claimants assert that this “is clearly a penalty independent of the program funds at issue for any one fiscal year.”¹⁶⁵

However, subdivision (b) of section 87482.6 and title 5, sections 53300-53320, set forth provisions “for the effective administration” of the provisions of subdivision (a), which set forth a voluntary program. The assumption in the provisions of subdivision (b) is that a district is participating, as indicated by subdivision (b)(3), which provides that the Chancellor “shall compute the number of full-time faculty (FTF) which are to be secured *through the use of the prescribed portion of program improvement revenue* allocated to each district.”¹⁶⁶ Thus, subdivision (b)(4) sets forth the result of a district’s failure to obtain the amount of full-time faculty using program improvement revenue pursuant to a discretionary program.

In addition, even if a community college district did participate in the voluntary program set forth in Education Code section 87482.6, subdivision (a), any portion of its base budget that would be subject to reduction pursuant to Education Code section 87482.6, subdivision (b)(4), and former title 5, section 53320, would have come from its program improvement revenue. Subdivision (b)(4) of section 87482.6 and former title 5, section 53320, require the Chancellor to review the extent to which districts had retained full time faculty using the districts’ program improvement revenue two years after the receipt of that revenue. Pursuant to the provisions of Education Code section 87455, subdivision (d), which addresses the allocation and use of program improvement revenue, the program improvement revenues would have become part of a district’s base budget during the two year period. Thus, contrary to the claimant’s assertion, there is not a penalty independent of the program funds at issue.

Finally, as noted above, pursuant to its own terms Education Code section 87482.6, subdivision (b), is no longer operative due to the adoption of title 5, sections 53300-53320. Former title 5, section 53320, which mirrored the terms of section 87482.6, subdivision (b), was repealed in 1994. Thus, even assuming that the provisions of Education Code section 87482.6,

¹⁶⁴ Claimants response to draft staff analysis, *supra*, p. 24. Former California Code of Regulations, title 5, section 53320 (Register 90, No. 37), was repealed in 1994 (Register 94, No. 38).

¹⁶⁵ *Ibid.*

¹⁶⁶ Education Code section 87482.6, subdivision (b)(3). (Italics added.)

subdivision (b), and former title 5, section 53320, did impose an additional penalty independent of the program funds at issue, these provisions were not in effect during the reimbursement period of this test claim.¹⁶⁷ As a result, districts did not face the additional penalty during the reimbursement period that the claimants' argue compel districts to participate in the program set forth in Education Code section 87482.6, subdivision (a).

Education Code section 87482.7 addresses the adoption of regulations by the Board of Governors and the transfer of program improvement funds by the Department of Finance from community college districts, which do not maintain the percentage of their hours of credit instruction taught by full-time instructors at 75 percent, to the Employment Opportunity Fund. Section 87482.7 provides:

(a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon notification by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the Employment Opportunity Fund pursuant to Section 87107.

The plain language of section 87482.7, quoted above, directs the Board of Governors to engage in specified activities; however, it does not impose any activities on community college districts. Thus, the Commission finds that Education Code section 87482.7 does not impose any state-mandated activities on community college districts.

As discussed above, title 5, sections 53300-53314, were initially adopted by the Board of Governors as directed by Education Code section 87482.6. Sections 53300-53314, set forth the methods of calculation used by the *Chancellor* to determine the number of full-time faculty which each district is to secure using growth and program improvement revenue pursuant to title 5, section 51025.¹⁶⁸ The claimants argue that "the methods of calculating the faculty ratios rely upon district information and have a direct bearing on the amount of program funding or penalty for each district."¹⁶⁹ However, sections 53300-53314 do not require the submission of this information. Thus, the activities contained in title 5, sections 53300-53314, do not impose any state-mandated activities on community college districts; rather, these activities are imposed on the Chancellor.

Pursuant to the above discussion, the Commission finds that Education Code sections 87482.6 and 87482.7, and California Code of Regulations, title 5, sections 53300-53302, 53308-53312, and 53314, do not impose any state-mandated activities subject to article XIII B, section 6 of the California Constitution.

¹⁶⁷ The reimbursement period for this test claim began on July 1, 2001.

¹⁶⁸ California Code of Regulations, title 5, section 53312, subdivision (a) (Register 2000, No. 26).

¹⁶⁹ Claimants' response to draft staff analysis, *supra*, p. 24.

(7) Matriculation (Ed. Code, §§ 78211.5, 78212, 78213, 78214, 78215, and 78216; and Cal. Code Regs., tit. 5, §§ 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, and 55534)

This section addresses the provision of matriculation programs by community college districts pursuant to the Seymour-Campbell Matriculation Act of 1986 (Ed. Code §§ 78210-78218) and its implementing regulations (Cal. Code Regs., tit. 5, § 55500 et seq.). As defined by the Seymour-Campbell Matriculation Act of 1986 and its implementing regulations, matriculation is “a process that brings a college and a student who enrolls for credit into an agreement for the purpose of realizing the student’s educational goal through the college’s established programs, policies, and requirements.”¹⁷⁰ For purposes of this section only, the Seymour-Campbell Matriculation Act of 1986 shall be referred to as “the Act.”

In response to the draft staff analysis, the claimants cite to Education Code section 70902, subdivision (b)(2), and state that subdivision (b)(2) requires community college districts to approve courses of instruction and educational programs, and to submit those programs to the Board of Governors. Although matriculation is related to the establishment of courses of instruction and educational programs, subdivision (b)(2) does not require community college districts to participate in the Seymour-Campbell Matriculation Act, nor do the claimants analyze how Education Code section 70902, subdivision (b)(2), imposes any requirements as relevant to the this section. As a result, Education Code section 70902, subdivision (b)(2), will not be further addressed in this section of the analysis.

- a. Education Code sections 78211.5, 78212, and 78213 – 78216, and California Code of Regulations, title 5, sections 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520 – 55526, 55530, 55532, and 55534 do not impose any state-mandated activities

Under *Kern High School Dist.*, it is necessary to look at the underlying program, the Act (Education Code sections 78210 – 78218) and its implementing regulations (Cal. Code Regs., tit. 5, §§ 55500 – 55534), to determine if the claimants’ participation is legally compelled.

Although the claimants point to various sections of the Act that allegedly mandate activities upon the claimants, these sections must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.¹⁷¹ Education Code section 78211.5 provides in relevant part:

- (a) The Board of Governors of the California Community Colleges shall initially provide for full implementation of the matriculation services specified in Section 78212 in *as many community colleges as the funds appropriated for this purpose allow*.
- (b) Because of the need to develop and evaluate data on a standard statewide basis concerning the implementation and effectiveness of the matriculation services described in this article [Education Code sections 78210 – 78218], *any college or district receiving funding under this article shall agree to carry out its provisions as specified, but shall be bound to that agreement only for the period during which funding is received pursuant to this article. . . .* (Emphasis added.)

¹⁷⁰ California Code of Regulations, title 5, section 55502, and Education Code section 78212.

¹⁷¹ *Fontana Unified School Dist. v. Burman*, *supra*, 45 Cal.3d 208, 218.

In addition, California Code of Regulations, title 5, section 55500, provides in relevant part:

- (a) This [subchapter (Cal. Code Regs., tit. 5, §§ 55500-55534)]¹⁷² implements and should be read in conjunction with the provisions of the [Act of 1986], c. 1467, Stats. 1986, codified as Education Code Sections 78210, et seq.[¶]
- (b) The requirements of this [subchapter] *apply only to districts receiving funds pursuant to Education Code Section 78216* for the period of time during which such funds are received. (Emphasis added.)

The claimants argue that when the Seymour-Campbell Matriculation Act is operative, community college districts are required to comply with the act, and that districts have no choice to decline to participate by refusing funding.¹⁷³

However, the plain language of Education Code section 78211.5 and California Code of Regulations, title 5, section 55500, show the voluntary nature of participation in, and as a result, compliance with the provisions of the Act and its implementing regulations. Education Code section 78211.5, subdivision (a), indicates an acknowledgement of the possibility that not all community colleges will receive funds pursuant to the Act. Pursuant to Education Code section 78211.5, subdivision (b), community colleges or districts must *agree* to carry out the provisions of the Act as a condition to receive funding under the Act. Also, community colleges and districts are not bound by this *agreement* to carry out the provisions of the Act when funding is not received under the Act. Thus, compliance with the provisions of the Act and its implementing regulations are triggered by the underlying discretionary decisions made by community colleges or districts to participate in the Act in order to receive funds under the Act, and therefore, community colleges and districts are not legally compelled to comply with the provisions of the Act or its implementing regulations.

The claimants assert that the Act (Ed. Code §§ 78210-78218), and the title 5 regulations pled by the claimants regarding matriculation programs (Cal. Code Regs., tit. 5, §§ 55500-55534) are two separate sources that require community college districts to provide matriculation services.¹⁷⁴ The claimants argue that, “[i]ndependently of the [Act], community college districts are required to comply with the Title 5 regulations mandating matriculation services.”¹⁷⁵

However, this is contrary to the plain language of California Code of Regulations, title 5, section 55500, which provides that California Code of Regulations, title 5, sections 55500-55534 “implement and should be read in conjunction with the provisions of the [Act].” Therefore, the requirements found in California Code of Regulations, title 5, sections 55500-55534 cannot be read independently of the Act. In addition, pursuant to the plain language of section 55500, subdivision (b), the requirements of sections 55500-55534 only apply to districts in receipt of funds under the Act. As a result, the requirements of California Code of Regulations, title 5, sections 55500-55534 are inextricably tied to the Act, participation in which is discretionary.

There is no evidence in the record of, nor have the claimants alleged, certain and severe penalties resulting from noncompliance with the Act or its implementing regulations. Outside of forgoing

¹⁷² See “Minimum Conditions Entitling Community College Districts to State Aid” section, regarding the discussion of the Nomenclature Cross-Reference issued by the Office of Administrative Law.

¹⁷³ Claimants’ response to draft staff analysis, *supra*, p. 24.

¹⁷⁴ Claimant Response to Chancellor’s Office Comments on Test Claim, 02-TC-31, *supra*, p. 42.

¹⁷⁵ *Id.* at p. 46.

funds provided pursuant to the Act, claimants do not face a “substantial penalty independent of the program funds at issue.”¹⁷⁶ As a result, the claimants do not face practical compulsion to comply with the provisions of the Act or its implementing regulations.

Thus, the Commission finds that Education Code sections 78211.5, 78212, and 78213 – 78216, and California Code of Regulations, title 5, sections 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520 – 55526, 55530, 55532, and 55534 do not impose any state-mandated activities upon community college districts, and therefore, do not mandate a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

(8) Transfer Centers (Ed. Code, §§ 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, and 71027)

This section addresses the transfer system between the three segments of California’s higher education system and the functions of various entities involved in the transfer system. The word “matriculation” as used in this section of the analysis does not refer to the Seymour-Campbell Matriculation Act of 1986. Instead for purposes of this section “matriculation” refers to the transfer of students between the three segments of California’s higher education system.

In addition, as used in this section, “governing boards” is defined as the local boards of trustees *and* the Board of Governors of the California Community Colleges, the Trustees of the California State University, and the Regents of the University of California.¹⁷⁷

- a. Education Code sections 66721.5, 66731, 66732, 66736, 66738, 66740, and 66742 impose state-mandated activities

Transfer System: Transfer Core Curriculum, Transfer Function, and Transfer Agreement (Ed. Code, §§ 66721, 66721.5, 66722, and 66722.5)

Sections 66721, 66721.5, 66722, and 66722.5 address the development and distribution of a “transfer core curriculum” for use by students for the purpose of transferring from the California Community College system to the University of California (UC) or California State University (CSU) systems.

The plain language of section 66721 does not impose any state-mandated activities on community college districts. Rather, section 66721 sets forth the duty of the *Board of Governors*, the Regents of the UC, and the Trustees of the CSU, to jointly cause the transfer core curriculum to be published and distributed to each public school in the state that provides instruction in grades 7 to 12 and to each community college in this state. In addition, section 66721 requires the Board of Governors to distribute the transfer core curriculum to the State Board of Education.

Also, sections 66722 and 66722.5 do not impose any state-mandated activities on community college districts. Instead, sections 66722 and 66722.5 set forth statements of legislative intent. Specifically section 66722 provides:

It is the intent of the Legislature that the transfer function shall be a central institutional priority of all segments of higher education in California, and that the segments shall have as a fundamental policy and practice the maintenance of an effective transfer system.

Section 66722.5 provides:

¹⁷⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

¹⁷⁷ Education Code section 66011, subdivision (b).

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

As a result, the Commission finds that sections 66721, 66722, and 66722.5 do not impose any state-mandated activities on community college districts.

Education Code section 66721.5, as added by Statutes 2000, chapter 187, was enacted as part of the Access to Transfer Information for Community College Students Act. Section 66721.5 addresses the distribution of the transfer core curriculum established by the California Community Colleges, CSU, and the UC. The plain language of section 66721.5, subdivision (a)(1), requires each community college district to direct each community college in the district to provide each student with a copy of the current transfer core curriculum. As defined by subdivision (a)(2), “transfer core curriculum” means the lower-division, general education transfer curriculum that is articulated between the California Community Colleges and the CSU and UC. Subdivision (b) provides that a copy of the current core curriculum shall be distributed to each newly admitted community college student who is enrolled in a degree or certification program and is physically in attendance at the institution. Subdivisions (c) and (d) provide:

(c) The governing board of a community college district shall ensure that the text of the current transfer core curriculum is included in the published class schedule of each academic term. Copies of the transfer core curriculum may also be made available in other locations on each campus, including, but not, necessarily limited to, all of the following:

- (1) The admissions office.
- (2) The bookstore.
- (3) The career counseling center.
- (4) The veteran’s affairs office.

(d) Notwithstanding subdivision (c), the governing board of a community college may, as an alternative to the methods of distribution set forth in subdivision (c), distribute copies of the current transfer core curriculum by any of the following means:

- (1) During the registration process.
- (2) By mail, with the registration materials or the enrollment materials, or both, or with other items sent to students.
- (3) During the issuance of student identification cards.
- (4) During student orientation programs.

The claimant asserts that section 66721.5, subdivision (c), requires making the current transfer core curriculum available at, but not limited to, the following locations: (1) the admissions office, (2) the bookstore, (3) the career counseling center, and (4) the veteran’s affairs office. However, the plain language of subdivision (c) provides that “[c]opies of the transfer core curriculum *may* also be made available in other locations on each campus” including but not limited to the locations stated above. Thus, making the current transfer core curriculum available at “other locations” is discretionary and not mandated by the state.

Subdivision (d) sets forth alternatives to the “methods of distribution set forth in subdivision (c).” However, it is unclear whether “methods of distribution set forth in subdivision (c)” refers to the required act of including the transfer core curriculum in the published class schedule each academic term *or* to the discretionary methods of distribution set forth in subdivision (c). If subdivision (d) intends the former, then section 66721.5 requires the current transfer core curriculum to be distributed by either including the transfer core curriculum in the published class schedule each academic term or by one of the alternatives set forth in subdivision (d). If, however, “methods of distribution set forth in subdivision (c)” refers to the discretionary methods of distribution set forth in subdivision (c), then subdivision (d) does not require any activities, because the alternatives set forth in subdivision (d) would be alternatives to a discretionary act, and thus, would also be discretionary.

Courts have held that where the provisions of a statute are ambiguous or conflict, the court may look to the legislative record and committee reports to determine the legislative intent.¹⁷⁸ The Senate Rules Committee issued a report explaining that section 66271.5:

[¶] ... [¶]

3. Requires [California Community College] governing boards to publish the current transfer core curriculum in the class schedule each academic term.
4. Allows, as an alternative to publishing the transfer core curriculum in the class schedule pursuant to #3 above, [California Community College] governing boards to distribute copies by any of the following means:
 - A. During the registration process.
 - B. By mail, as specified.
 - C. Along with the issuance of student identification cards.
 - D. During student orientation programs.¹⁷⁹

This report indicates that the Legislature intended that “methods of distribution set forth in subdivision (c)” refers to including the transfer core curriculum in the published class schedule each academic term, rather than the discretionary methods set forth in subdivision (c). As a result, subdivisions (c) and (d) require community college districts distribute the transfer core curriculum using one of the following methods: (1) including the transfer core curriculum in the published class schedule each academic term, (2) during the registration process, (3) by mail, with the registration materials or the enrollment materials, or both, or with other items sent to students, (4) during the issuance of student identification cards, or (5) during student orientation programs.

The Commission finds that Education Code section 66721.5 imposes the following state-mandated activities:

1. The governing board of each community college district direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum (Ed. Code § 66721.5, subd. (a)(1))

¹⁷⁸ *DuBois v. Workers’ Comp. Appeals Bd.*, *supra*, 5 Cal. 4th 382, 394.

¹⁷⁹ Senate Rules Committee, Office of Senate Floor Analysis, Third Reading Analysis of Assembly Bill 1918 (1999-2000 Reg. Sess.) as amended April 24, 2000.

2. Distribute a copy of the current transfer core curriculum to each community college student who is enrolled in a degree or certification program and is physically in attendance at the institution (Ed. Code § 66721.5, subd. (b)).
3. Including the text of the current transfer core curriculum in the published class schedule for each academic term, or distribute the transfer core curriculum during the registration process, or by mail, or during the issuance of student identification cards, or during student orientation programs (Ed. Code § 66721.5, subd. (c) and (d)).

Transfer Functions: Student Matriculation, Policies, Counseling Services, Outreach Programs, Articulation Agreements, Transfer Agreements, Annual Statistics, and Intersegmental Advisory Committee (Education Code section 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, and 66743)

Sections 66731, 66732, 66736-66738, and 66740-66743 address the functions of various entities involved in the transfer system between the three segments of California's system of higher education.

Section 66731 addresses the role of transferring from community colleges to the UC or the CSU in California's higher education system. The plain language of section 66731 mandates community college district governing boards to:

Recognize student matriculation from community colleges through the University of California and California State University as a central institutional priority of all segments of higher education. (Ed. Code, § 66731.)

Section 66732 addresses the policy of the governing boards of each segment of higher education regarding transferring and its role in achieving student diversity. Section 66732 provides:

The governing boards of each segment shall declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. The governing boards of each segment shall design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University.

As defined by Education Code section 66011, "governing boards" means the local board of trustees and the Board of Governors of the California Community Colleges, the Trustees of the CSU, and the Regents of the UC. Pursuant to the plain language of section 66732, community college districts are mandated to engage in the following activities:

1. Declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732.)
2. Design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University. (Ed. Code, § 66732.)

Section 66736 addresses the counseling, advising, and monitoring of students seeking to transfer. Section 66736 requires community college districts to engage in the following activity:

1. Ensure that its colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek

out, counsel, advise, and monitor the progress of potential and identified community college transfer students. (Ed. Code, § 66736.)

2. All policies and procedures adopted for the purpose of ensuring the maintenance of student transfer counseling and student services pursuant to Education Code section 66736 must give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations. (Ed. Code, § 66736.)

Section 66737 addresses the expectation that the Regents of the UC, the Trustees of the CSU, and the Board of Governors develop programs to facilitate the successful transfer of students between community colleges and the universities. Specifically, section 66737 provides:

The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges are expected to develop new programs of outreach, recruitment, and cooperation between and among the three segments of public higher education to facilitate the successful transfer of students between the community colleges and the universities. Every community college student who successfully completes the transfer agreement programs, as defined in Section 66738, in a community college shall have an appropriate place in an upper division university program.

Section 66737 does not impose any activities on community college districts. Instead, the plain language of section 66737 sets forth the expectation that the Regents of the UC, the Trustees of the CSU, and the Board of Governors engage in specific activities. As a result, the Commission finds that Education Code section 66737 does not impose any state-mandated activities on community college districts.

Section 66738 addresses the development and implementation of formal systemwide articulation agreements and transfer agreement programs. Specifically, section 66738 provides:

- (a) The governing board of each public postsecondary education segment shall be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function.
- (b) The elements in a comprehensive transfer system shall include, but not be limited to, the following:
 - (1) Enrollment and resource planning; intersegmental faculty curricular efforts.
 - (2) Coordinated counseling.
 - (3) Financial aid and transfer services.
 - (4) Transfer articulation agreements and programs.
 - (5) Specific efforts to improve diversity.
 - (6) Early outreach activities.
 - (7) Expansion of current practices relating to concurrent enrollment of community college students in appropriate university courses.
 - (8) Centers.

(c) The governing board of each segment shall expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available; and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus.

The plain language of section 66738, subdivision (a) requires the governing board of each public postsecondary education segment, including local governing boards of community college districts,¹⁸⁰ to be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs. Subdivision (c) requires the governing board of each segment, including the governing boards of community college districts, to expand existing practices related to concurrent enrollment and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus.

Subdivision (b) does not impose any state-mandated activities on community college districts. Instead, subdivision (b) sets forth the elements of a comprehensive transfer system, but makes no reference to community college districts' role in developing or implementing these elements. Thus, subdivision (b) acts as a declaration of what a comprehensive transfer system includes. The claimants argue that subdivision (b) defines the mandate in subdivision (a).¹⁸¹ However, the activities required by subdivision (a) are an element of subdivision (b). Specifically, subdivision (a) requires community college districts, along with the other segments of postsecondary education, to be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs. This activity is a part of what a "comprehensive transfer system" is defined as by subdivision (b).¹⁸² Subdivisions (a) and (b) do not require community college districts to create a comprehensive transfer system, as defined by subdivision (b).

As a result, the Commission finds that Education Code section 66738 imposes the following state-mandated activities on community college districts:

1. Be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function. (Ed. Code, § 66738, subs. (a).)
2. Expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus. (Ed. Code, § 66738, subd. (c).)

Section 66740 addresses the development of discipline-specific articulation agreements, transfer programs, and discipline-based agreements. The section sets forth specific roles of the three segments of higher education. Specifically, section 66740 provides:

Each department, school, and major in the University of California and California State University shall develop, in conjunction with community college faculty in

¹⁸⁰ Education Code section 66011, defining "governing board."

¹⁸¹ Claimants' response to draft staff analysis, *supra*, p. 25.

¹⁸² See Education Code section 66738, subdivision (b)(4).

appropriate and associated departments, discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. Faculty from the community colleges and university campuses shall participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency.

Where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors shall be made readily available to community college counselors, faculty, and students on an annual basis. In cases where the prescribed course of study is altered by the university department, notice of the modification shall be communicated to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major.

Community college districts, in conjunction with the California State University and the University of California, shall develop discipline-based agreements with as many campuses of the two university segments as feasible, and no fewer than three University of California campuses and five California State University campuses.

The development of these agreements shall be the mutual responsibility of all three segments, and no one segment should bear the organizational or financial responsibility for accomplishing these goals.

The Chancellor of the California Community Colleges and the President of the University of California shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to the University of California. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

The Chancellor of the California Community Colleges and the Chancellor of the California State University system shall begin the process of setting priorities to determine which community colleges will receive first attention for the development of agreements. Criteria for priority determination shall include, but not be limited to, the percentage and number of students from economically disadvantaged families and underrepresented racial and ethnic minorities, and community colleges which traditionally have not transferred many students to California State Universities. The priority list shall be completed by March 1, 1992. These considerations shall not be used in any way to displace current agreements between any community college and the University of California or the California State University.

The first paragraph of section 66740 requires community college faculty in appropriate and associated departments to act in conjunction with each department, school, and major in the UC and CSU to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. In doing so, community college faculty

shall participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency.

The third paragraph of section 66740 requires community college districts, in conjunction with the CSU and the UC, to develop discipline-based agreements with as many campuses of the two university segments as feasible, but no fewer than three UC campuses and five CSU campuses.

The remaining paragraphs (paragraphs 2 and 4-6) of section 66740 do not impose any activities on community college districts. The second paragraph of section 66740 provides:

Where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors shall be made readily available to community college counselors, faculty, and students on an annual basis. In cases where the prescribed course of study is altered by the university department, notice of the modification shall be communicated to appropriate community college faculty and counselors at least one year prior to the deadline for application to that major and implementation by the department responsible for teaching that major.

The claimants assert that the first sentence of the second paragraph of section 66740 requires community college districts to implement policies and procedures to ensure that, where specific majors are impacted or over-subscribed, the prescribed course of study and minimum grade point average required for consideration for upper division admission to all of these majors are made readily available to community college counselors, faculty, and students on an annual basis.¹⁸³ In addition, the claimants assert that the second sentence of this paragraph is directed at community college districts, and therefore, requires notification of a modification of prescribed courses of study made by university departments prior to implementation by the department.¹⁸⁴

The plain language of the first sentence of the second paragraph does not provide for the implementation of policies and procedures. Instead, the language of the second paragraph requires that specified information be *made readily available* to community college counselors, faculty, and students on an annual basis. The language of the second paragraph, however, is silent as to which entities are required to engage in the activities set forth in the first and second sentences of the paragraph. Because of this ambiguity, it is necessary to give a reasonable and commonsense interpretation of the statutory provisions consistent with the apparent legislative purpose and intent.¹⁸⁵

A reasonable and commonsense interpretation is that the second paragraph is directed at the entities from which the information regarding impacted or over-subscribed majors or changes made to prescribed courses of study by the CSU or UC departments originates. Here, the CSU and UC are the entities which would first know whether or not majors within the CSU and UC are impacted or over-subscribed. In addition, the CSU and UC, or the departments within the CSU and UC, would be the entities which prescribe the course of study and minimum grade point average for admission to the majors within the CSU and UC. Also, when prescribed courses of study are altered by the CSU and UC departments, the CSU and UC would be the entities with the information required to be communicated to appropriate community college

¹⁸³ Test Claim 02-TC-31, p. 371.

¹⁸⁴ *Ibid.*

¹⁸⁵ *American Buildings Co. v. Bay Commercial Construction, Inc.*, *supra*, 99 Cal. App. 4th 1193.

faculty and counselors. Thus, it is clear that the second paragraph is directed at the CSU and UC, and not community college districts.

In the claimants' response to the draft staff analysis, the claimants argue that it is reasonable and necessary for the community college districts to facilitate the distribution of the information regarding impacted or over-subscribed majors or changes made to prescribed courses of study by the CSU or UC. However, as discussed above, the language of section 66740 does not require this activity, nor is there any evidence in the record that it is necessary for community college districts to facilitate the distribution of the information regarding impacted or over-subscribed majors or changes made to prescribed courses of study by the CSU or UC. As a result, the Commission finds that the second paragraph of section 66740 does not impose any state-mandated activities on community college districts.

The fourth paragraph of section 66740 sets forth that the development of the agreements described in the first and third paragraphs of section 66740 are the mutual responsibility of all three segments of higher education, and the legislative intent that no one segment should bear the organizational or financial responsibility for accomplishing these goals.

The fifth and sixth paragraphs provide that the Chancellor is required to begin the process of setting priorities with the CSU and UC to determine which community colleges will receive first attention for the development of agreements. As a result, the fifth and sixth paragraphs do not impose any state-mandated activities on community college districts.

The Commission finds that the Education Code section 66740 mandates community college districts to engage in the following activities:

1. Act in conjunction with each department, school, and major in the University of California and California State University to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites.

In doing so, faculty from community colleges and university campuses are to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. (Ed. Code, § 66740, first paragraph.)

2. Develop discipline-based agreements in conjunction with the California State University and the University of California with as many campuses of the two university segments as feasible, but no fewer than three University of California campuses and five California State University campuses. No one segment should bear the organizational or financial responsibility for accomplishing these goals. (Ed. Code, § 66740, third paragraph.)

Section 66741 sets forth the expected results and the rights resulting from the system wide and interinstitutional agreements developed by the CSU, UC, and community colleges pursuant to Education Code section 66740. Section 66741 provides:

As a result of system wide and interinstitutional agreements, each community college student shall be assured of the opportunity to enter into a transfer agreement program enabling a student to receive high priority consideration, attain equivalent special treatment, or enter into a contract when applying for university admission at the advanced standing level. It is recognized that eligibility for transfer agreement programs will require completion of certain requirements as defined in interinstitutional agreements. It is also recognized that access to majors of choice will, in most cases, require completion of additional requirements, such as specialized coursework and attainment of a specialized grade point average.

Transfer agreement programs also shall carry high priority access to majors of choice. The University of California and the California State University shall require that continuing undergraduate students and community college transfer students are assessed against a common set of criteria for upper division standing to a specific major. However, generally speaking, access to these programs shall require completion of specialized coursework and attainment of a grade point average above the minimums defined in general admission requirements, such as those used in supplementary admission criteria for impacted or over-subscribed programs.

Alternatively, students may also, by meeting the University of California or California State University requirements for admission at the advanced standing level, simply wish to apply as required. All students meeting these admission requirements shall be guaranteed a place somewhere in the University of California or California State University system, as appropriate.

The claimants assert that community college districts are required to ensure that each community college student is assured of the opportunity to enter into a transfer agreement program enabling a student to (1) receive high priority consideration, (2) attain equivalent special treatment, or (3) enter into a contract when applying for university admission at the advanced standing level.¹⁸⁶ The plain language of section 66741, however, does not require community college districts to engage in any activity. Instead, section 66741 sets forth what will result from the agreements made by the CSU, UC, California Community Colleges, and local community college districts. As a result, the Commission finds that Education Code section 66741 does not impose any state-mandated activities.

Section 66742 addresses the presentation of annual statistical reports on transfer patterns to the Governor and the Legislature. Specifically, section 66742 provides:

The governing boards of the three public segments of higher education shall present annual statistical reports on transfer patterns via the California Postsecondary Education Commission to the Governor and Legislature. The reports shall include recent statistics on student enrollments by campus, segment, gender, ethnicity, and the ratio of upper division to lower division, including information on both freshman and transfer student access to the system. These reports should include, to the extent that data are available or become available, data on application, admission and enrollment information for all students by sex, ethnicity, and campus. For transfer students, this data shall indicate the segment of origin for all students. In addition, data shall be separately identified for transfer students from California Community Colleges, and shall identify the subset of applications which are completed together with admission, enrollment, and declared major information for that group. The reports shall describe the number of transfer agreements, if any, whose terms and conditions were not satisfied by either the California State University or the University of California, the number of California Community College transfer students denied either admission to the student's first choice of a particular campus of the California State University or the University of California or the student's first choice of a major field of study, and, among those students, the number of students who, upon denial of either of the student's first choices, immediately enrolled at another campus of the California State University or the University of California.

¹⁸⁶ Test Claim 02-TC-31, p. 372.

The reports shall also include information by sex and ethnicity on retention and degree completion for transfer students as well as for native students, and the number and percentage of baccalaureate degree recipients who transferred from a community college.

The plain language of section 66742 mandates community college districts to engage in the following activity:

Present annual statistical reports with the California Community Colleges, California State University, and the University of California on transfer patterns to the Governor and Legislature via the California Postsecondary Education Commission.

Include in these reports statistics and information as described in Education Code section 66742. (Education Code section 66742.)

Section 66743 addresses the presentation of a biennial report by an intersegmental advisory committee convened by the California Postsecondary Education Commission to the Governor and the Legislature. Specifically, section 66743 provides:

The California Postsecondary Education Commission is requested to convene an intersegmental advisory committee on transfer access and performance for the purposes of presenting biennial reports to the Governor and the Legislature on the status of transfer policies and programs, the diligence of each segment's board, and the effectiveness of these programs in meeting the state's goals for transfer. The report shall include information about all of the following:

(a) The effectiveness of transfer agreement programs and activities in enhancing the transfer function overall as well as the extent to which transfer program activities have been directed at students who have been historically underrepresented in the University of California and the California State University.

(b) The status of the implementation of the transfer core curriculum as described in Section 66720 for each community college, including information about the extent to which sophomore level courses needed for transfer are available on all community college campuses.

(c) Progress that has been made in achieving articulation agreements in those specific majors that have lower division prerequisites, and the dissemination of this information. The committee shall also explore methods to systematically measure the extent to which the state's goals of freshmen and transfer student access are being met, including analyses of the number of fully eligible freshmen or transfer students who are denied access to the system, and the reasons for that denial. The committee shall also address ways in which sharing of information about transfer students among the segments can be improved, including early identification of potential transfer students for intensive recruitment purposes.

The Governor and the Legislature shall monitor the success of the University of California and the California State University in achieving their targeted enrollment levels and in implementing these reforms. A substantial failure to implement reform, to achieve the 60/40 ratio by the designated dates, or to improve the transfer rate of historically underrepresented groups significantly, shall precipitate legislative hearings to determine the reasons why any one or all of these goals have not been met.

The claimants assert that section 66743 requires community college districts to compile, prepare and make available data required by the California Postsecondary Education Commission’s intersegmental advisory committee on transfer access and performance so that the committee may present biennial reports to the Governor and the Legislature on the status of transfer policies and programs.¹⁸⁷ In addition the claimants assert, “Community college districts, as one of the ‘segments,’ are a reasonable and perhaps necessary source for CPEC for some of the information regarding the effectiveness of transfer agreement programs”¹⁸⁸ The plain language of section 66743, however, does not require community college district to engage in any activities. Rather, section 66743 requires an “intersegmental advisory committee” convened by the California Postsecondary Education Commission to engage in a specified activity. As a result, the Commission finds that section 66743 does not impose any state-mandated activities on community college districts.

In summary the Commission finds that Education Code sections 66731, 66732, 66736, 66738, 66740, and 66742 require community college districts to engage in the following state-mandated activities:

1. Recognize student matriculation from community colleges through the University of California and California State University as a central institutional priority of all segments of higher education. (Ed. Code, § 66731.)
2. Declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732.)
3. Design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University. (Ed. Code, § 66732.)
4. Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

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

5. Be accountable for the development and implementation of formal system wide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function. (Ed. Code, § 66738, subs. (a).)
6. Expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus. (Ed. Code, § 66738, subd. (c).)

¹⁸⁷ Test Claim 02-TC-31, p. 374.

¹⁸⁸ Claimants’ response to draft staff analysis, *supra*, p. 26.

7. Act in conjunction with each department, school, major in the University of California and California State University to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites.

In doing so, faculty from community colleges and university campuses are to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. (Ed. Code, § 66740, first paragraph.)

8. Develop discipline-based agreements in conjunction with the California State University and the University of California with as many campuses of the two university segments as feasible, but no fewer than three University of California campuses and five California State University campuses. No one segment should bear the organizational or financial responsibility for accomplishing these goals. (Ed. Code, § 66740, third paragraph.)
9. Present annual statistical reports with the California Community Colleges, California State University, and the University of California on transfer patterns to the Governor and Legislature via the California Postsecondary Education Commission.

Include in these reports statistics and information as described in Education Code section 66742. (Education Code section 66742.)

General Common Course Numbering System (Ed. Code, § 71027)

Section 71027 addresses the Board of Governors' duty regarding a general common course numbering system. Specifically, section 71027 provides:

- (a) The Board of Governors of the California Community Colleges shall develop, maintain, and disseminate a general common course numbering system for use by the community college districts.
- (b) The office of the Chancellor of the California Community Colleges shall absorb the costs of developing, maintaining, and disseminating a general common course numbering system pursuant to this section within the office's existing resources

The claimants assert that section 71027 requires community college districts "[t]o implement policies and procedures to comply with the statewide common course numbering system adopted and disseminated by the Board of Governors" ¹⁸⁹ However, the plain language of section 71027 does not impose any activities on community college districts. Rather, section 71027 requires the Board of Governors to engage in specific activities and for the Chancellor's Office to absorb all costs of these activities within its existing resources. As a result, the Commission finds that Education Code section 71027 does not impose any state-mandated activities on community college districts.

(i) Summary of state-mandated activities

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

¹⁸⁹ Test Claim 02-TC-31, p. 366.

3. Including the text of the current transfer core curriculum in the published class schedule for each academic term, or distribute the transfer core curriculum during the registration process, or by mail, or during the issuance of student identification cards, or during student orientation programs (Ed. Code § 66721.5, subd. (c) and (d)).
4. Recognize student matriculation from community colleges through the University of California and California State University as a central institutional priority of all segments of higher education. (Ed. Code, § 66731.)
5. Declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732.)
6. Design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University. (Ed. Code, § 66732.)
7. Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students.

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

8. Be accountable for the development and implementation of formal systemwide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function. (Ed. Code, § 66738, subd. (a).)
9. Expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus. (Ed. Code, § 66738, subd. (c).)
10. Act in conjunction with each department, school, major in the University of California and California State University to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites.

In doing so, faculty from community colleges and university campuses are to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. (Ed. Code, § 66740, first paragraph.)
11. Develop discipline-based agreements in conjunction with the California State University and the University of California with as many campuses of the two university segments as feasible, but no fewer than three University of California campuses and five California State University campuses. No one segment should bear the organizational or financial responsibility for accomplishing these goals. (Ed. Code, § 66740, third paragraph.)
12. Present annual statistical reports with the California Community Colleges, California State University, and the University of California on transfer patterns to the Governor and Legislature via the California Postsecondary Education Commission.

Include in these reports statistics and information as described in Education Code section 66742. (Education Code section 66742.)

- b. The activities mandated by Education Code sections 66721.5, 66731, 66732, 66736, 66738, 66740, and 66742 constitute new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution

As found by the court in *Long Beach Unified School Dist.*, education is a peculiarly governmental function.¹⁹⁰ In addition, the Legislature has found:

Student matriculation, from community colleges through the University of California and the California State University, is recognized by the Governor, Legislature, and the governing boards of each of the segments of California's system of public postsecondary education as a central institutional priority of all segments of higher education.¹⁹¹

The requirements of Education Code section 66721.5 carry out the governmental function of education and the central institutional priority of higher education by ensuring that all students are clearly and fully informed as to which community college courses and units are transferable so as to improve the opportunity of community college students to transfer.

Citing to *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, the Chancellor's Office argues that although education is a "program" subject to article XIII B, and transfer principles are a part of the "program," the means by which students learn of the transfer core curriculum is not a "program."¹⁹² As relevant to this discussion, the county in *County of Los Angeles v. Department of Industrial Relations* argued that elevator safety regulations that required specific activities in regard to elevators constituted a "program" under article XIII B because elevators in county owned and leased buildings are necessary to provide access to services to the public. However, the court held, "In determining whether these regulations are a program, the critical question is whether the *mandated program* carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services."¹⁹³ The court concluded that providing elevators equipped with fire and earthquake safety features is not a "governmental function of providing services to the public" and therefore not a "program" under article XIII B.¹⁹⁴

The Chancellor's Office asserts that the distribution of copies of the current transfer core curriculum is "more akin to the elevators [discussed in *County of Los Angeles v. Department of Industrial Relations*] that provide a means of obtaining the program services."¹⁹⁵ As a result, the Chancellor's Office argues that the activities required by section 66721.5 do not constitute a "program." *County of Los Angeles v. Department of Industrial Relations*, however, is factually distinguishable from this situation. In *County of Los Angeles v. Department of Industrial Relations* the regulations at issue imposed requirements on all public buildings regarding

¹⁹⁰ *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d. at p. 172.

¹⁹¹ Statutes 2000, chapter 187, section 2, subdivision (a) (A.B. 1918). Restating Education Code section 66731, added by Statutes 1991, chapter 1188.

¹⁹² Chancellor's Office on 02-TC-25, *supra*, p. 5.

¹⁹³ *County of Los Angeles v. Department of Industrial Relations*, *supra*, 214 Cal.App.3d at p. 1546. Original emphasis.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

elevator safety which were completely separate and unrelated to the public services provided by the county in the buildings owned and leased by the county. Here, section 66721.5 is directly related to the governmental function of education and higher education's central institutional priority of transferring students. Thus, the requirements imposed by section 66721.5 do not merely serve as a means to access a program (i.e. education) unrelated to section 66721.5. Rather, the distribution of the current transfer core curriculum carries out the governmental function of education and higher education's central institutional priority. As a result, the activities required by section 66721.5 constitute a "program" subject to article XIII B.

Similarly, the state-mandated activities imposed by Education Code sections 66731, 66732, 66736, 66738, 66740, and 66742 carry out the governmental function of education by promoting student matriculation between the three segments of public higher education, and as a result constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The claimants have pled Education Code section 66721.5, as added by Statutes 2000, chapter 187.¹⁹⁶ Prior to the enactment of Statutes 2000, chapter 187, Education Code section 66721.5 did not exist, nor did the section's requirements exist as a different code section. As a result, Education Code section 66721.5, as added by Statutes 2000, chapter 1867, constitutes a "new program or higher level of service."

The claimants have pled Education Code sections 66731, 66732, 66736, 66738, 66740, and 66742, as added by Statutes 1991, chapter 1188.¹⁹⁷ Prior to the enactment of Education Code sections 66731, 66732, 66736, 66738, 66740, and 66742 in 1991, community college districts were not required to engage in the activities imposed by the sections. As a result, the state-mandated activities imposed by Education Code sections 66731, 66732, 66736, 66738, 66740, and 66742, as added by Statutes 1991, chapter 1188, constitute "new programs or higher levels of service."

(i) Summary of state-mandated new program or higher level of service

In summary, the Commission finds that the test claim statutes of the "Transfer Centers" section of this analysis impose the following state-mandated new programs or higher levels of service:

1. The governing board of each community college district direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum. (Ed. Code § 66721.5, subd. (a)(1) (Stats. 2000, ch. 187).)
2. Distribute a copy of the current transfer core curriculum to each community college student who is enrolled in a degree or certification program and is physically in attendance at the institution. (Ed. Code § 66721.5, subd. (b) (Stats. 2000, ch. 187).)
3. Include the text of the current transfer core curriculum in the published class schedule for each academic term, or distribute the transfer core curriculum during the registration process, or by mail, or during the issuance of student identification cards, or during student orientation programs. (Ed. Code § 66721.5, subd. (c) and (d) (Stats. 2000, ch. 187).)
4. Recognize student matriculation from community colleges through the University of California and California State University as a central institutional priority of all segments of higher education. (Ed. Code, § 66731 (Stats. 1991, ch. 1188).)

¹⁹⁶ Test Claim 02-TC-31 pg. 159.

¹⁹⁷ *Id.* at pgs. 148-155.

5. Declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732 (Stats. 1991, ch. 1188).)
6. Design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University. (Ed. Code, § 66732(Stats. 1991, ch. 1188).)
7. Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students. All policies and procedures adopted for this purpose must give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations. (Ed. Code, § 66736 (Stats. 1991, ch. 1188).)
8. Be accountable for the development and implementation of formal system wide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function. (Ed. Code, § 66738, subds. (a) (Stats. 1991, ch. 1188).)
9. Expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus. (Ed. Code, § 66738, subd. (c) (Stats. 1991, ch. 1188).)
10. Act in conjunction with each department, school, major in the University of California and California State University to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. In doing so, faculty from community colleges and university campuses are to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. (Ed. Code, § 66740, first paragraph (Stats. 1991, ch. 1188).)
11. Develop discipline-based agreements in conjunction with the California State University and the University of California with as many campuses of the two university segments as feasible, but no fewer than three University of California campuses and five California State University campuses. No one segment should bear the organizational or financial responsibility for accomplishing these goals. (Ed. Code, § 66740, third paragraph (Stats. 1991, ch. 1188).)
12. Present annual statistical reports with the California Community Colleges, California State University, and the University of California on transfer patterns to the Governor and Legislature via the California Postsecondary Education Commission. Include in these reports statistics and information as described in Education Code section 66742. (Education Code section 66742 (Stats. 1991, ch. 1188).)

(9) Vocational Education (Ed. Code, §§ 78015 and 78016; and Cal. Code Regs., tit. 5, §§ 55600-55603, 55605, 55607, 55620, and 55630)¹⁹⁸

This section addresses the activities that must be done prior to and after the establishment of vocational or occupational training programs, and the ability of community college districts to contract with private postsecondary schools, activity centers, work activity centers, or sheltered workshops to provide vocational skill training.

- a. Education Code sections 78015 and 78016, and California Code of Regulations, title 5, section 55601, impose state-mandated activities on community college districts; however, California Code of Regulations, title 5, sections 55600, 55602-55603, 55605, 55607, 55620, and 55630 do not

Establishment and Review of Vocational Education Programs (Ed. Code, §§ 78015 and 78016)

Sections 78015 and 78016 address activities that must be done prior to and after the establishment of vocational or occupational training programs. Section 78015 sets forth activities that a community college district must engage in prior to establishing a vocational or occupational training program. The plain language of section 78015 requires a community college district to engage in the following activities:

1. Conduct a job market study of the labor market area, as defined by Education Code section 52301.5, in which it proposes to establish the program prior to establishing the program.¹⁹⁹

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

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

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

¹⁹⁸ In the claimants' response to the draft staff analysis the claimants cite to Education Code section 70902, subdivision (b)(2), which addresses the establishment of policies for and approval of credit courses of instruction generally. Although Education Code section 70902, subdivision (b), is generally related to the provision of vocational education programs and all other courses and programs offered by a community college district, it does not require the provision of vocational education programs or specifically address vocational education. This analysis will address Education Code section 70902, subdivision (b), in the "Curriculum" section of the analysis, because it is a more appropriate place for the issues raised by Education Code section 70902, subdivision (b).

¹⁹⁹ Education Code section 52301.5 defines "Labor Market Area" as "a county or aggregation of counties designated by the Employment Development Department (EDD) that has one or more central core cities and that meets criteria of population, population density, commute patterns, and social and economic integration specified by the EDD.

3. Determine whether or not the job market study justifies the proposed vocational education program. (Ed. Code, § 78015, subd. (b) (Stats. 1998, ch. 365).)
4. Determine by resolution whether the program will be offered through the district's own facilities or through a contract with an approved private postsecondary school pursuant to Education Code section 8092, if the district determines that the job market study justifies the initiation of the proposed program. (Ed. Code, § 78015, subd. (c) (Stats. 1998, ch. 365).)

However, when analyzing whether section 78015 mandates any activities it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary.²⁰⁰ Here, a community college district is required to engage in the activities stated above *only* if it establishes a vocational or occupational training program. As a result, it is necessary to determine if community college districts are required to offer vocational or occupational training program.

Education Code section 66010.4 sets forth the "missions and functions" of California's institutions of higher education. Subdivision (a) of section 66010.4 delineates the primary mission of community colleges, and provides in relevant part, "The California Community Colleges shall, as a primary mission, offer academic and vocational instruction" Thus, community college districts are required to establish vocational programs, and as a result, are mandated to engage in the activities set forth in Education Code section 78015.

Section 78016 addresses the review of vocational or occupational training programs. Specifically, section 78016 mandates community college districts to engage in the following activities:

1. Review every vocational or occupational training program offered by the district and commenced subsequent to July 28, 1983, every two years to ensure that each program: (1) meets a documented labor market demand; (2) does not represent unnecessary duplication of other manpower training programs in the area; and (3) is of demonstrated effectiveness as measured by the employment and completion success of its students.

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

2. Terminate any program that does not meet the requirements of Education Code section 78016, subdivision (a), and the standards promulgated by the governing board within one year after the review conducted pursuant to section 78016. (Ed. Code, § 78016, subd. (b) (Stats. 1998, ch. 365).)
3. Include the review and comments by the local Private Industry Council, established pursuant to Unemployment Insurance Code section 15000 et seq., in the review process of every vocational or occupational training program offered by the district and commenced subsequent to July 28, 1983, the review and comments by the Private Industry Council shall occur prior to any decision by the district governing board. (Ed. Code, § 78016, subd. (c) (Stats. 1998, ch. 365).)

²⁰⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

4. Make a written summary of the findings of each review available to the public. (Ed. Code, § 78016, subd. (e) (Stats. 1998, ch. 365).)

Appointment of Vocational Education Advisory Committee (Cal. Code Regs., tit. 5, § 55601)

Title 5, section 55601, addresses the appointment of a vocational education advisory committee by community college districts participating in a vocational education program. Title 5, section 55601, provides:

The governing board of each community college district participating in a vocational education program shall appoint a vocational education advisory committee to develop recommendations on the program and to provide liaison between the district and potential employers.

The committee shall consist of one or more representative of the general public knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development.²⁰¹

As discussed above, community college districts are required to establish vocational education programs. Thus, title 5, section 55601, mandates community college districts to engage in the following activity:

Appoint a vocational education advisory committee, consisting of one or more members of the general public, to develop recommendations on the program and to provide a liaison between the district and potential employers. The members must be knowledgeable about the disadvantaged, students, teachers, business, industry, school administration, and the field office of the Department of Employment Development. (Cal. Code Regs., tit. 5, § 55601 (Register 93, No. 25).)

Vocational Education Contracts (Cal. Code Regs., tit. 5, §§ 55600, 55602, 55603, 55605, 55607, 55620, and 55630)

Title 5, sections 55600, 55602-55607, 55620, and 55630, address the ability of community college districts to contract with private post secondary schools to provide vocational skills training, and the corresponding contracting requirements if a district chooses to contract with a private post secondary school. However, pursuant to *Kern High School Dist.* a requirement resulting from an underlying discretionary decision does not constitute a state-mandated activity.²⁰² Title 5, section 55602, provides, “Any community college district or districts may contract with a private post secondary school ... to provide vocational skill training”²⁰³ Pursuant to title 5, section 55602, community college districts have the authority to contract with a private post secondary school, but are not required to use this authority. Thus, it is a community college district’s decision to utilize its authority that triggers any subsequent requirements within title 5, sections 55602-55607, 55620, and 55630, which set forth requirements regarding contracting with a private post secondary school for the provision of vocational skills training.

In response to the draft staff analysis, the claimants argue:

²⁰¹ California Code of Regulations, title 5, section 55601 (Register 93, No. 25).

²⁰² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

²⁰³ California Code of Regulations, title 5, section 55602 (Register 95, No. 22).

[v]ocational education was determined by the DSA to be a mandate, not a precursor optional program. The use of private contractors is a method to implement the mandate, not a subsequent new program. A choice of methods or sources to implement the mandate is not a new program subsequent to a discretionary program. If regulations never had been established specifically for vocational education contracts, there would be no question that private contracting was a reimbursable method to implement the mandate.²⁰⁴

The claimants misinterpret the draft staff analysis. The claimants' argument is based on its assertion that the provision of vocational education is a reimbursable state-mandated new program or higher level of service. The *requirement* to provide vocational education stems from Education Code section 66010.4, which was not pled in this test claim. The analysis cited to this requirement as the basis for finding that new *requirements* relating to vocational education constituted state-mandated activities. However, the analysis did not find that the *provision of vocational education* was a reimbursable state-mandated new program or higher level of service. Because Education Code section 66010.4 was not pled in this test claim and, thus the Commission does not have jurisdiction to make findings regarding its provisions.²⁰⁵ Absent a finding that the provision of vocational education is a reimbursable state-mandated new program or higher level of service, community college districts would not be able to claim reimbursement for providing vocational education through the discretionary use of contractors. As a result, the requirements of title 5, sections 55600, 55602, 55603, 55605, 55607, 55620, and 55630 do not constitute state-mandated activities.

- b. The state-mandated activities imposed by Education Code sections 78015 and 78016 constitute a new program or higher level of service; however, the activity mandated by California Code of Regulations, title 5, section 55601 does not

To constitute a “new program or higher level of service” the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.²⁰⁶ In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.²⁰⁷ To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.²⁰⁸

The state-mandated activities imposed by Education Code sections 78015 and 78016 carry out the governmental function of providing education by setting forth the steps necessary to establish vocational education programs, the provision of which is a primary mission of the California Community Colleges. In addition, the claimants have pled Education Code sections 78015 and 78016 as added in 1979 and last amended in 1998.²⁰⁹ Immediately prior to 1979, community

²⁰⁴ Claimants' response to draft staff analysis, *supra*, pgs. 20-21.

²⁰⁵ The Commission notes that Education Code section 66010.4 was derived from former Education Code section 22650, as added by Statutes 1961, 1st Extraordinary Session 1961, chapter 49.

²⁰⁶ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

²⁰⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

²⁰⁸ *Ibid.*

²⁰⁹ Statutes 1979, chapter 977; and Statutes 1998, chapter 365.

college districts were not required to engage in the state-mandated program within Education Code sections 78015 and 78016. Thus, Education Code sections 78015 and 78016 constitute a new program or higher level of service.

California Code of Regulations, title 5, section 55601, carries out a governmental function by requiring the appointment of a vocational education advisory committee for each community college district to advise community college districts on the creation of vocational education programs, the provision of which, as noted above, are a primary mission of community colleges. The claimants have pled title 5, section 55601, as added in 1993.²¹⁰ However, the requirement to appoint a vocational education advisory committee existed in 1973 under former Education Code section 6257.²¹¹ This requirement was renumbered to Education Code section 8070 in 1976.²¹² In 1990, the Board of Governors were directed to incorporate the text of Education Code section 8070 into the title 5 regulations governing community college districts, noting that if the Board of Governors fails to adopt and put into effect regulations containing the language of Education Code section 8070, the Education Code section shall remain operative until the Board of Governors does so.²¹³ Thus, even though there was a two year delay to incorporate the provisions of Education Code section 8070 into the title 5 regulations in the form of title 5, section 55601, there was never a lapse in the requirement. As a result, the requirement of California Code of Regulations, title 5, section 55601, does not constitute a state-mandated new program or higher level of service.

(i) Summary of state-mandated new program or higher level of service

1. Conduct a job market study of the labor market area, as defined by Education Code section 52301.5, in which it proposes to establish the program prior to establishing the program.²¹⁴

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

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

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

²¹⁰ Test Claim 02-TC-31, p.82. The 1993 date cited by the claimants coincides with Register 93, number 25.

²¹¹ Statutes 1973, chapter 1207.

²¹² Statutes 1976, chapter 1010.

²¹³ Statutes 1990, chapter 1372, section 708.

²¹⁴ Education Code section 52301.5 defines “Labor Market Area” as “a county or aggregation of counties designated by the Employment Development Department (EDD) that has one or more central core cities and that meets criteria of population, population density, commute patterns, and social and economic integration specified by the EDD.

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

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

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

(10) Standards of Scholarship (Ed. Code, § 70902, subd. (b)(3); Cal. Code Regs., tit. 5, §§ 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, and 55765)

This section addresses regulations that set forth standards addressing the basic operation of community college districts regarding standards of scholarship, including but not limited to the following areas of scholarship: grading practices, credit-no credit options, advanced placement examinations, standards for probation, academic record symbols, and grade point average.

- a. Education Code section 70902, subd. (b)(3), and California Code of Regulations, title 5, sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764 requires community college districts to engage in state-mandated activities

Regulations (Ed. Code, § 70902, subd. (b)(3); Cal. Code Regs., tit. 5, § 55750)

As relevant to this discussion, Education Code section 70902, subdivision (b)(3), requires district governing boards to establish academic standards, probation, dismissal, and readmission policies consistent with the minimum standards adopted by the Board of Governors. Title 5 sections 55750 et seq. set forth the minimum standards addressing academic standards, probation,

dismissal, and readmission. As part of the minimum standards adopted by the Board of Governors, section 55750 provides:

The governing board of a district maintaining a community college shall adopt regulations consistent with this [subchapter].²¹⁵ The regulations shall be published in the college catalog under appropriate headings and filed with the Chancellor's Office as required by section 51002 of this [division].²¹⁶

The plain language of section 55750 requires community college districts to adopt regulations consistent with the subchapter on "Standards of Scholarship." In addition, these regulations are required to be published in the college catalog under appropriate headings. The language of section 55750 also provides that the district file the regulations with the Chancellor's office as required by section 51002.

Although the requirements of California Code of Regulations, title 5, section 51002, do not independently impose state-mandated activities, section 55750 requires community college districts to file their regulations regarding district standards of scholarship with the Chancellor's Office as required by section 51002. Section 51002, subdivision (b), requires districts to file a copy of their regulations, and any amendments, with the Chancellor's Office. As a result, community college districts are mandated to file a copy of their the regulations, and any amendments thereto, adopted pursuant to section 55750 with the Chancellor's Office. Therefore, the Commission finds that Education Code section 70902, subdivision (b)(3), and California Code of Regulations, title 5, section 55750 mandates community college districts to engage in the following activities:

1. Adopt regulations consistent with the subchapter regarding standards of scholarship consisting of California Code of Regulations, title 5, section 55750 – 55765.²¹⁷ (Ed. Code, § 70902, subd. (b)(3) and Cal. Code Regs., tit. 5, § 55750.)
2. Publish the regulations consistent with the subchapter regarding standards of scholarship in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55750.)
3. File a copy of the regulations regarding standards of scholarship, and any amendments, with the Chancellor. (Cal. Code Regs., tit. 5, § 55750.)

In the claimants' response to the draft staff analysis, the claimants cite Education Code section 70902, subdivision (b)(3), in association with title 5 section 51020, which has been determined to not impose any state-mandated activities.²¹⁸ The claimants do make any argument regarding the relationship between the Education Code section or the title 5 section. Instead, the claimants suggest that Education Code section 70902, subdivision (b)(3), should be analyzed.²¹⁹ To the extent that the claimants are arguing that Education Code section 70902, subdivision

²¹⁵ See "Minimum Conditions Entitling Community College Districts to State Aid" section, regarding the discussion of the Nomenclature Cross-Reference issued by the Office of Administrative Law.

²¹⁶ *Ibid.*

²¹⁷ The language of California Code of Regulations, title 5, section 55750 provides, "... consistent with this chapter." However, see discussion regarding the Nomenclature Cross Reference in the "Minimum Conditions Entitling Community College Districts to State Aid" section above.

²¹⁸ Claimants' response to draft staff analysis, *supra*, p. 15.

²¹⁹ *Ibid.*

(b)(3), imposes an independent requirement to comply with the provisions of title 5 section 51020, the Commission finds that it does not. As found above, Education Code section 70902, subdivision (b)(3), requires community college districts to establish academic standards, probation, and dismissal, and readmission policies consistent with the minimum standards adopted by the Board of Governors, which are set forth in title 5 sections 55750-55765. Section 70902, subdivision (b) does not require districts to have stated objectives for its instructional programs, as provided by title 5 section 51020.

Grading Practices (Cal. Code Regs., tit. 5, § 55751)

Section 55751 addresses the grading practices of community college districts. The plain language of section 55751 requires community college districts to determine a uniform grading practice for the district based on sound academic principles. In addition, the uniform grading practices must conform to the standard that work in all courses acceptable in the fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license is graded in accordance with a grading scale adopted by the governing board consistent with section 55758, and sections 55752 (Credit-No Credit Options) or 55753 (Credit by Examination). As a result, the Commission finds that California Code of Regulations, title 5, section 55751 imposes the following state-mandated activities:

1. Determine a uniform grading practice for the district based on sound academic principles. (Cal. Code Regs., tit. 5, § 55751.)
2. Conform the uniform grading practices to the standard that work in all courses acceptable in the fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license is graded in accordance with a grading scale adopted by the governing board consistent with section 55758, and sections 55752 (Credit-No Credit Options) or 55753 (Credit by Examination). (Cal. Code Regs., tit. 5, § 55751, subs. (a) and (b).)

Credit-No Credit Option (Cal. Code Regs., tit. 5, § 55752)

Section 55752 addresses the “credit-no credit” options regarding classes offered by a community college. Section 55752, subdivision (a), provides that the “governing board of a community college district may by resolution and regulation offer courses” in which all students are evaluated on a “credit- no credit” basis, or in which students may choose to be evaluated on a “credit-no credit” basis or a letter grade. In addition, subdivision (a) provides that if such a course is offered, a community college must specify in its catalog the category into which the course falls.

As a result, the plain language of section 55752 authorizes the governing boards of community college districts to offer courses on a “credit-no credit” basis, but does not require the governing boards to do so. If “credit-no credit” courses are not offered, there would be no requirement to specify the type of “credit-no credit” course in the district catalog, adopt regulations, or file the regulations with the Chancellor’s Office. As a result, any requirement of section 55752 is a downstream activity resulting from a community college district’s voluntary decision to offer courses wherein all students are evaluated on a “credit-no credit” basis or wherein each student may elect whether the basis of evaluation is to be “credit-no credit” or letter grade. Thus, the Commission finds that California Code of Regulations, title 5, section 55752, does not impose any state-mandated activities on community colleges, and therefore, is not subject to article XIII B, section 6 of the California Constitution.

Credit by Examination (Cal. Code Regs., tit. 5, § 55753)

Section 55753 addresses the option of credit by examination for a community college course. Section 55753, as added by Register 83, Number 29 (July 16, 1983) provides:

- (a) The governing board maintaining one or more community colleges shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of this section and the provisions of Sections 55751, 55752, 55758, 55760, 55761, 55762, and 55764.
- (b) The governing board may grant credit to any student who satisfactorily passes an examination approved or conducted by proper authorities of the college. Such credit may be granted only to a student who is registered at the college and in good standing and only for a course listed in the catalog of the community college.
- (c) The student's academic record shall be clearly annotated to reflect that credit was earned by examination.
- (d) Units for which credit is given pursuant to the provisions of this section shall not be counted in determining the 12 semester hours of credit in residence required for an associate degree.

In 2002, section 55753 was amended by Register 2002, Number 8 (Feb. 22, 2002) to provide:

- (a) The governing board of each community college district shall adopt and publish procedures and regulations pertaining to credit by examination in accordance with the provisions of [the "Standards of Scholarship" subchapter].
- (b) [As quoted above (Register 83, No. 29 (July 16, 1983))].
- (c) The nature and content of the examination shall be determined solely by faculty in the discipline that normally teaches the course for which credit is to be granted in accordance with policies and procedures approved by the curriculum committee established pursuant to Section 55002. The faculty shall determine that the examination adequately measures mastery of the course content as set forth in the outline of record. The faculty may accept an examination conducted at a location other than the community college for this purpose.
- (d) A separate examination shall be conducted for each course for which credit is to be granted. Credit may be awarded for prior experience or prior learning only in terms of individually identified courses for which examinations are conducted pursuant to this section.
- (e) [Identical to the above quoted subdivision (c), as added by Register 83, Number 29 (July 16, 1983)]
- (f) Grading shall be according to the regular grading scale approved by the governing board pursuant to Section 55758, except that students shall be offered a credit-no credit option if that option is ordinarily available for the course.
- (g) [Identical to the above quoted subdivision (d), as added by Register 83, Number 29 (July 16, 1983)]

The plain language of subdivision (a) provides that community college districts shall adopt and publish *procedures* and *regulations* pertaining to credit by examination. However, courts have held that the intent of a regulation should be ascertained from the entire regulation and regulatory

scheme rather than from isolated parts or words.²²⁰ Additionally, under *Kern High School Dist.* a requirement resulting from an underlying discretionary decision does not constitute a state-mandated activity.

Here, subdivision (b) authorizes, but does not require, community college districts to offer credit by examination. In addition, the usual and ordinary meaning of the word “procedures” is, “a way of performing or effecting something.”²²¹ In light of the discretionary nature of offering credit by examination, and the usual and ordinary meaning of “procedures,” the activity of adopting and publishing *procedures*, or a way of performing or effecting credit by examination, would only be necessary if a community college district made the initial decision to offer credit by examination. Thus, the requirement of adopting and publishing *procedures* regarding credit by examination is triggered by a community college district’s initial discretionary decision to offer credit by examination, and therefore under *Kern High School Dist.*, is not mandated by the state. Likewise, the subsequent activities set forth in section 55753, subdivisions (c)-(g) are downstream activities of a community college district’s decision to offer credit-by examination, and therefore not state-mandated.

As distinguished from “procedures,” the usual and ordinary meaning of the word “regulations” is, “A principle, rule, or law designed to control or govern behavior.”²²² Adopting and publishing *regulations* regarding credit by examination, or rules to control or govern credit by examination is not dependent on actually offering credit by examination. Thus, the Commission finds that California Code of Regulations, title 5, section 55753, subdivision (a) imposes the following state-mandated activities:

Adopt and publish regulations pertaining to credit by examination in accordance with the provisions of Subchapter 9 “Standards of Scholarship” (Cal. Code Regs., tit. 5, § 55750 et seq.). (Cal. Code Regs., tit. 5, § 55753, subd. (a).)

Articulation of High School Courses (Cal. Code Regs., tit. 5, § 55753.5)

Section 55753.5 addresses the use of articulated high school courses to satisfy community college course requirements. Section 55753.5 provides in relevant part:

The governing board of a community college district may adopt policies to permit articulated high school courses to be applied to community college requirements in accordance with this Section. ...

The remaining portions of section 55753.5 set forth what articulated high school courses can and cannot be used in lieu of comparable community college courses, and the requirements resulting from the application of articulated high school courses toward community college requirements. Reading section 55753.5 as a whole and “not as individual parts or words standing alone,”²²³ any activities required are a result of a community college district’s decision to permit articulated high school courses to be applied to community college requirements. As a result, under *Kern High School Dist.*, California Code of Regulations, title 5, section 55753.5, does not impose any

²²⁰ *DuBois v. Workers’ Comp. Appeals Bd.*, *supra*, 5 Cal. 4th 382, 388; *Cal. Drive-In Restaurant Assn. v. Clark*, *supra*, 22 Cal.2d 287, 292.

²²¹ Webster’s 2d New College Dictionary. (1999) p.881.

²²² American Heritage Dictionary (new college ed. 1979) p. 1096.

²²³ *Fontana Unified School Dist. v. Burman*, *supra*, 45 Cal.3d 208, 218.

state-mandated activities on community college districts, and therefore, is not subject to article XIII B, section 6 of the California Constitution.

Advanced Placement Examinations (Cal. Code Regs., tit. 5, § 55753.7)

Section 55753.7 addresses the granting of credit for satisfactory completion of advanced placement examinations. Section 55753.7 provides in relevant part:

The governing board of a community college district may adopt policies to grant credit for satisfactory completion of advanced placement examinations typically recognized by colleges and universities as measuring competencies comparable to those achieved in baccalaureate leave courses.

The remaining portions of section 55753.7 set forth activities resulting from the granting of credit for satisfactory completion of advanced placement examinations. Read as a whole, any activities required by section 55753.7 are downstream activities resulting from a community college district's decision to adopt policies to grant credit for satisfactory completion of advanced placement examinations. As a result, under *Kern High School Dist.*, California Code or Regulations, title 5, section 55753.7, does not impose any state-mandated activities on community college districts, and therefore, is not subject to article XIII B, section 6 of the California Constitution.

Standards for Probation (Cal. Code Regs., tit. 5, § 55754)

Section 55754 addresses the standards for academic and progress probation. Pursuant to the plain language of the section 55754, subdivision (a), community colleges are required to place student on academic probation if the student has attempted at least 12 semester or 18 quarter units and has earned a grade point average below 2.0 in all units which were graded.

The plain language of subdivision (b), similarly provides that a community college is to place a student on progress probation if the student has enrolled in a total of at least 12 semester or 18 quarter units and the percentage of all units in which the student has enrolled and for which entries of "Withdrawal," "Incomplete," and "No Credit" have been recorded reaches or exceeds 50 percent. However, subdivision (b) must be read in the context of the regulatory scheme as a whole.²²⁴ Under the California Code of Regulations, title 5, sections 55752 and 55758, community college districts are not required to offer courses on a "credit – no credit" basis, nor are community college districts required to authorize the use of "Withdrawal" or "Incomplete" as academic record symbols.²²⁵ As a result, the requirement to place a student on "progress probation" is a downstream activity of a community college's decision to offer courses on a "credit – no credit" basis and to authorize the use of "Withdrawal" or "Incomplete" as academic record symbols.

In response to the draft staff analysis, the claimants argue that the above analysis is incorrect because it is based on the discretionary use of "Credit" and "No Credit" grading symbols, and "grading symbols are not a new program applied to a precursor optional program, so *Kern* is inapplicable."²²⁶ The claimants misinterpret the above analysis. Placing a student on "progress

²²⁴ *Ibid.*

²²⁵ California Code of Regulations, title 5, section 55752 addresses the "credit – no credit" grading option. California Code of Regulations, title 5, section 55758 addresses academic record symbols, including the use of "Withdrawal" and "Incomplete." Section 55758 will be addressed in more detail below.

²²⁶ Claimants' response to draft staff analysis, *supra*, p. 8.

probation” is a downstream activity of *offering* classes on a “credit-no credit” basis, which is a discretionary decision pursuant to section 55752.²²⁷ Therefore, under *Kern High School District*, subdivision (b) does not mandate any activity upon community colleges or districts.

In addition, the plain language of subdivision (c) authorizes community college districts to adopt standards for probation higher than those set forth by subdivisions (a) and (b); however, districts are not required to do so. Thus, the Commission finds that subdivision (a) of section 55754 of title 5 of the California Code of Regulations imposes the following state-mandated activity:

Place a student on academic probation when he/she has attempted at least 12 semester or 18 quarter units as shown by the official academic record and earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale. (Cal. Code Regs., tit. 5, § 55754, subd. (a).)

Removal from Probation (Cal. Code Regs., tit. 5, § 55755)

Section 55755 addresses the removal of students from probation. Pursuant to the plain language of section 55755, subdivision (a), community colleges are required to remove a student from academic probation when the student’s accumulated grade point average is 2.0 or higher.

Subdivision (b) provides that community colleges are required to remove a student from progress probation when the percentage of units for which “Withdrawal,” “Incomplete,” and “No Credit” entries have been recorded drops below 50 percent. However, as discussed with section 55754, districts are not required to offer courses on a “credit-no credit” basis or to use “Withdrawal” or “Incomplete” as academic record symbols. Thus, under *Kern High School Dist.*, subdivision (b) does not mandate any activities on community college districts.

Subdivision (c) requires community college districts to adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. In addition, subdivision (c) authorizes a community college district to establish standards higher than those specified in subdivisions (a) and (b), but the district is not required to do so.

For the reasons discussed above the Commission finds that subdivisions (a) and (c) of section 55755 of title 5 of the California Code of Regulations impose the state-mandated activities summarized below.

1. Remove a student from academic probation when the student’s accumulated grade point average is 2.0 or higher. (Cal. Code Regs., tit. 5, § 55755, subd. (a).)
2. Adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. (Cal. Code Regs., tit. 5, § 55755, subd. (c).)

Standards for Dismissal (Cal. Code Regs., tit. 5, § 55756)

Section 55756 addresses community college district standards for dismissal. Pursuant to the plain language of section 55756, subdivision (a), community colleges are required to make a student on academic probation subject to dismissal if the student earned a cumulative grade point average of less than 1.75 in all units attempted in each of three consecutive semesters or 5 quarters which were graded. Subdivision (b) provides that a student on progress probation is required to be subject to dismissal if the percentage of units in which the student has been enrolled for which entries of “Withdrawal,” “Incomplete,” and “No Credit” have been recorded for 3 consecutive semesters or 5 consecutive quarters reaches or exceeds 50 percent. However,

²²⁷ In the claimants’ response to draft staff analysis the claimants make the same argument in regard to California Code of Regulations, title 5, sections 55755, subdivision (b), and 55756, subdivision (b). The Commission’s response applies equally to these regulations.

for the same reasons discussed above, subdivision (b) of section 55756 does not impose any state-mandated activities. Subdivision (c) requires a community college district to adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. Subdivision (d) requires community college districts to adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal, and to file a copy of the rules with the Chancellor. As a result, the Commission finds that subdivisions (a), (c) and (d) of section 55756 of title 5 of the California Code of Regulations impose the following state-mandated activities:

1. Make a student subject to dismissal if the student is on academic probation and has earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters or 5 consecutive quarters which were graded on the basis of a grading scale. (Cal. Code Regs., tit. 5, § 55756, subd. (a).)
2. Adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. (Cal. Code Regs., tit. 5, § 55756, subd. (c).)
3. Adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal. (Cal. Code Regs., tit. 5, § 55756, subd. (d).)
4. File a copy of the rules setting forth the circumstances that warrant exceptions to the standards for dismissal with the Chancellor. (Cal. Code Regs., tit. 5, § 55756, subd. (d).)

Remedial Coursework Limit (Cal. Code Regs., tit. 5, § 55756.5)

Section 55756.5 addresses the remedial coursework limit of community colleges which, with exceptions,²²⁸ is set at 30 semester units or 45 quarter units. “Remedial course work” refers to precollegiate basic skills courses which are defined as those courses in reading, writing, computation, and English as a Second Language which are designated by the community college district as nondegree credit courses.²²⁹ Subdivision (b) of section 55756.5, provides:

A student’s need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to [subchapter] 6 (commencing with section 55500) of [chapter] 6 of this [division].

The plain language of subdivision (b) requires community college districts to use appropriate assessment instruments, methods, or procedures used pursuant to the regulations implementing the Seymour-Campbell Matriculation Act of 1986 (Cal. Code Regs., tit. 5, §§ 55500 – 55534). The “assessment instruments, methods, or procedures” used in the Seymour-Campbell Matriculation Act of 1986 include, but are not limited to: interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. As a result, pursuant to subdivision (b), community colleges are required to use these “assessment instruments, methods, or procedures” to determine a student’s need for remedial coursework.

²²⁸ See California Code of Regulations, title 5, section 55756.5, subdivision (c).

²²⁹ “Precollegiate basic skills courses” defined by California Code of Regulations, title 5, section 55502, subdivision (b).

In addition, subdivisions (b) and (e) of section 55756.5 require community colleges to dismiss and refer students that have exhausted the unit limitation to appropriate adult noncredit education services provided by college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement. Also, pursuant to subdivision (g) community college districts are required to submit, through the established Management Information System, information necessary to enable the Chancellor to determine: (1) the effect of section 55765.5 on students by sex, age, and ethnicity; and (2) the success rates for students enrolled in “remedial coursework.”

The claimants allege that subdivision (c) of section 55756.5 requires community college districts to track and ensure that students enrolled in English as a Second Language classes and those students identified by the districts as having a learning disability are exempted from the remedial coursework limit.²³⁰ However, the plain language of subdivision (c) does not require community college districts to *track* or *ensure* exemption of students that fit within these categories. Rather, the plain language of subdivision (c) only provides that students that fit within these categories are exempt. As a result, tracking or ensuring that students are exempt is not required by section 55756.5.

The claimants also allege that subdivision (d) of section 55756.5 requires:

... the governing board [of a community college district] to review and approve any locally developed standards which provide for a waiver of the limitation on remedial coursework with respect to any student, and for the standards to include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units²³¹

However, the plain language of subdivision (d) provides in relevant part that the “governing board of a district *may* provide a waiver of the limitation on remedial coursework”²³²

Subdivision (d) then sets forth requirements if the district decides to provide a waiver. As a result, any activities required under subdivision (d) are downstream activities of a district’s voluntary decision to provide a waiver to the remedial coursework limit, and therefore are not required by the section.

In addition, the claimants allege that subdivision (f) requires community college districts:

[t]o allow a student who has successfully completed all appropriate “remedial coursework,” or has demonstrated the level of skills which reasonably assures success in college-level courses, to request reinstatement to proceed with college-level coursework²³³

However, the plain language of subdivision (f) does not impose the activity of allowing a student to request reinstatement on a community college or district. Rather, subdivision (f) allows students to make a request for reinstatement to proceed with college-level courses if certain conditions are met. Subdivision (f) does not require any activities of community college districts. As a result, the Commission finds that subdivisions (b), (e) and (g) of section 55756.5 of title 5 of the California Code of Regulations impose the following state-mandated activities:

²³⁰ Test Claim 02-TC-31, p. 174.

²³¹ *Ibid.*

²³² Emphasis added.

²³³ Test Claim 02-TC-31, p. 174 – 175.

1. Determine a student’s need for remedial coursework using appropriate assessment instruments, methods, or procedures, including, but not limited to, interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test cores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. (Cal. Code Regs., tit. 5, § 55756.5, subd. (b).)
2. Dismiss and refer students that have exhausted the remedial coursework unit limitation to appropriate adult noncredit education services, provided by college, adult school, community-based organization, or other appropriate local provider which the district has an established referral agreement. (Cal. Code Regs., tit. 5, § 55756.5, subds. (b) and (e).)
3. Submit, through the established Management Information System, information necessary to enable the Chancellor to determine the effect of the California Code of Regulations, title 5, section 55756.5 on students by sex, age and ethnicity, and the success rates for students enrolled in “remedial coursework.” (Cal. Code Regs., tit. 5, §55756.5, subd. (g).)

Units Attempted (Cal. Code Regs., tit. 5, § 55757)

Section 55757 provides:

For the purposes of sections 55754 and 55756, “all units attempted” means all units of credit for which the student is enrolled in the current community college of attendance. The governing board of each district shall adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or “credit-no credit” or from which the student withdrew in accordance with rules adopted by the district governing board.

The first sentence of section 55757 defines “all units attempted” for purposes of sections 55754 and 55756. As discussed above, sections 55754 and 55756 address a community college district’s standards for probation and dismissal of students for academic reasons. Read in this context, the second sentence of section 55757 requires the governing board of a district to adopt rules and regulations governing the inclusion in or exclusion of units in which a student did not receive a grade or “credit-no credit” or from which the student withdrew when determining whether a student should be placed on probation or dismissed.

Although, as discussed above, community college districts are not required to offer courses on a “credit – no credit” basis, nor are they required to authorize the use of “Withdrawal” or “Incomplete” as academic record symbols,²³⁴ they are still required to adopt rules and regulations governing the inclusion or exclusion of units received on these bases. As a result, the Commission finds that California Code of Regulations, title 5, section 55757 imposes the following state-mandated activity:

Adopt rules and regulations governing the inclusion in or exclusion of units, for the purpose of determining whether to place a student on probation or dismissal,

²³⁴ California Code of Regulations, title 5, section 55752 addresses the “credit – no credit” grading option. California Code of Regulations, title 5, section 55758 addresses academic record symbols, including the use of “Withdrawal” and “Incomplete.” Section 55758 will be addressed in more detail below.

in which a student did not receive a grade or “credit-no credit” or from which the student withdrew in accordance with rules adopted by the district governing board. (Cal. Code Regs., tit. 5, § 55757.)

Academic Record Symbols and Grade Point Average (Cal. Code Regs., tit. 5, § 55758)

Section 55758 addresses the academic record symbols and grade point average used by community college districts. Subdivision (a) of section 55758 provides in relevant part:

Grades from a grading scale shall be averaged on the basis of the point equivalencies to determine a student’s grade point average using only the following evaluative symbols ...

Subdivision (a) then sets forth the evaluative symbols “A” through “F” with the grade point equivalencies of “4” through “0” respectively. Subdivision (d) requires the governing board of each community college district to publish in the catalogs of community colleges the point equivalencies for the grades in the grading scale used in section 55758, subdivision (a), as part of its grading practices. Subdivisions (b), (c), and (e), authorize the governing board of community college districts to use “plus,” “minus,” “FW” designations, and nonevaluative symbols.

The plain language of section 55758 imposes a state mandate on community college districts to determine a student’s grade point average using grades from the grading scale set forth in subdivision (a). In addition, subdivision (d) requires community college districts to publish in the catalogs of community colleges the point equivalencies for the grades in the grading scale used in section 55758, subdivision (a). However, pursuant to the plain language of the section 55758 and interpreting the regulatory scheme as a whole, the inclusion of the academic record symbols “CR” and “NC” are not required to be published pursuant to section 55758, subdivision (d). Subdivision (d) provides that a district “shall publish the *point equivalencies* for the *grades* used in [subdivision] (a) ... in the catalog.”²³⁵ As set forth in subdivision (a), the symbols “CR” and “NC” do not have corresponding point equivalencies. In fact, it is noted in subdivision (a) that units awarded a “CR” or “NC” are not to be counted in a student’s grade point average. In addition, as discussed above in the section regarding section 55752, community college districts are not required to offer courses on a “credit – no credit” (“CR” – “NC”) basis. As a result, the inclusion of “CR” or “NC” in the published grading scale is not required by subdivision (d) of section 55758.

In addition, section 55758 authorizes, but does not require, the governing board of a community college district to use “plus”, “minuses”, “FW” designations, and nonevaluative symbols. The plain language of section 55758 provides that “plus”, “minus”, and “FW” designations, and nonevaluative symbols need to be published *if* they are used. As a result, the Commission finds community college districts are not mandated by the state to publish as part of their grading practices “plus”, “minuses”, “FW” designations, and nonevaluative symbols in their catalogs.

Thus, the Commission finds that only California Code Regulations, title 5, section 55758, subdivisions (a) and (d) impose state-mandated activities, which are summarized below.

1. Determine a student’s grade point average using the grades from a grading scale and the corresponding point equivalencies set forth in California Code of Regulations, title 5, section 55758, subdivision (a). (Cal. Code Regs., tit. 5, § 55758, subd. (a).)
2. Publish the point equivalencies for the grades used in California Code Regulations, title 5, section 55758, subdivision (a), in the catalog or catalogs of the community college

²³⁵ Emphasis added.

district as part of its grading practices. “Point equivalencies for the grades” that are to be published excludes the symbols for credit (CR) and no credit (NC). (Cal. Code Regs., tit. 5, § 55758, subd. (d).)

Grade Point Average Calculation (Cal. Cod Regs., tit. 5 § 55758.5)

Section 55758.5 addresses the calculation of a student’s degree applicable grade point averages. Section 55758.5 provides in relevant part, “In calculating students’ degree applicable grade point averages, grades earned in nondegree credit courses shall not be included.” The claimants assert that community college districts are required “[t]o ensure that grades earned in nondegree credit courses are not included in calculating students’ degree applicable grade point averages.” Additionally, the claimants argue that:

The Section 55758.5 activity in which the districts must ‘engage’ is the calculation of the grade point average, which must exclude noncredit courses. To implement the calculation, the noncredit grade must be affirmatively removed thus creating an activity in which the districts must ‘engage.’ The noncredit grading ratings have the same regulatory standing in Section 55758, subdivision (a), as A-F ratings.^{236 237}

The claimants seek to imply an activity into section 55758.5. However, the plain language of section 55758.5 does not impose any activities on community college districts; rather it prohibits a community college district from engaging in an activity. Specifically, community college districts are prohibited from including grades earned in nondegree credit courses when calculating a student’s degree applicable grade point average. The plain language of section 55758.5 does not require the calculation of the grade point average and then to affirmatively remove nondegree credit courses. Thus, the Commission finds that California Code of Regulations, title 5, section 55758.5 does not impose any state-mandated activities.

Notification of Probation and Dismissal (Cal. Code Regs., tit. 5, § 55759)

Section 55759 addresses the notification of students of academic probation and dismissal. Section 55759 requires each community college to make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter in which it will take effect, but no later than the start of the fall semester or quarter. Each community college must also make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. In addition, section 55759 requires the policies and procedures regarding probation and dismissal to be published in the college catalog. In addition, each community college shall make a reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties.

Thus, the Commission finds that California Code of Regulations, title 5, section 55759 imposes the following state-mandated activities:

²³⁶ Claimants’ response to draft staff analysis, *supra*, p. 8.

²³⁷ It is necessary to note that there is a distinction between “credit-no credit” courses and “nondegree credit” courses. Nondegree credit courses are course for which a student receives course credit, but the credit is not applicable toward a degree. A credit-no credit course is a course in which a student either receives credit or no credit upon completion of the course. Thus, this section of the analysis does not involve “credit-no credit” courses, which community college districts are not required to offer as discussed above.

1. Make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. (Cal. Code Regs., tit. 5, § 55759.)
2. Publish the policies and procedures regarding probation and dismissal in the college catalog. (Cal. Code Regs., tit. 5, § 55759.)
3. Make reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. (Cal. Code Regs., tit. 5, § 55759.)

Grade Changes and Course Repetition (Cal. Code Regs., tit. 5, §§ 55760, 55761, and 55762)

Sections 55760, 55761, and 55762 address grade changes, the district policy for course repetition, and the requirements when adopting regulations to implement the policy.

Section 55760, subdivision (a), provides that the instructor of a course shall determine the grade to be awarded to each student in any course of instruction for which grades are awarded. In addition, subdivision (a) requires districts to include expunging incorrect grades from the record in the procedures for the correction of grades given in error. Subdivision (b) provides that the governing board of a district must adopt and publish procedures and regulations in accordance with sections 55761 and 55762, which pertain to the repetition of courses for which substandard work has been recorded. In addition, subdivision (b) requires appropriate annotations to be made in a student's permanent academic record when grade changes are made in accordance to sections 55761 and 55762.

Section 55761 requires the governing board of a community college district to adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. Section 55761 also provides that the procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages.

Section 55762 sets forth rules pertaining to the adoption and publishing of policies and procedures or regulations that permit the repetition of courses. Section 55762, subdivision (a), prohibits a community college district from adopting regulations or procedures that conflict with existing law pertaining to the finality of grades assigned by instructors, and the retention and destruction of records. Subdivision (b) provides that the governing board of a community college district may permit repetition of any course which was taken at an accredited college or university and for which substandard work has been recorded. Subdivision (c) provides that when the governing board of a community college district permits course repetition, the governing board must indicate any specific courses or categories of courses which are exempt from course repetition. Subdivision (d) provides that courses that are repeated must be clearly indicated on the student's permanent academic record. Subdivision (e) provides that when course repetition is allowed, specific procedures must be published to implement section 55762. Subdivision (g) provides that the governing board must maintain a careful record of actions taken under course repetition procedures or regulations.

Although sections 55760 and 55761 require the adoption and publication of procedures and regulations pertaining to the repetition of courses for which substandard work has been recorded, community college districts are not required to allow such repetition. Section 55761 provides in relevant part, "The procedures or regulations *may* allow [courses for which substandard work has been recorded] to be repeated and the previous grade and credit to be disregarded" ²³⁸ In

²³⁸ Emphasis added.

addition, the language throughout section 55762 indicates the voluntary nature of allowing course repetition for which substandard work has been recorded.²³⁹ Similar to the analysis in section 55753 regarding the adoption of “procedures,” the activity of adopting and publishing procedures (defined as a way of performing or effecting something) for the repetition of courses for which substandard work has been recorded is unnecessary if a community college district chooses not to offer repetition of courses. As a result, pursuant to *Kern High School Dist.* the adoption and publication of *procedures* pertaining to the repetition of courses is not a state-mandated activity. In addition, the activities set forth in section 55762 are also downstream activities resulting from a community college district’s decision to offer repetition of courses, and not a result of a state mandate.

As distinguished from the activity of adopting *procedures*, adopting and publishing *regulations* regarding the repetition of courses for which substandard work has been recorded is not dependent on actually offering the repetition of courses. Thus, the Commission finds that California Code of Regulations, title 5, sections 55760 and 55761 impose the following state-mandated activities:

1. The instructor of the course is to determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”). (Cal. Code Regs., tit. 5, § 55760, subd. (a).)
2. Include in the procedures for the correction of grades given in error the expunging of the incorrect grade from the record. (Cal. Code Regs., tit. 5, § 55760, subd. (a).)
3. Adopt and publish regulations for repeating courses in which substandard work has been recorded. (Cal. Code Regs., tit. 5, §§ 55760, subd. (b), and 55761.)

Academic Renewal without Course Repetition (Cal. Code Regs., tit. 5, §§ 55764 and 55765)

Sections 55764 and 55765 address a community college district’s policy regarding academic renewal without course repetition and the requirements when adopting procedures or regulations to implement the policy.

Section 55764 requires the district of a community college to adopt and publish procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance that is not reflective of a student’s demonstrated ability. The procedures or regulations must include a clear statement of the educational principles upon which they are based, and must be referred to as academic renewal regulations. When procedures or regulations permit recorded substandard course work to be disregarded in the computation of grade point averages, the permanent academic record shall be annotated so that all work remains legible.

Section 55765, subdivision (a), prohibits a community college district from adopting regulations or procedures that conflict with existing law pertaining to the finality of grades assigned by instructors, and the retention and destruction of records. Subdivision (b) provides that when adopted procedures or regulations permit the alleviation of previously recorded substandard performance that is not reflective of a student’s demonstrated ability, the governing board of a community college district must state: (1) the amount of coursework that may be alleviated, (2) the amount of academic work to have been completed at a satisfactory level subsequent to the coursework to be alleviated, (3) the length of time that is to elapse since the substandard coursework was recorded, and (4) any courses exempt from academic renewal. Subdivision (c) provides that when alleviation is permitted, the governing board must publish specific

²³⁹ See California Code of Regulations, title 5, section 55762, subdivisions (b), (c), and (e).

procedures to be followed in implementing the procedures or regulations adopted pursuant to section 55765 and 55764 that allow alleviation. These implementing procedures must state, at a minimum, the procedures to be followed by students petitioning for alleviation, and the officers or personnel responsible for implementing the procedures or regulations.

Although section 55764 requires the adoption and publication of procedures or regulations pertaining to the alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability, community college districts are not required to allow alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability. For the same reasons discussed in the analysis of section 55753, the adoption and publication of *procedures* is a downstream activity triggered by a community college district's decision to offer alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability. Similarly, the activities set forth in section 55765 are also downstream activities resulting from a community college district's decision to offer alleviation of previously recorded substandard academic performance, and not a result of a state mandate.

However, for the same reasons as discussed in the analysis of section 55753, adopting and publishing *regulations* regarding the alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability is not dependent on offering alleviation of previously recorded substandard academic performance. Thus, the Commission finds that California Code of Regulations, title 5, section 55764, imposes the following state-mandated activity:

Adopt and publish regulations for alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability. (Cal. Code Regs., tit. 5, § 55764.)

(i) Summary of state-mandated activities

In summary, the Commission finds that California Code of Regulations, title 5, subchapter 9, sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764, impose the following state-mandated activities:

1. Adopt regulations consistent with the subchapter regarding standards of scholarship consisting of California Code of Regulations, title 5, section 55750 – 55765.²⁴⁰ (Ed. Code, § 70902, subd. (b)(3) and Cal. Code Regs., tit. 5, § 55750.)
2. Publish the regulations consistent with the subchapter regarding standards of scholarship in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55750.)
3. File a copy of the community college district's regulations regarding standards of scholarship, and any amendments of the regulations, with the Chancellor. (Cal. Code Regs., tit. 5, § 55750.)
4. Determine a uniform grading practice for the district based on sound academic principles. (Cal. Code Regs., tit. 5, § 55751.)
5. Conform the uniform grading practices to the standard that work in all courses acceptable in the fulfillment of the requirements for an associate or baccalaureate degree, a

²⁴⁰ The language of California Code of Regulations, title 5, section 55750 provides, "... consistent with this chapter." However, see discussion regarding the Nomenclature Cross Reference in the "Minimum Conditions Entitling Community College Districts to State Aid" section above.

certificate, diploma or license is graded in accordance with a grading scale adopted by the governing board consistent with section 55758, and sections 55752 (Credit-No Credit Options) or 55753 (Credit by Examination). (Cal. Code Regs., tit. 5, § 55751, subs. (a) and (b).)

6. Adopt and publish regulations pertaining to credit by examination in accordance with the provisions of Subchapter 9 “Standards of Scholarship” (Cal. Code Regs., tit. 5, § 55750 et seq.). (Cal. Code Regs., tit. 5, § 55753, subd. (a).)
7. Place a student on academic probation when he/she has attempted at least 12 semester or 18 quarter units as shown by the official academic record and earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale. (Cal. Code Regs., tit. 5, § 55754, subd. (a).)
8. Remove a student from academic probation when the student’s accumulated grade point average is 2.0 or higher. (Cal. Code Regs., tit. 5, § 55755, subd. (a).)
9. Adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. (Cal. Code Regs., tit. 5, § 55755, subd. (c).)
10. Make a student subject to dismissal if the student is on academic probation and has earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters or 5 consecutive quarters which were graded on the basis of a grading scale. (Cal. Code Regs., tit. 5, § 55756, subd. (a).)
11. Adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. (Cal. Code Regs., tit. 5, § 55756, subd. (c).)
12. Adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal. (Cal. Code Regs., tit. 5, § 55756, subd. (d).)
13. File a copy of the rules setting forth the circumstances that warrant exceptions to the standards for dismissal with the Chancellor. (Cal. Code Regs., tit. 5, § 55756, subd. (d).)
14. Determine a student’s need for remedial coursework using appropriate assessment instruments, methods, or procedures, including, but not limited to, interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test cores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. (Cal. Code Regs., tit. 5, § 55756.5, subd. (b).)
15. Dismiss and refer students that have exhausted the remedial coursework unit limitation to appropriate adult noncredit education services, provided by college, adult school, community-based organization, or other appropriate local provider which the district has an established referral agreement. (Cal. Code Regs., tit. 5, § 55756.5, subs. (b) and (e).)
16. Submit, through the established Management Information System, information necessary to enable the Chancellor to determine the effect of the California Code of Regulations, title 5, section 55756.5, on students by sex, age, and ethnicity, and the success rates for students enrolled in “remedial coursework.” (Cal. Code Regs., tit. 5, § 55756.5, subd. (g).)
17. Adopt rules and regulations governing the inclusion in or exclusion of units, for the purpose of determining whether to place a student on probation or dismissal, in which a

student did not receive a grade or “credit-no credit” or from which the student withdrew in accordance with rules adopted by the district governing board. (Cal. Code Regs., tit. 5, § 55757.)

18. Determine a student’s grade point average using the grades from a grading scale and the corresponding point equivalencies set forth in California Code of Regulations, title 5, section 55758, subdivision (a). (Cal. Code Regs., tit. 5, § 55758, subd. (a).)
19. Publish the point equivalencies for the grades used in California Code Regulations, title 5, section 55758, subdivision (a), in the catalog or catalogs of the community college district as part of its grading practices. “Point equivalencies for the grades” that are to be published excludes the symbols for credit (CR) and no credit (NC). (Cal. Code Regs., tit. 5, § 55758, subd. (d).)
20. Make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter which it will take effect, but no later than the start of the fall semester or quarter. (Cal. Code Regs., tit. 5, § 55759.)
21. Make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. (Cal. Code Regs., tit. 5, § 55759.)
22. Publish the policies and procedures regarding probation and dismissal in the college catalog. (Cal. Code Regs., tit. 5, § 55759.)
23. Make reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. (Cal. Code Regs., tit. 5, § 55759.)
24. The instructor of the course is to determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”). (Cal. Code Regs., tit. 5, § 55760, subd. (a).)
25. Include in the procedures for the correction of grades given in error the expunging of the incorrect grade from the record. (Cal. Code Regs., tit. 5, § 55760, subd. (a).)
26. Adopt and publish regulations for repeating courses in which substandard work has been recorded. (Cal. Code Regs., tit. 5, §§ 55760, subd. (b), and 55761.)
27. Adopt and publish regulations for alleviation of previously recorded substandard academic performance that is not reflective of a student’s demonstrated ability. (Cal. Code Regs., tit. 5, § 55764.)
 - b. Education Code section 70902, subdivision (b)(3), and California Code of Regulations, title 5, sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764 constitute a new program or higher level of service

To constitute a “new program or higher level of service” the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement a state policy.²⁴¹ In addition, the requirements must be new in comparison with the pre-existing

²⁴¹ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

scheme and must be intended to provide an enhanced service to the public.²⁴² To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.²⁴³

As discussed and summarized above, the activities required by Education Code section 70902, subdivision (b)(3), and title 5 sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764 include, but are not limited to, activities related to the grading practices, academic probation and dismissal, and remedial coursework. The activities required by these sections carry out the governmental function of providing education. As the court held in *Long Beach Unified School Dist.*, a case involving a kindergarten through 12th grade (K-12) school district, “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function.”²⁴⁴ Despite the distinct differences between postsecondary education and K-12 education, namely that postsecondary education is not compulsory or a fundamental right,²⁴⁵ education remains a peculiarly governmental function. The Legislature has acknowledged postsecondary education as a governmental function of providing service to the public with the enactment of the Donahoe Higher Education Act. The Donahoe Higher Education Act sets forth the system of postsecondary education including community colleges, state colleges, and the University of California. Education Code section 66002, which sets forth the legislative findings of the Donahoe Higher Education Act, provides:

California must support an educational system which prepares all Californians for responsible citizenship and meaningful careers in a multicultural society; this requires a commitment from all to make quality education available and affordable for every Californian.²⁴⁶

The legislative findings indicate the need for state government to support a higher educational system for a public purpose. Thus, education, whether provided in K-12 or community college districts, provides a service to the public and therefore is a peculiarly governmental function. As a result, the activities mandated by Education Code section 70902, subdivision (b)(3), and title 5 sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764 carry out a governmental function and constitute a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The following discussion will address whether these sections constitute new programs or higher levels of service by looking at the legal requirements in effect immediately prior to the enactment of the sections.

Remedial Coursework Limit (Cal. Code Regs., tit. 5, § 55756.5)

Section 55756.5 mandates community college districts to engage in the following activities:

1. Determine a student’s need for remedial coursework using appropriate assessment instruments, methods, or procedures, including, but not limited to, interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career

²⁴² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁴³ *Ibid.*

²⁴⁴ *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d at 172.

²⁴⁵ *Gurfinkel v. Los Angeles Community College Dist.* (1981) 121 Cal.App.3d 1, 5-7.

²⁴⁶ Education Code section 66002, subdivision (e)(3).

aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test scores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. (Cal. Code Regs., tit. 5, § 55756.5, subd. (b) (Register 91, No. 23).)

2. Dismiss and refer students that have exhausted the remedial coursework unit limitation to appropriate adult noncredit education services, provided by college, adult school, community-based organization, or other appropriate local provider which the district has an established referral agreement. (Cal. Code Regs., tit. 5, § 55756.5, subds. (b) and (e) (Register 91, No. 23).)
3. Submit, through the established Management Information System, information necessary to enable the Chancellor to determine the effect of the California Code of Regulations, title 5, section 55756.5, on students by sex, age, and ethnicity, and the success rates for students enrolled in “remedial coursework.” (Cal. Code Regs., tit. 5, § 55756.5, subd. (g) (Register 91, No. 23).)

The claimants have pled section 55756.5 of title 5 of the California Code of Regulations, as added in 1990.²⁴⁷ Prior to the adoption of section 55756.5, community colleges were not required to engage in the activities required by section 55756.5, and as a result, the activities are new as compared to pre-existing legal requirements. As a result, the Commission finds that the above activities mandated by section 55756.5 of title 5 of the California Code of Regulations constitute a “new program or higher level of service” subject to article XIII B, section 6 of the California Constitution. In 2007, section 55756.5 was renumbered to California Code of Regulations, title 5, section 55035; however, the state-mandated “new program or higher level of service” found above continued after the 2007 amendment.²⁴⁸

Standards of Scholarship (Ed. Code, § 70902, subd. (b)(3), and Cal. Code Regs., tit. 5, § 55750, 55751, 55753, 55754, 55755, 55756, 55757, 55758, 55759, 55760, 55761, and 55764)

The claimants have Education Code section 70902, subdivision (b)(3) as added in 1988,²⁴⁹ and title 5 sections 55750, 55751, 55754, 55755, 55756, 55757, 55759, 55760, 55761, and 55764 of title 5 of the California Code of Regulations, as added in 1983 and last amended in 1991.²⁵⁰ In addition, the claimants have pled title 5, section 55753, as added in 1983 and last amended in 2002, and title 5, section 55758, as added in 1983 and last amended in 2001.²⁵¹ The activities mandated by Education Code section 70902, subdivision (b)(3), and the title 5 sections are derived from former Education Code section 72285 and title 5 regulations existing prior to

²⁴⁷ Test Claim 02-TC-31, p. 16 – 17. This date coincides with Register 91, number 23.

²⁴⁸ California Code of Regulations, title 5, section 55035 (Register 2007, No. 35 (Aug. 16, 2007).)

²⁴⁹ Test Claim 02-TC-31, p. 9. The claimants cite to Statutes 1988, chapter 973.

²⁵⁰ Test Claim 02-TC-31, p. 13, 15-19. These dates coincide with Register 83, number 29; and Register 91, number 23.

²⁵¹ Test Claim 02-TC-31, p. 14 and 17. These dates coincide with Register 83, number 29; Register 2000, number 50 (operative Jan. 1, 2001); and Register 2002, number 8;

1983.²⁵² However, former Education Code section 72285 was enacted in 1976 as part of a statutory scheme that the Legislature declared:

[S]hall be construed as an expression of the policy of the Legislature with regard to the functions of the above-mentioned boards [(including district governing boards)], but shall not be construed as an enactment of specific legal provisions. Nothing contained in this article shall supplant existing law.²⁵³

Thus, the requirement imposed by Education Code section 70902, subdivision (b)(3), is new as compared to the preexisting statutory scheme.

The former title 5 sections were all part of former “Division 2” of the title 5 regulations, the provisions of which:

[C]omprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.²⁵⁴

Thus, the former title 5 regulations which contain the same requirements as the regulations pled in this section of the analysis did not impose state-mandated activities prior to 1983 for the same reasons that the regulations pled in the “Minimum Conditions” section of this analysis did not impose state-mandated activities. Specifically, the requirements of the former title 5 regulations are downstream activities triggered by the discretionary decision to become *entitled to receive state aid*. As a result, immediately prior to the adoption of title 5, sections 55750, 55751, 55754, 55755, 55756, 55757, 55759, 55760, 55761, and 55764, community college districts were not required to engage in the activities mandated by the sections.

²⁵² Title 5, section 55750, addressing the adoption of regulations, was derived from former title 5, section 51300, added in 1971 by Register 71, number 27. Title 5, section 55751, addressing grading practices, was derived from former title 5, section 51301, as amended in 1977 by Register 77, number 45. Title 5, section 55753, addressing credit by examination, was derived from former title 5, section 51302.5, as amended in 1980 by Register 80, number 11. Title 5, section 55754, addressing standards for probation, was derived from former title 5, section 51303, as added in 1971 by Register 71, number 27. Title 5, section 55755, addressing removal from probation, was derived from former title 5, section 51303.5, as added in 1980 by Register 80, number 19. Title 5, section 55756, addressing standards for dismissal, was derived from former title 5, section 51304, as added in 1971 by Register 71, number 27. Title 5, section 55757, addressing units attempted, was derived from former title 5, section 51305, as added in 1971 by Register 71, number 27. Title 5, section 55758, addressing academic record symbols and grade point average, was derived from former title 5, section 51306, as added in 1971 by Register 71, number 27. Title 5, section 55759, addressing notification of probation and dismissal, was derived from former title 5, sections 51503 and 51507, as 1970 and 1971 by Registers 70 and 71, numbers 16 and 27. Title 5, sections 55760 and 55761, addressing grade changes and course repetition, were derived from former title 5, sections 51308 and 51315, as amended in 1977 and 1980 by Registers 80 and 77, numbers 11 and 46. Title 5, section 55764, addressing academic renewal without course repetition, was derived from former title 5, section 51318, as amended in 1977 by Register 77, number 18.

²⁵³ Former Education Code section 72280, as added by Statutes 1976, chapter 1010, referring to Article 3 containing former Education Code section 72285.

²⁵⁴ Former California Code of Regulations, title 5, section 51000 (Register 80, number 11).

Pursuant to the above discussion, the Commission finds that Education Code section 70902, subdivision (b)(3) and the title 5 sections constitute a “new program or higher level of service” subject to article XIII B, section 6 of the California Constitution. In 2007, the title 5 regulations pled in this section of the test claim analysis were repealed and renumbered to title 5, section 55020 et seq.; however, the state-mandated new program or higher level of service found above continued after the 2007 amendment.²⁵⁵

(i) Summary of state-mandated new program or higher level of service

Pursuant to the above discussion, the Commission finds that Education Code section 70902, subdivision (b)(3), and California Code of Regulations, title 5, sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764 mandate new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution. Specifically, California Code of Regulations, title 5, sections 55750, 55751, 55753, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, and 55764 mandate the following new program or higher level of service:

1. Adopt regulations consistent with the subchapter regarding standards of scholarship consisting of California Code of Regulations, title 5, section 55750 – 55765.²⁵⁶ (Ed. Code, § 70901, subd. (b)(3) (Stats. 1988, ch. 973); Cal. Code Regs., tit. 5, § 55750 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55020 (Register 2007, No. 35).)
2. Publish the regulations consistent with the subchapter regarding standards of scholarship in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55750 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55020 (Register 2007, No. 35).)
3. File a copy of the community college district’s regulations regarding standards of scholarship, and any amendments of the regulations, with the Chancellor. (Cal. Code Regs., tit. 5, § 55750 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55020 (Register 2007, No. 35).)
4. Determine a uniform grading practice for the district based on sound academic principles. (Cal. Code Regs., tit. 5, § 55751 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55021, subd. (a) (Register 2007, No. 35).)
5. Conform the uniform grading practices to the standard that work in all courses acceptable in the fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license is graded in accordance with a grading scale adopted by the governing board consistent with section 55758, and sections 55752 (Credit-No Credit Options) or 55753 (Credit by Examination). (Cal. Code Regs., tit. 5, § 55751, subds. (a) and (b) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55021, subd. (c) (Register 2007, No. 35).)
6. Adopt and publish regulations pertaining to credit by examination in accordance with the provisions of Subchapter 9 “Standards of Scholarship” (Cal. Code Regs., tit. 5, § 55750

²⁵⁵ Register 2007, number 35, operative August 16, 2007.

²⁵⁶ The language of California Code of Regulations, title 5, section 55750 provides, “... consistent with this chapter.” However, see discussion regarding the Nomenclature Cross Reference in the “Minimum Conditions Entitling Community College Districts to State Aid” section above.

- et seq.). (Cal. Code Regs., tit. 5, § 55753, subd. (a) (Register 2002, No. 8); for current requirement see Cal. Code Regs., tit. 5, § 55050, subd. (a) (Register 2007, No. 35).)
7. Place a student on academic probation when he/she has attempted at least 12 semester or 18 quarter units as shown by the official academic record and earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale. (Cal. Code Regs., tit. 5, § 55754, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55031, subd. (a) (Register 2007, No. 35).)
 8. Remove a student from academic probation when the student's accumulated grade point average is 2.0 or higher. (Cal. Code Regs., tit. 5, § 55755, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55032, subd. (a) (Register 2007, No. 35).)
 9. Adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. (Cal. Code Regs., tit. 5, § 55755, subd. (c) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55032, subd. (c) (Register 2007, No. 35).)
 10. Make a student subject to dismissal if the student is on academic probation and has earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters or 5 consecutive quarters which were graded on the basis of a grading scale. (Cal. Code Regs., tit. 5, § 55756, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55033, subd. (a) (Register 2007, No. 35).)
 11. Adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. (Cal. Code Regs., tit. 5, § 55756, subd. (c) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55033, subd. (c) (Register 2007, No. 35).)
 12. Adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal. (Cal. Code Regs., tit. 5, § 55756, subd. (d) (Register 91, No. 23) ending August 16, 2007.)
 13. File a copy of the rules setting forth the circumstances that warrant exceptions to the standards for dismissal with the Chancellor. (Cal. Code Regs., tit. 5, § 55756, subd. (d) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55033, subd. (d) (Register 2007, No. 35).)
 14. Determine a student's need for remedial coursework using appropriate assessment instruments, methods, or procedures, including, but not limited to, interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test cores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. (Cal. Code Regs., tit. 5, § 55756.5, subd. (b) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55035, subd. (a) (Register 2007, No. 35).)
 15. Dismiss and refer students that have exhausted the remedial coursework unit limitation to appropriate adult noncredit education services, provided by college, adult school, community-based organization, or other appropriate local provider which the district has

an established referral agreement. (Cal. Code Regs., tit. 5, § 55756.5, subs. (b) and (e) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55035, subd. (a) and (e) (Register 2007, No. 35).)

16. Submit, through the established Management Information System, information necessary to enable the Chancellor to determine the effect of the California Code of Regulations, title 5, section 55756.5, on students by sex, age, and ethnicity, and the success rates for students enrolled in “remedial coursework.” (Cal. Code Regs., tit. 5, § 55756.5, subd. (g) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55035, subd. (g) (Register 2007, No. 35).)
17. Adopt rules and regulations governing the inclusion in or exclusion of units, for the purpose of determining whether to place a student on probation or dismissal, in which a student did not receive a grade or “credit-no credit” or from which the student withdrew in accordance with rules adopted by the district governing board. (Cal. Code Regs., tit. 5, § 55757 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55030, subd. (a) (Register 2007, No. 35).)
18. Determine a student’s grade point average using the grades from a grading scale and the corresponding point equivalencies set forth in California Code of Regulations, title 5, section 55758, subdivision (a). (Cal. Code Regs., tit. 5, § 55758, subd. (a) (Register 2000, No. 50); for current requirement see Cal. Code Regs., tit. 5, § 55023, subd. (a) (Register 2007, No. 35).)
19. Publish the point equivalencies for the grades used in California Code Regulations, title 5, section 55758, subdivision (a), in the catalog or catalogs of the community college district as part of its grading practices. “Point equivalencies for the grades” that are to be published excludes the symbols for credit (CR) and no credit (NC). (Cal. Code Regs., tit. 5, § 55758, subd. (d) (Register 2000, No. 50); for current requirement see Cal. Code Regs., tit. 5, § 55023, subd. (d) (Register 2007, No. 35).)
20. Make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter which it will take effect, but no later than the start of the fall semester or quarter. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
21. Make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
22. Publish the policies and procedures regarding probation and dismissal in the college catalog. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
23. Make reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
24. The instructor of the course is to determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”). (Cal. Code Regs., tit. 5, § 55760,

subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025, subd. (a) (Register 2007, No. 35).)

25. Include in the procedures for the correction of grades given in error the expunging of the incorrect grade from the record. (Cal. Code Regs., tit. 5, § 55760, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025, subd. (d) (Register 2007, No. 35).)
26. Adopt and publish regulations for repeating courses in which substandard work has been recorded. (Cal. Code Regs., tit. 5, §§ 55760, subd. (b); and 55761 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, §§ 55040, subd. (a), and 55042, subd. (a) (Register 2007, No. 35).)
27. Adopt and publish regulations for alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability. (Cal. Code Regs., tit. 5, § 55764 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55046, subd. (a) (Register 2007, No. 35).)

(11) Curriculum (Ed. Code, § 70902, subd. (b)(2), and Cal. Code Regs., tit. 5, §§ 55000-55002.5, 55004-55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200-55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320-55322, 55340, and 55350; and “Program and Course Approval Handbook,” Chancellor’s Office California Community Colleges (September 2001))

The “Curriculum” section of the the Commission analysis addresses Education Code section 70902, subdivision (b)(2), and 33 title 5 regulations and the 135-page “Program and Course Approval Handbook” (Handbook) addressing the requirements and procedures for securing approval of courses and programs proposed by community colleges or community college districts. The process for course approval begins with a recommendation for approval by the community college curriculum or district curriculum committee to the district governing board. The recommended course then needs approval by the district governing board, followed by the approval of the Chancellor.

As discussed throughout this analysis, community college districts have broad discretion over the governance of community colleges. This discretion extends to the courses and programs the community colleges offer. However, as provided in statute, the primary mission of community college districts is to provide academic and vocational instruction.²⁵⁷ In addition, community college districts by definition are degree-granting institutions.²⁵⁸ Thus, although community college districts maintain discretion in the curriculum the districts’ offer, districts at a minimum must offer some courses, and as a result, districts must comply with the regulations and procedures necessary to offer courses.

²⁵⁷ Education Code section 66010.4.

²⁵⁸ California Code of Regulations, title 5, section 55180, subdivision (a) (Register 2008, No. 25).

- a. Education Code section 70902, subdivision (b)(2), and California Code of Regulations, title 5, sections 55001, 55002, 55004, 55005, and 55006, and the “Program and Course Approval Handbook,” Chancellor’s Office California Community Colleges (September 2001) impose state-mandated activities.

Definition of Terms and Content of Social Science Courses (Cal. Code Regs., tit. 5, §§ 55000, 55000.5, 55002.5, and 55004)

Title 5, section 55000, defines specified terms as used in the title 5 regulations addressing “Curriculum and Instruction.”²⁵⁹ Title 5, section 55000.5, imposes a requirement on the Chancellor’s Office to issue and maintain a handbook containing course approval criteria and procedures for securing course and program approval.²⁶⁰ Title 5, section 55002.5, defines a “credit hour,” and authorizes variances from the definition in the event that a term is more or less than 16 weeks. Title 5, section 55004, describes the content that courses of instruction in social sciences are required to include.

Title 5, sections 55000, 55000.5, and 55002.5, do not impose any activities on community college districts. Rather, these sections define terms and impose activities on the Chancellor’s Office. The claimants allege that districts, “are required to use these definitions in the course adoption and implementation process.”²⁶¹ Although, the terms defined in sections 55000, 55000.5, and 55002.5, may be needed to understand the scope of any mandated activities imposed by the regulations pled by the claimants, these sections do not, in and of themselves, impose any activities on the claimants. However, to the extent that any state-mandated activity contains a term defined by these sections, these definitions must be used to define those terms.

Title 5, section 55004, requires community college districts to engage in the following activity:

Include in social science courses a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States. (Cal. Code Regs., tit. 5, § 55004 (Register 91, No. 23).)

Recommendation and Approval of Proposed Courses at the Community College/Community College District Level (Cal. Code Regs., tit. 5, §§ 55001, 55002, 55005, and 55006)

Title 5, sections 55001, 55002, 55005, and 55006, address the standards and criteria for receiving district approval for proposed courses, the publication of information regarding the classes offered, and the reporting and record keeping requirements for courses offered.

Title 5, section 55002, sets forth the standards and criteria that proposed courses must meet in order to be recommended and approved as associate degree credit courses, nondegree credit courses, noncredit courses, and community service classes. In addition, section 55002 requires that a college or district curriculum committee be established by the mutual agreement of the college or district administration and the academic senate. Title 5, section 55001, outlines and

²⁵⁹ California Code of Regulations, title 5, section 55000, defines the terms “course,” “educational program,” and “class.”

²⁶⁰ The 2001 version of the handbook issued by the Chancellor’s Office, titled “Program and Course Approval Handbook,” has been pled by the claimants as an executive order imposing state-mandated activities.

²⁶¹ Claimants’ response to draft staff analysis, *supra*, p. 16.

describes the types of educational programs that community colleges are authorized to provide. Specifically, section 55001 describes the type of courses that fall within the realm of “instructional services” and “community services.” In addition, title 5, section 55001, requires community college districts to report the classification of all courses, classes, and activities offered by the district to the Chancellor’s Office. Title 5, section 55005, requires community colleges to publish the following course information for students: (1) whether the course is offered as a credit or noncredit course, or a community service class; (2) whether it is transferable to a four-year college or university; (3) whether the course fulfills a major or general education requirement; and (4) whether the course is offered on the basis of credit-no credit. Title 5, section 55006, requires community college districts to keep and submit records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities.

In order to determine if an activity is mandated by the state it is necessary to look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.²⁶² For many of the activities required by the title 5 regulations at issue here the underlying program is the offering of courses as associate degree credit courses, nondegree credit courses, noncredit courses, and community service classes.

In regard to associate degree credit courses, community colleges are defined by the Board of Governors’ regulations as degree-granting institutions, and thus, colleges must offer associate degree credit courses.²⁶³ Regarding nondegree credit courses and noncredit courses, the primary mission of community colleges has been defined to include offering instruction and courses to achieve:

The provision of remedial instruction for those in need of it and, in conjunction with the school districts, instruction in English as a second language, adult noncredit instruction, and support services which help students succeed at the postsecondary level are reaffirmed and supported as essential and important functions of the community colleges.²⁶⁴

Nondegree credit courses are defined by title 5, section 55002, subdivision (b), to include precollegiate basic skills courses, which are courses in reading, writing, computation, and English as a second language.²⁶⁵ Thus, pursuant to the primary mission of community colleges, community colleges are required to offer nondegree credit courses and noncredit courses. However, in regard to community service classes, Education Code section 66010.4, which sets forth the primary mission of community colleges, provides:

²⁶² *Kern High School Dist.*, *supra*, 30 Cal. 4th at p. 743.

²⁶³ Former California Code of Regulations, title 5, section 55827 (Register 83, No. 29); current California Code of Regulations, title 5, section 55180, subdivision (a) (Register 2008, No. 25)

²⁶⁴ Education Code section 66010.4, subdivision (a)(2)(A).

²⁶⁵ California Code of Regulations, title 5, section 55002, subdivision (b), cites to title 5, section 55502, subdivision (d), which defines “precollegiate basic skills courses” as “courses in reading, writing, computation, and English as a Second Language which are designated by community college district as nondegree credit courses pursuant to section 55002, subdivision (b).

(a)(2) In addition to the primary mission of academic and vocational instruction, the community colleges shall offer instruction and courses to achieve all of the following:

(A) The provision of remedial instruction for those in need of it and, in conjunction with the school districts, instruction in English as a second language, adult noncredit instruction, and support services which help students succeed at the postsecondary level are reaffirmed and supported as essential and important functions of the community colleges.

(B) The provision of adult noncredit education curricula in areas defined as being in the state's interest is an essential and important function of the community colleges.

(C) The provision of community services courses and programs is an authorized function of the community colleges so long as their provision is compatible with an institution's ability to meet its obligations in its primary missions.²⁶⁶

The claimants allege that the provision that “community colleges shall offer instruction and courses to achieve all of the following” in Education Code section 66010.4, subdivision (a)(2), requires community college districts to use the authority given in subdivision (a)(2)(C) to offer community service courses. However, read in context of the whole of subdivision (a)(2), including (a)(2)(A) and (a)(2)(B) which specifically require the provision of certain instruction, subdivision (a)(2)(C) *only* authorizes the provision of community service classes. Thus, community colleges are authorized, but not required, to offer community service classes. As a result, the activities required by title 5, sections 55001, 55002, 55005, and 55006, constitute state-mandated activities as they apply to associate degree credit courses, nondegree credit courses, and noncredit courses. However, the activities do not constitute state-mandated activities, to the extent that the required activities apply to community service classes.

Pursuant to the above discussion, the Commission finds that title 5, sections 55001, 55002, 55005, and 55006, impose the following state-mandated activities:

1. Report the classification of all courses, classes, and activities offered in accordance with California Code of Regulations, title 5, sections 55001, subdivision (a) (describing instructional services of community colleges), and 55002 (standards and criteria for associate degree credit course, nondegree credit course, and noncredit course) by transmitting the following information to the Chancellor’s Office:
 - a. The unique static course identifier and the course title for all credit and noncredit courses. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(1) (Register 94, No. 38).)
 - b. The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(2) (Register 94, No. 38).)
 - c. Whether the course is offered as credit or noncredit. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(3) (Register 94, No. 38).)
 - d. Whether the course transfers to the California State University or the University of California or both. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(4) (Register 94, No. 38).)

²⁶⁶ Education Code section 66010.4, subdivision (a)(2).

2. Establish a college or district curriculum committee by mutual agreement of the college or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college or district administration and academic senate. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(1) (Register 93, No. 42).)
3. When seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course, the course must be recommended by the college or district curriculum committee and approved by the district governing board. (Cal. Code Regs., tit. 5, § 55002, subds. (a), (b), and (c) (Register 93, No. 42).)
4. Each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record. (Cal. Code Regs., tit. 5, § 55002, subds. (a)(4), (b)(4), and (c)(3) (Register 93, No. 42).)
5. Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:

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

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

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

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

- c. Intensity: For associate degree credit course, the course must treat subject matter with a scope and intensity that requires students to study independently outside of class time. For nondegree credit courses, the course must provide instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses.

(Cal. Code Regs., tit. 5, § 55002, subds. (a)(2)(C) and (b)(2)(C) (Register 93, No. 42).)

6. Proposed associate degree credit courses must also meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2), in order to receive a recommendation by the college or district curriculum committee:
 - a. Prerequisites and Corequisites: Require prerequisites or corequisites when: (a) the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (b) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(2)(D) and (E) (Register 93, No. 42).)
 - b. Difficulty: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(2)(F) (Register 93, No. 42).)
 - c. Level: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(2)(G) (Register 93, No. 42).)
7. Maintain a course outline of record for associate degree credit courses, nondegree credit courses, and noncredit courses in the official college files that describe the course and make the outline available to each instructor.

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

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

8. Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee in order to receive a recommendation by the college or district curriculum committee. (Cal. Code Regs., tit. 5, § 55002, subd. (c)(1) (Register 93, No. 42).)
9. Make available to students through college publications all of the following facts regarding each course offered before they enroll in the course: (1) whether the course is offered as a credit or noncredit course; (2) whether the course is transferable to four-year colleges and universities; and (3) whether the course fulfills a major or general education requirement. (Cal. Code Regs., tit. 5, § 55005 (Register 91, No. 23))
10. Each community college must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities. (Cal. Code Regs., tit. 5, § 55006 (Register 91, No. 23).)

Approval of Courses and Programs by the Chancellor (Ed. Code, § 70902, subd. (b)(2), and Cal. Code Regs., tit. 5, §§ 55100, 55130, 55150, 55160, 55170, and 55182; and “Program and Course Approval Handbook,” Chancellor’s Office California Community Colleges (September 2001))

Education Code section 70902, subdivision (b)(2), and title 5, sections 55100, 55130, 55160, 55170, and 55182, and the Program and Course Approval Handbook (Handbook), address the approval requirements for credit courses and programs, noncredit courses and programs, and community service classes.

Education Code section 70902, subdivision (b)(2), requires community college districts to engage in the following activities:

1. Establish policies for and approve educational programs. (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973).)
2. Submit educational programs to the Board of Governors for approval. (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973).)
3. Establish policies for, and approve, individual courses that are offered in approved educational programs, without referral to the Board of Governors. (Ed. Code, § 70902, subd. (b)(2) (Stats. 1988, ch. 973).)

In the claimants’ response to the draft staff analysis, the claimants also cite to Education Code section 70902, subdivision (b)(2), in relation to title 5, section 51022. However, Education Code section 70902, subdivision (b)(2), does not require community college districts to comply with title 5, section 51022, and thus, does not impose any additional activities beyond those listed above.

Similarly, title 5 sections 55100, 55130, and 55150, requires each course or program to be offered by a community college to be approved by the Chancellor before the course is offered by the college, and specifies that approval is sought by submitting the course on forms provided by the Chancellor’s Office to the Chancellor. Section 55100 also requires community college districts to establish policies for local approval of individual courses offered as part of a program previously approved by the Chancellor. In addition, section 55130 sets forth the information to be included on the forms requesting approval of credit programs, and provides that the development, establishment, and evaluation of an education program shall include representative faculty involvement. Pursuant to section 55130, districts are to include specified information including, but not limited to: (1) an explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning; (2) the need for the proposed program; and (3) the need for and present adequacy of college/district resources.²⁶⁷

Section 55160 provides that community college districts are authorized to approve and conduct community services classes without the approval of the Chancellor and requires that such classes be reported to the Chancellor in accordance with title 5, section 55001, which identifies the types of community service classes and specifies what information must be reported to the Chancellor. However, as discussed above, community college districts are not required to offer community service classes. Thus, pursuant to *Kern High School Dist.*, community college districts are not mandated by the state to engage in any activity required by title 5, section 55160.

²⁶⁷ California Code of Regulations, title 5, section 55130, subdivisions (b)(5)-(7) (Register 91, No. 23).

Section 55170 addresses the approval of contract classes. Contract education refers to situations in which a community college district contracts with a public or private entity for the purposes of providing instruction or services or both by the community college.²⁶⁸ Section 55170, however, provides that districts must seek approval of contract classes *only* if the district claims state support for the class. In addition, community college districts are authorized, but not required, to establish contract education programs. Thus, the underlying decisions of a community college district to establish contract education programs, and subsequently seek state support for the classes in the program, which triggers the approval requirement found in section 55170, are discretionary. The claimants argue that the “use of private contractors is a method to implement the mandate, not a subsequent new program.” However, the “mandate” or activity required by section 55170 is seeking approval for offering contract classes for which a community college district seeks state support. Absent the voluntary decision to offer a contract course, which is also supported by the state, community college districts would not have to comply with the provisions of section 55170. As a result, title 5 section 55170 does not impose any state-mandated activities on community college districts.

Section 55182 authorizes community college districts to reinstate courses which were deleted from the credit or noncredit curriculum during the 1982-83 fiscal year in response to a reduction in funding to community colleges in the Budget Act of 1982. Section 55182 conditions reinstatement of classes terminated in the 1982-83 fiscal year on community colleges following specified criteria and procedures set forth in section 55182. The claimants argue:

Section 55182 states that reinstatement of the course must be in accordance with the mission of the community college, which is the Education Code 66010.4 criterion for including these courses in the scope of the mandate, not the fact that they were once deleted due to budget constraints. Further, these courses are part of the educational program subject to (Education Code Sections 70901 and 70902 and Title 5 Section 55001) Board of Governors approval. The DSA does not cite any legal basis that defines the specific courses that must be provided in furtherance of the primary mission of the community colleges. The codes and regulations only speak to types of course, therefore, the courses deleted pursuant to the 1982 Budget Act are not automatically discretionary as to this course approval mandate. Adoption of previously deleted courses is essentially the same process as adopting a new course that is within the scope of the mandate.²⁶⁹

The claimants misidentify the “mandate” or required activity addressed in title 5, section 55182. The required activity is complying with certain criteria and procedures. This is triggered *only* if a community college district chooses to reinstate a previously deleted course in response to the Budget Act of 1982. Because community college districts are authorized, and not required, to reinstate courses deleted in the 1982-83 fiscal year, districts are not mandated by the state to comply with any requirements of section 55182.

The Handbook provides explanations of the content of the forms referred to in title 5, sections 55100, 55130, and 55150. In addition, the appendix of the Handbook contains the forms that are to be submitted when requesting approval of proposed courses and programs. Although the Commission has found that the Handbook constitutes an executive order within the jurisdiction of the Commission, it is necessary to determine which parts of the Handbook impose mandated activities on community college districts. Of the 135 pages of the Handbook, the

²⁶⁸ Education Code section 78020, subdivision (a).

²⁶⁹ Claimants’ response to draft staff analysis,

claimants have alleged mandated activities from pages 16-18, 24-25, and A-1 through A-54 of Appendix A of the Handbook.²⁷⁰

Pages 16-18 of the Handbook discuss the five criteria, derived from statute and the title 5 regulations, used by the Chancellor's Office to approve programs and courses, specifically: (1) appropriateness to mission; (2) need; (3) quality; (4) feasibility; and (5) compliance. However, these criteria are essentially reiterations and explanations of the requirements contained in title 5, sections 55002, 55100-55150, and 55805.5.²⁷¹ As a result, the criteria listed on pages 16-18 do not mandate any activities on community college districts. Instead the criteria provide clarification and guidelines on the content of the requirements of the regulations pled by the claimants.

Pages 24-25 of the Handbook discuss blanket approval of stand-alone courses, which exempts community college districts from seeking approval to offer a course from the Chancellor. The process laid out on pages 24-25 of the Handbook do not require community college districts to engage in any activity; rather it authorizes districts to offer courses without engaging in the approval process normally required of proposed courses. Thus, pages 24-25 of the Handbook do not impose any state-mandated activities on community college districts.

Pages A-1 through A-54 contain the course and program approval forms that community colleges and community college districts must submit to the Chancellor, pursuant to title 5, sections 55100, 55130, and 55150, an explanation of the information requested in the form, and a description of the documentation required to be submitted with the form showing the proposed course or program meets criteria of appropriateness to mission, need, quality, feasibility, and compliance. The following forms are contained in pages A-1 through A-44 of the appendix of the Handbook: (1) Application for Approval-New Occupational Program (pages A-1 through A-20); (2) Application for Approval-New Transfer Program (pages A-21 through A-35); (3) Request to Add New Option or Certificate Within Existing Program to Inventory (pages A-36 through A-42); (4) Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program) (pages A-43 through A-46); and (5) Application for Approval-New or Revised Apprenticeship Program (pages A-47 through A-54).

The "Application for Approval-New Occupational Programs" and the "Application for Approval-New Transfer Program" forms are used to seek approval of new academic, vocational, and transfer programs. As noted above and further discussed in the "Degrees and Certificates" section of this analysis, community college districts are degree-granting institutions which are required to offer academic and vocational instruction. In addition, as discussed in the "Transfer Centers" section of the this analysis, transferring from community colleges through the University of California and California State University is a central institutional priority, and community college districts are required to have a core transfer curriculum. In order to offer degree programs, vocational programs, or transfer programs, community college districts are mandated to submit the "Application for Approval-New Occupational Programs" and the "Application for Approval-New Transfer Program," and provide documentation showing that the

²⁷⁰ Test Claim 02-TC-31, pgs. 292-296.

²⁷¹ California Code of Regulations, title 5, section 55002, 55100-55150, which generally address the approval requirements for credit courses and programs, noncredit courses and programs, are discussed above within this section. Title 5, section 55805.5, which addresses the types of courses appropriate for an associate degree, is discussed below in the "Degrees and Certificates" section of the staff analysis.

course or program meets the criteria of appropriateness to mission, need, quality, feasibility, and compliance as stated on pages A-1 through A-35 of the appendix.

However, as discussed in the “Degrees and Certificates” section of this analysis, districts are not required to offer certificates. Also, there is no evidence in the record that community college districts are required to add a new option, emphasis, or specialization to an existing degree program. As a result, community college districts are not mandated to submit the “Request to Add New Option or Certificate Within Existing Program to Inventory” or to provide the documentation stated on pages A-36 through A-42 of the appendix. Similarly, community college districts are not required to establish contract education programs. The “Application for Approval-New or Revised Apprenticeship Program” is the form used to request approval for contract education programs, and as a result, the submission of this form and the documentation stated on pages A-47 through A-54 of the appendix is not mandated by the state.

The “Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)” form is used by community colleges that desire to have non-substantial changes to approved programs reflected immediately in the Inventory of Approved and Projected Programs maintained and updated by the Chancellor’s Office. However, the Chancellor’s Office conducts periodic college program inventory updates, which gives colleges the opportunity to update such information for all their programs at once. As a result, the use of this form is triggered by a college’s discretionary decision to have non-substantial changes to approved programs reflected immediately in the Inventory of Approved and Projected Programs, which is not required. Thus, community colleges and districts are not mandated to submit the “Non-Substantial Changes to Approved Program (or Reactivation of Inactive Program)” found at pages A-43 through A-46 of the appendix.

Pursuant to the above discussion, the Commission finds that Education Code section 70902, subd. (b)(2), and title 5, sections 55100, 55130, and 55150, and the Handbook require community college districts to engage in the following state-mandated activities:

1. Establish policies for and approve educational programs (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973).)
2. Seek approval of proposed courses and programs on forms provided by the Chancellor’s Office. Specifically, the “Application for Approval-New Occupational Programs” and the “Application for Approval-New Transfer Program” forms, which require the provision of the documentation showing that the proposed courses and programs meet the criteria of appropriateness to mission, need, quality, feasibility, and compliance as stated on pages A-1 through A-35 of the appendix of the “Program and Course Approval Handbook” (2001). (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973), and Cal. Code Regs., tit. 5, §§ 55100, subd. (a); 55130, subd. (a); and 55150, subd. (a) (Register 91, No. 23); and “Program and Course Approval Handbook” (2001) pages A-1 through A-35.)
3. Include in the application for program approval the following information:
 - a. The name of the proposed program
 - b. The description of the proposed program
 - c. The purposes and specific objectives of the proposed program
 - d. The place of the proposed program in the district master plan

- e. An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning
 - f. The need for the proposed program based on the following factors: (a) other community colleges in the area currently offering the proposed program, (b) other programs closely related to the proposed program offered by the college, (c) the relation of the proposed program to job market analysis, (d) enrollment projection for the proposed program, (e) recommendations of area vocational master plan committees when applicable, and (f) the classification of the courses in the program in accordance with California Code of Regulations, title 5, section 55001 (Register 94, No. 38)
 - g. The need for and present adequacy of the following resources in relation to the proposed program: (a) library and media center resources, (b) facilities and equipment required to initiate and sustain the program, (c) availability of adequate or proposed financial support, and (d) availability of faculty. (Cal. Code Regs., tit. 5, § 55130, subdivision (b) (Register 91, No. 23).)
4. Establish policies for approval of individual courses offered as part of a program that has already been approved by the Chancellor. (Ed. Code, § 70902, subd. (b)(2)(B) (Stats. 1988, ch. 973), and Cal. Code Regs., tit. 5, § 55100, subd. (b) (Register 91, No. 23).)
 5. Include representative faculty involvement in the development, establishment, and evaluation of an education program. (Cal. Code Regs., tit. 5, § 55130, subd. (c) (Register 91, No. 23).)
 6. Keep on file at the community college offering the course the course outlines for all noncredit courses offered. (Cal. Code Regs., tit. 5, § 55150, subd. (b) (Register 91, No. 23).)
 7. Keep such current records and reports as may be required by the Chancellor. (Cal. Code Regs., tit. 5, § 55150, subd. (c) (Register 91, No. 23).)

Prerequisites, Corequisites, and Advisories on Recommended Preparation (Cal. Code Regs., tit. 5, §§ 55200, 55201, and 55202)

The regulations discussed in this section address the authority to establish prerequisites, corequisites, and advisories on recommended preparation courses, the requirements associated with establishment of these courses, and the limitation on a district's authority to establish these courses. Prerequisites and corequisites are conditions that must be met to enroll in another course or educational program.²⁷² Advisories on recommended preparation are suggested courses to be taken in conjunction with or before enrolling in a course or educational program.²⁷³

Title 5, section 55201, provides “[n]othing in this subchapter [addressing programs, courses and classes (Cal. Code Regs., tit. 5, §§55000-55202)] shall be construed to require a district to establish prerequisites, corequisites, or advisories on recommended preparation,” except when the course is offered for associate degree credit and the curriculum committee finds that the prerequisite or corequisite is necessary pursuant to title 5, section 55002, subdivisions (a)(2)(D)

²⁷² California Code of Regulations, title 5, section 55200, subdivisions (a) and (b) (Register 93, No. 42).

²⁷³ California Code of Regulations, title 5, section 55200, subdivision (c) (Register 93, No. 42).

or (a)(2)(E).²⁷⁴ Subdivisions (a)(2)(D) and (a)(2)(E) require the establishment of prerequisites or corequisites for an associate degree credit course whenever: (1) the college or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (2) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English or mathematics. Thus, any activities required by the title 5 regulations pled by the claimants (particularly sections 55201 and 55202) regarding the establishment of prerequisites or corequisites are only mandated by the state when applicable to prerequisites and corequisites established for the above purposes. Also, any activities required by these sections in regard to the establishment of advisories on recommended preparation are not mandated by the state, because community college districts are authorized but not required to establish advisories on recommended preparation.

Title 5, section 55201, also contains a provision referencing a title 5 regulation (Cal. Code Regs., tit. 5, § 55510) that implements the Seymour-Campbell Matriculation Act of 1986 (Ed. Code §§ 78210-78218). Specifically, section 55201, subdivision (h), requires “[d]istrict [prerequisite and corequisite policies] adopted pursuant to this section ... be submitted to the Chancellor as part of the district’s matriculation plan pursuant to Section 55510.” However, as discussed in the “Matriculation” section of this analysis, the Seymour-Campbell Matriculation Act and its implementing regulations do not impose any state-mandated activities on community college districts. As a result, the requirement of subdivision (h) of section 55201 does not impose activities on community college districts.

The Commission finds that title 5, sections 55201 and 55202, impose the following state-mandated activities on community college districts:

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

²⁷⁴ California Code of Regulations, title 5, section 55201, subdivision (a) (Register 98, No. 7).

- d. The bases and process for an individual student to challenge the application of a prerequisite or corequisite. The bases to challenge a prerequisite or corequisite are:
 - i. The prerequisite or corequisite was not established in accordance with the district's process for establishing prerequisites and corequisites;
 - ii. The prerequisite or corequisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and corequisites;
 - iii. The prerequisite or corequisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 - iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite; and
 - v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201, subds. (b)(2) and (f)(1)-(5) (Register 98, No. 7).)
2. Gather data according to sound research practices and show that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite, in addition to conducting a content review, if the community college district seeks to establish a course in communication or computation skills as a prerequisite or corequisite for any non-communication or non-computation skills course.

This data gathering requirement does not apply when:

- a. Four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or
- b. The prerequisite or corequisite is required for enrollment in a program that is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:
 - i. Colleges in at least six different districts have previously satisfied the data collection requirement with respect to the same prerequisite or corequisite for the same program; and
 - ii. The district establishing the prerequisite or corequisite conducts an evaluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor, and if there is a disproportionate impact the district in consultation with the Chancellor develops and implements a plan setting forth the steps the district will take to correct the disproportionate impact. (Cal. Code Regs., tit. 5, § 55201, subd. (e) (Register 98, No. 7).)
3. If a prerequisite or corequisite is challenged on the basis that it is either unlawfully discriminatory or applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 55201, subd. (f)(3)), advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to the title 5 regulations addressing discrimination complaint procedures (Cal. Code Regs., tit. 5, § 59300 et seq.). (Cal. Code Regs., tit. 5, § 55201, subd. (g) (Register 98, No. 7).)

4. Identify prerequisites and corequisites in college publications available to students as well as in the course outline of any course for which they are established. (Cal. Code Regs., tit. 5, § 55202, subd. (a) (Register 93, No. 42).)
5. Determine whether a student meets a prerequisite based on successful completion of an appropriate course. (Cal. Code Regs., tit. 5, § 55202, subd. (c) (Register 93, No. 42).)
6. Ensure precollegiate basic skills courses designed to teach the required skills in reading, written expression, or mathematics, are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course, if a prerequisite requires precollegiate skills in reading, written expression, or mathematics. (Cal. Code Regs., tit. 5, § 55202, subd. (d) (Register 93, No. 42).)
7. Offer sufficient sections of a corequisite course to reasonably accommodate all students who are required to take the corequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42).)
8. Waive a corequisite for any student whom space in the corequisite course is not available. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42).)
9. Make a determination of whether a student meets a prerequisite prior to the student's enrollment in the course requiring the prerequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (g) (Register 93, No. 42).)

Distance Education and Independent Study (Cal. Code Regs., tit. 5, §§ 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, and 55350)

Distance education is instruction in which the instructor and the student are separated by distance and interact through the assistance of communication technology.²⁷⁵ Independent study is a mode of instruction in which students are not required to be under the immediate supervision and control of a qualified academic employee.²⁷⁶ The title 5 regulations pled in this section address the requirements associated with offering courses and programs designed and conducted as distance education and independent study. The requirements address issues including, but not limited to, the following: (1) instructor contact or availability; (2) maintenance and reporting of information regarding distance education and independent study courses and programs to the Chancellor; (3) accepting courses toward the completion of a degree; (4) course quality and criteria; and (5) the establishment of procedures to evaluate student progress in independent study courses or programs.

Under *Kern High School Dist.*, when analyzing state mandate claims it is necessary for the Commission to look at the underlying program to determine if a claimant's participation in the underlying program is voluntary or legally compelled.²⁷⁷ Here, community college districts are authorized under the "permissive code" to offer distance education and independent study, however, districts are not required to offer instruction using distance education or independent

²⁷⁵ California Code of Regulations, title 5, section 55205 (Register 2002, No. 26).

²⁷⁶ California Code of Regulations, title 5, section 55302, subd. (d), (Register 79, No 46); see also, Test Claim 02-TC-31, "Program and Course Approval Handbook" (2002), p. 47.

²⁷⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th at p. 743.

study.²⁷⁸ Thus, any activities required by title 5 regulations pled in this section of the this analysis are downstream activities triggered by a community college district’s decision to offer distance education or independent study.

The claimants argue that “[t]he mandate here pertains to approval of courses, and not to the method of course delivery.”²⁷⁹ However, as discussed above, the requirement is triggered by a community college district’s discretionary decision to offer distance education and independent study course. Without this discretionary decision districts would not be required to engage in the requirements associated with seeking approval of these types of courses.

In addition, the claimants argue, “Inasmuch as the Legislature does not mandate a form of instructional delivery, all methods, traditional or otherwise, are alternatives, but are not discretionary programs pursuant to *Kern*.”²⁸⁰ However, the claimants’ argument essentially provides that since community college districts are given broad authority to act in any manner not inconsistent with their purpose pursuant to the “permissive code,” any discretionary activity consistent with the purpose of community college districts which triggers required activities would result in reimbursable state-mandated activities. This result is contrary to the decision in *Kern High School Dist*. As a result, the Commission finds that title 5, sections 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, and 55350, do not impose state-mandated activities.

(i) Summary of state-mandate activities

Because the regulations pled in this section of the analysis are interrelated, some of the activities mandated by one title 5 regulation section are also required in a different title 5 regulation, as a result, where appropriate duplicate activities will be combined. California Code of Regulations, title 5, sections 55001, 55002, 55004, 55005, 55006, 55100, 55130, 55150, 55201, and 55202; and “Program and Course Approval Handbook” (2001) pages A-1 through A-44, impose the following state-mandated activities:

1. Include in social science courses a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States. (Cal. Code Regs., tit. 5, § 55004 (Register 91, No. 23).)
2. Report the classification of all courses, classes, and activities offered in accordance with California Code of Regulations, title 5, sections 55001, subdivision (a) (describing instructional services of community colleges), and 55002 (standards and criteria for associate degree credit course, nondegree credit course, and noncredit course) by transmitting the following information to the Chancellor’s Office:
 - a. The unique static course identifier and the course title for all credit and noncredit courses. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(1) (Register 94, No. 38).)

²⁷⁸ Former Education Code section 78310 (Stats. 1981, ch. 470) specifically authorized districts to offer independent study courses. Currently, however, specific authorization for independent study or distance education is not required under the “permissive code.”

²⁷⁹ Claimants’ response to draft staff analysis, *supra*, p. 18.

²⁸⁰ *Ibid.*

- b. The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(2) (Register 94, No. 38).)
 - c. Whether the course is offered as credit or noncredit. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(3) (Register 94, No. 38).)
 - d. Whether the course transfers to the California State University or the University of California or both. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(4) (Register 94, No. 38).)
3. Establish a college or district curriculum committee by mutual agreement of the college or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college or district administration and academic senate. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(1) (Register 93, No. 42).)
 4. When seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course, the course must be recommended by the college or district curriculum committee and approved by the district governing board. (Cal. Code Regs., tit. 5, § 55002, subds. (a), (b), and (c) (Register 93, No. 42).)
 5. Each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record. (Cal. Code Regs., tit. 5, § 55002, subds. (a)(4), (b)(4), and (c)(3) (Register 93, No. 42).)
 6. Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:
 - a. Grading policy: The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with California Code of Regulations, title 5, section 55758 (Register 2000, No. 50), which details the academic record symbols and associated grade points to be used by community colleges.

The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays for associate degree credit courses or written expression for nondegree credit courses, or in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students. (Cal. Code Regs., tit. 5, § 55002, subds. (a)(2)(A) and (b)(2)(A) (Register 93, No. 42).)
 - b. (2) Units: The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline.

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

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

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

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

9. Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee in order to receive a

recommendation by the college or district curriculum committee. (Cal. Code Regs., tit. 5, § 55002, subd. (c)(1) (Register 93, No. 42).)

10. Make available to students through college publications all of the following facts regarding each course offered before they enroll in the course: (1) whether the course is offered as a credit or noncredit course; (2) whether the course is transferable to four-year colleges and universities; and (3) whether the course fulfills a major or general education requirement. (Cal. Code Regs., tit. 5, § 55005 (Register 91, No. 23))
11. Each community college must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities. (Cal. Code Regs., tit. 5, §§ 55006 and 55150, subd. (c) (Register 91, No. 23).)
12. Establish policies for and approve educational programs (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973).)
13. Seek approval of proposed courses and programs on forms provided by the Chancellor's Office. Specifically, the "Application for Approval-New Occupational Programs" and the "Application for Approval-New Transfer Program" forms, which require the provision of the documentation showing that the proposed courses and programs meet the criteria of appropriateness to mission, need, quality, feasibility, and compliance as stated on pages A-1 through A-35 of the appendix of the "Program and Course Approval Handbook" (2001). (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973), and Cal. Code Regs., tit. 5, §§ 55100, subd. (a); 55130, subd. (a); and 55150, subd. (a) (Register 91, No. 23); and "Program and Course Approval Handbook" (2001) pages A-1 through A-35.)
14. Include in the application for program approval the following information:
 - a. The name of the proposed program
 - b. The description of the proposed program
 - c. The purposes and specific objectives of the proposed program
 - d. The place of the proposed program in the district master plan
 - e. An explanation of whether the program is appropriate to the objectives and conditions of higher education and community college education in California and whether it conforms to statewide master planning
 - f. The need for the proposed program based on the following factors: (a) other community colleges in the area currently offering the proposed program, (b) other programs closely related to the proposed program offered by the college, (c) the relation of the proposed program to job market analysis, (d) enrollment projection for the proposed program, (e) recommendations of area vocational master plan committees when applicable, and (f) the classification of the courses in the program in accordance with California Code of Regulations, title 5, section 55001 (Register 94, No. 38)
 - g. The need for and present adequacy of the following resources in relation to the proposed program: (a) library and media center resources, (b) facilities and equipment required to initiate and sustain the program, (c) availability of adequate or proposed financial support, and (d) availability of faculty. (Cal. Code Regs., tit. 5, § 55130, subd. (b) (Register 91, No. 23).)

15. Establish policies for approval of individual courses offered as part of a program that has already been approved by the Chancellor. (Ed. Code, § 70902, subd. (b)(2)(B) (Stats. 1988, ch. 973), and Cal. Code Regs., tit. 5, § 55100, subd. (b) (Register 91, No. 23).)
16. Include representative faculty involvement in the development, establishment, and evaluation of an education program. (Cal. Code Regs., tit. 5, § 55130, subd. (c) (Register 91, No. 23).)
17. Adopt policies for the following in accordance with the Board of Governors regulations addressing faculty participation in district and college governance (Cal. Code Regs., tit. 5, §§ 53200-53204) when establishing prerequisites or corequisites for an associate degree credit course as required by California Code of Regulations, title 5, section 55002, subdivisions (a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or corequisite, or success in a course is dependent on communication or computation skills):
 - a. The process for establishing prerequisites and corequisites. The policy for the process for establishing prerequisites or corequisites shall be based on content review with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite established. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(1) (Register 98, No. 7).)
 - b. The procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or corequisite. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(2) (Register 98, No. 7).)
 - c. The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(3) (Register 98, No. 7).)
 - d. The bases and process for an individual student to challenge the application of a prerequisite or corequisite. The bases to challenge a prerequisite or corequisite are:
 - i. The prerequisite or corequisite was not established in accordance with the district's process for establishing prerequisites and corequisites;
 - ii. The prerequisite or corequisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and corequisites;
 - iii. The prerequisite or corequisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 - iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite; and
 - v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201, subds. (b)(2) and (f)(1)-(5) (Register 98, No. 7).)

18. Gather data according to sound research practices and show that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite, in addition to conducting a content review, if the community college district seeks to establish a course in communication or computation skills as a prerequisite or corequisite for any non-communication or non-computation skills course.

This data gathering requirement does not apply when:

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

25. Make a determination of whether a student meets a prerequisite prior to the student's enrollment in the course requiring the prerequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (g) (Register 93, No. 42).)

- b. Parts of California Code of Regulations, title 5, sections 55001, 55002, 55005, 55006, 55150, 55201, and 55202, constitute a new program or higher level of service.

The activities mandated by title 5, sections 55001, 55002, 55004, 55005, 55006, 55100, 55130, 55150, 55201, and 55202; and "Program and Course Approval Handbook" (2001) pages A-1 through A-44, carry out the governmental function of education, and as a result, the activities mandated by these title 5 regulations and the Handbook constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Although the activities mandated by the title 5 regulations constitute a "program" it is necessary to determine if the mandates are new in comparison with the pre-existing scheme and provide an enhanced service to the public. To make this determination, the mandates must be compared with the legal requirements in effect immediately prior to their enactment.²⁸¹

Content of Social Science Courses (Cal. Code Regs., tit. 5, § 55004 (Register 91, No. 23))

The claimants have pled title 5, section 55004, as added in 1991.²⁸² As added in 1991, section 55004 mandates community college districts to engage in the following activity:

Include in social science courses a study of the role, participation, and contribution of both men and women, black Americans, American Indians, Mexicans, Asians, Pacific Island people, and other ethnic groups to the economic, political, and social development of California and the United States. (Cal. Code Regs., tit. 5, § 55004 (Register 91, No. 23).)

However, immediately prior to adoption of title 5, section 55004, in 1991, former Education Code section 78202, required the same activity. Although former Education Code section 78202 was repealed in 1990, the Legislature directed the Board of Governors to incorporate the text of former Education Code section 78202 into its regulations and until such incorporation occurs, former Education Code section 78202 shall remain operative.²⁸³ In addition, the Legislature states specifically that there "be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained" in former Education Code section 78202.²⁸⁴ Thus, the mandated activity imposed by title 5, section 55004, does not constitute a new program or higher level of service.²⁸⁵

Recommendation and Approval of Proposed Courses (Ed. Code, § 70902, subd. (b)(2), and Cal. Code Regs., tit. 5, §§ 55001, 55002, 55005, 55006, 55100, 55130, and 55150 (Register 81, No. 52; Register 88, No. 42; Register 91, No. 23; Register 93, No. 42; and Register 94, No. 38); and

²⁸¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁸² The date coincides with Register 91, number 23.

²⁸³ Statutes 1990, chapter 1372, section 708.

²⁸⁴ *Ibid.*

²⁸⁵ The Commission notes that the activity mandated by title 5, section 55004, traces back to former Education Code section 25516.3, as added in Statutes 1971, chapter 1245.

“Program and Course Approval Handbook,” Chancellor’s Office California Community Colleges (September 2001) pages A-1 through A-35)

The claimants have pled title 5, section 55001, as added in 1981 and last amended in 1994.²⁸⁶ In addition, title 5, section 55002, was pled as added in 1988 and last amended in 1993.²⁸⁷

Section 55001 mandates activities involving the identification, classification, and description of courses offered by community college districts, and transmitting such information to the Chancellor’s Office. Section 55002 mandates activities involving the development and approval of proposed associate degree credit courses, nondegree credit courses, and noncredit courses. These activities include establishing a district or college curriculum committee, and maintaining a course outline of record for proposed courses. The activities mandated by title 5, sections 55001 and 55002, were not mandated prior to 1981 and 1988, respectively. As a result, the activities mandated by title 5, sections 55001 and 55002, constitute a new program or higher level of service. On April 14, 2006, title 5, section 55001 was repealed, and as a result, the state-mandated activities required by this section ends on that date.²⁸⁸

Title 5, section 55005, requires the publication of specific information for students regarding the courses offered. This information includes whether the course is offered as a credit or noncredit course, the course is transferable to four-year colleges and universities, and whether the course fulfills a major or general education requirement. The claimants have pled title 5, section 55005, as added in 1981 and last amended in 1991.²⁸⁹ The activities mandated by title 5, section 55005, are derived from former title 5, sections 51102 and 51103, as added in 1971 by Register 71, number 27. However, former title 5, sections 51102 and 51103, are part of former “Division 2” of the title 5 regulations, the provisions of which:

[C]omprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.²⁹⁰

Thus, the former title 5 regulations which contain the same requirements as the regulations pled in this section of the analysis did not impose state-mandated activities prior to 1983 for the same reasons that the regulations pled in the “Minimum Conditions” section of this analysis did not impose state-mandated activities. Specifically, the requirements of the former title 5 regulations are downstream activities triggered by the discretionary decision to become *entitled to receive state aid*. As a result, immediately prior to the adoption of title 5, section 55005, community college districts were not required to engage in the activities mandated by the section, and therefore, the activities mandated by title 5, section 55005, constitute a “new program or higher level of service” subject to article XIII B, section 6 of the California Constitution.

Title 5, sections 55006 and 55150, subdivision (c), requires community college districts to engage in the following activity:

Each community college must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill

²⁸⁶ The dates coincide with Register 81, number 52; and Register 94, number 38.

²⁸⁷ The dates coincide with Register 88, number 42; and Register 93, number 42.

²⁸⁸ Register 2006, number 17, operative April 14, 2006.

²⁸⁹ The dates coincide with Register 81, number 52; and Register 91, number 23.

²⁹⁰ Former California Code of Regulations, title 5, section 51000 (Register 80, number 11).

statutory responsibilities. (Cal. Code Regs., tit. 5, §§ 55006 and 55150, subd. (c) (Register 91, No. 23).)

The claimants have pled title 5, sections 55006 and 55150, as added in 1981 and last amended in 1991.²⁹¹ Immediately prior to the adoption of title 5, sections 55006 and 55150, in 1981 community college districts were not required to engage in the above-stated activity. As a result, the activity mandated by title 5, sections 55006 and 55150, subdivision (c), constitute a new program or higher level of service.

Education Code section 70902, subdivision (b)(2)(A), requires community college districts to establish policies for and approve educational programs. The claimants have pled Education Code section 70902 as added in 1988.²⁹² Immediately prior to 1988, community college districts were not required to establish policies for and approve education programs. Thus, this activity constitutes a new program or higher level of service.

In addition to the above activity, Education Code section 70902, subdivision (b)(2)(A), and title 5, sections 55100, subdivision (a); 55130, subdivision (a); and 55150, subdivision (a); and the “Program and Course Approval Handbook” (Handbook) pages A-1 through A-35 (consisting of the “Application for Approval-New Occupational Programs” and the “Application for Approval-New Transfer Program” forms), require community college districts to engage in the following activity:

Seek approval of proposed courses and programs on forms provided by the Chancellor’s Office. Specifically, the “Application for Approval-New Occupational Programs” and the “Application for Approval-New Transfer Program” forms, which require the provision of the documentation showing that the proposed courses and programs meet the criteria of appropriateness to mission, need, quality, feasibility, and compliance as stated on pages A-1 through A-35 of the appendix of the “Program and Course Approval Handbook” (2001). (Ed. Code, § 70902, subd. (b)(2)(A), and Cal. Code Regs., tit. 5, §§ 55100, subd. (a); 55130, subd. (a); and 55150, subd. (a) (Register 91, No. 23); and “Program and Course Approval Handbook” (2001) pages A-1 through A-35.)

The claimants have pled title 5, sections 55100, 55130, and 55150, as added in 1981 and last amended in 1991.²⁹³ In addition, the claimants have pled the “Program and Course Approval Handbook” (Handbook) as issued in 2001. However, since 1971 community college districts have been required to seek approval of proposed courses and programs on forms provided by the Chancellor’s Office.²⁹⁴ In addition, immediately prior to 2001 the Chancellor’s Office provided the form for program and course approval in the appendix of the “Curriculum Standards Handbook” issued in 1995, which required community colleges and community college districts to provide documentation showing that the proposed courses and programs meet the criteria of appropriateness to mission, need, quality, feasibility, and compliance.²⁹⁵ As a result, the above

²⁹¹ The dates coincide with Register 81, number 52; and Register 91, number 23.

²⁹² Test Claim 02-TC-31, p. 9, citing to Statutes 1988, chapter 973.

²⁹³ The dates coincide with Register 81, number 52; and Register 91, number 23.

²⁹⁴ California Code of Regulations, title 5, section 55100 (Register 71, No. 9 (Feb. 27, 1998).) Former California Code of Regulations, title 5, sections 55131 and 55135 (Register 71, No. 9 (Feb. 27, 1998).)

²⁹⁵ “The Curriculum Standards Handbook for the California Community College” (1995) Chancellor’s Office.

activity mandated by California Code section 70902, subdivision (a)(2)(A), and title 5, sections 55100, subdivision (a); 55130, subdivision (a); and 55150, subdivision (a); and the “Program and Course Approval Handbook” (Handbook) pages A-1 through A-35 (consisting of the “Application for Approval-New Occupational Programs” and the “Application for Approval-New Transfer Program” forms), does not constitute a new program or higher level of service.

Title 5, section 55130, subdivision (b), requires community colleges or districts to include specific information in the application for program approval, including the name, description, purpose, specific objectives, need, and adequacy of facilities. The claimants have pled title 5, section 55130, as added in 1981 and last amended in 1991. However, since 1971 community college districts were required to include this information in their application for program approval to the Chancellor.²⁹⁶ As a result, including the information specified by title 5, section 55130, subdivision (b), in the application seeking program approval does not constitute a new program or higher level of service.

Similarly, since 1971 community college districts have been required to engage in the activities mandated by Education Code section 70902, subdivision (b)(2)(B), and title 5, sections 55100, subdivision (b); and 55130, subdivision (c).²⁹⁷ These sections require districts to establish policies for approval of individual courses offered as part of a program that has already been approved by the Chancellor, and the inclusion of representative faculty involvement in the development, establishment, and evaluation of an education program. As a result, the activities mandated by Education Code section 70902, subdivision (b)(2)(B), and title 5, sections 55100, subdivision (b); and 55130, subdivision (c), do not constitute a new program or higher level of service.

Prerequisites and Corequisites (Cal. Code Regs., tit. 5, §§ 55201 and 55202 (Register 93, No. 42; and Register 98, No. 7))

Title 5, sections 55201 and 55202, mandate activities associated with the establishment of prerequisites and corequisites for associate degree programs. The claimants have pled title 5, sections 55201 and 55202, as added in 1993, and section 55201 as last amended in 1998.²⁹⁸ Immediately prior to 1993, community college districts were not required to engage in the activities mandated by title 5, sections 55201 and 55202, and as a result, the activities mandated by title 5, sections 55201 and 55202, constitute a new program or higher level of service.

In 2007, sections 55201 and 55202 were combined and renumbered to title 5, section 55003, without any substantive changes to the new program or higher level of service found above.²⁹⁹

²⁹⁶ Former California Code of Regulations, title 5, sections 55135, 55136, 55140-55143 (Register 71, No. 9 (Feb. 27, 1971).)

²⁹⁷ Former California Code of Regulations, title 5, sections 55132 and 55144 (Register 71, No. 9 (Feb. 27, 1971).)

²⁹⁸ The dates coincide with Register 93, number 42; and Register 98, number 7. The Commission notes that the claimants have pled title 5, section 55201, as added in 1983. However, in 1983 title 5, section 55201, did not exist, instead it was added in 1993. From the claimants’ narrative, it is clear that the claimants intended to plead title 5, section 55201, as added in 1993. Thus, the Commission will treat section 55201 as pled as added in 1993.

²⁹⁹ California Code of Regulations, title 5, section 55003 (Register 2007, No. 35 (Aug. 16, 2007).)

(i) Summary of state-mandated new program or higher level of service

Pursuant to the above discussion, the Commission finds that the following state-mandated activities constitute a new program or higher level of service subject to article XII B, section 6 of the California Constitution:

1. Report the classification of all courses, classes, and activities offered in accordance with California Code of Regulations, title 5, sections 55001, subdivision (a) (describing instructional services of community colleges), and 55002 (standards and criteria for associate degree credit course, nondegree credit course, and noncredit course) by transmitting the following information to the Chancellor's Office:
 - a. The unique static course identifier and the course title for all credit and noncredit courses. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(1) (Register 94, No. 38) ending April 14, 2006.)
 - b. The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(2) (Register 94, No. 38) ending April 14, 2006.)
 - c. Whether the course is offered as credit or noncredit. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(3) (Register 94, No. 38) ending April 14, 2006.)
 - d. Whether the course transfers to the California State University or the University of California or both. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(4) (Register 94, No. 38) ending April 14, 2006.)
2. Establish a college or district curriculum committee by mutual agreement of the college or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college or district administration and academic senate. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(1) (Register 93, No. 42).)
3. When seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course, the course must be recommended by the college or district curriculum committee and approved by the district governing board. (Cal. Code Regs., tit. 5, § 55002, subs. (a), (b), and (c) (Register 93, No. 42).)
4. Each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record. (Cal. Code Regs., tit. 5, § 55002, subs. (a)(4), (b)(4), and (c)(3) (Register 93, No. 42).)
5. Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:
 - a. Grading policy: The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with California Code of Regulations, title 5, section 55758 (Register 2000, No. 50), which details the academic record symbols and associated grade points to be used by community colleges.

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

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

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

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

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

8. Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee in order to receive a recommendation by the college or district curriculum committee. (Cal. Code Regs., tit. 5, § 55002, subd. (c)(1) (Register 93, No. 42).)
9. Make available to students through college publications all of the following facts regarding each course offered before they enroll in the course: (1) whether the course is offered as a credit or noncredit course; (2) whether the course is transferable to four-year colleges and universities; and (3) whether the course fulfills a major or general education requirement. (Cal. Code Regs., tit. 5, § 55005 (Register 91, No. 23).)
10. Each community college must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities. (Cal. Code Regs., tit. 5, §§ 55006 and 55150, subd. (c) (Register 91, No. 23).)
11. Establish policies for and approve educational programs (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973).)
12. Adopt policies for the following in accordance with the Board of Governors regulations addressing faculty participation in district and college governance (Cal. Code Regs., tit. 5, §§ 53200-53204) when establishing prerequisites or corequisites for an associate degree credit course as required by California Code of Regulations, title 5, section 55002, subdivisions (a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or corequisite, or success in a course is dependent on communication or computation skills):
 - a. The process for establishing prerequisites and corequisites. The policy for the process for establishing prerequisites or corequisites shall be based on content review with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite established. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(1) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(1) (Register 2007, No. 35).)
 - b. The procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or corequisite. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(2) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(2) (Register 2007, No. 35).)

- c. The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(3) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(3) (Register 2007, No. 35).)
 - d. The bases and process for an individual student to challenge the application of a prerequisite or corequisite. The bases to challenge a prerequisite or corequisite are:
 - i. The prerequisite or corequisite was not established in accordance with the district's process for establishing prerequisites and corequisites;
 - ii. The prerequisite or corequisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and corequisites;
 - iii. The prerequisite or corequisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 - iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite; and
 - v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201, subds. (b)(2) and (f)(1)-(5) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(2) and (m)(1)-(5) (Register 2007, No. 35).)
13. Gather data according to sound research practices and show that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite, in addition to conducting a content review, if the community college district seeks to establish a course in communication or computation skills as a prerequisite or corequisite for any non-communication or non-computation skills course.

This data gathering requirement does not apply when:

- a. Four-year institutions will not grant credit for a course unless it has the particular communication or computation skill prerequisite; or
- b. The prerequisite or corequisite is required for enrollment in a program that is subject to approval by a state agency other than the Chancellor's Office and both of the following conditions are satisfied:
 - i. Colleges in at least six different districts have previously satisfied the data collection requirement with respect to the same prerequisite or corequisite for the same program; and
 - ii. The district establishing the prerequisite or corequisite conducts an evaluation to determine whether the prerequisite or corequisite has a disproportionate impact on particular groups of students described in terms of race, ethnicity, gender, age or disability, as defined by the Chancellor, and if there is a disproportionate impact the district in consultation with the Chancellor develops and implements a plan setting

forth the steps the district will take to correct the disproportionate impact. (Cal. Code Regs., tit. 5, § 55201, subd. (e) (Register 98, No. 7) ; for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (e) (Register 2007, No. 35).)

14. If a prerequisite or corequisite is challenged on the basis that it is either unlawfully discriminatory or applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 55201, subd. (f)(3)), advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to the title 5 regulations addressing discrimination complaint procedures (Cal. Code Regs., tit. 5, § 59300 et seq.). (Cal. Code Regs., tit. 5, § 55201, subd. (g) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (n) (Register 2007, No. 35).)
15. Identify prerequisites and corequisites in college publications available to students as well as in the course outline of any course for which they are established. (Cal. Code Regs., tit. 5, § 55202, subd. (a) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (f) (Register 2007, No. 35).)
16. Determine whether a student meets a prerequisite based on successful completion of an appropriate course. (Cal. Code Regs., tit. 5, § 55202, subd. (c) (Register 93, No. 42) ; for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (h) (Register 2007, No. 35).)
17. Ensure precollegiate basic skills courses designed to teach the required skills in reading, written expression, or mathematics, are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course, if a prerequisite requires precollegiate skills in reading, written expression, or mathematics. (Cal. Code Regs., tit. 5, § 55202, subd. (d) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (i) (Register 2007, No. 35).)
18. Offer sufficient sections of a corequisite course to reasonably accommodate all students who are required to take the corequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (j) (Register 2007, No. 35).)
19. Waive a corequisite for any student whom space in the corequisite course is not available. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (j) (Register 2007, No. 35).)
20. Make a determination of whether a student meets a prerequisite prior to the student's enrollment in the course requiring the prerequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (g) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (l) (Register 2007, No. 35).)

(12) Degrees and Certificates (Cal. Code Regs., tit. 5, §§ 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, and 55809)

This section addresses regulations pertaining to the award of degrees, certificates, and diplomas by community college districts upon the completion of standards specified by the Board of Governors and the governing board of the community college district.

Prior to analyzing title 5, sections 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, and 55809, it is necessary to review the authority, missions, and functions of California Community Colleges. As noted above, since 1976 community college districts have been given

broad authority in the governance of community colleges. This authority known as the “permissive code” allows community college districts to initiate and carry on any program, activity, or to otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.³⁰⁰ Although local districts have been granted broad authority to govern community colleges, the Legislature has maintained general supervision of the governance of community colleges.³⁰¹ As part of this supervision the Legislature has defined the missions and functions of community colleges in Education Code section 66010.4, which provides in relevant part:

The California Community Colleges shall, as a primary mission, offer academic and vocational instruction at the lower division level for both younger and older students, including those persons returning to school. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree.³⁰²

Taking this grant of authority to offer associate degrees further, the Board of Governors defined “‘college’ [to mean] a degree-granting institution intended to provide instruction through the fourteenth grade.”³⁰³ Thus, although the Education Code authorizes, but does not require, community college districts to grant associate degrees, as defined by the Board of Governors’ regulations community colleges are required to grant degrees.³⁰⁴

- a. California Code of Regulations, title 5, sections 55800, 55800.5, 55805, 55805.5, 55806, 55808, and 55809 impose state-mandated activities³⁰⁵

³⁰⁰ Former Education Code section 72233, as added by Statutes 1976, chapter 1010. See also, *Barnhart v. Cabrillo Community College*, *supra*, 76 Cal.App.4th 818, 824-825.

³⁰¹ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1579. See footnote 5, providing:

While the Legislature has chosen to encourage local responsibility for control of public education through local school districts, that is a matter of legislative choice rather than constitutional compulsion and the authority that the Legislature has given to local districts remains subject to the ultimate and nondelegable responsibility of the Legislature.

³⁰² Education Code section 66010.4, subdivision (a)(1), as amended by Statutes 1996, chapter 1057; and derived from former Education Code Section 22651, as added by Statutes 1960, chapter 49, 1st extraordinary session.

³⁰³ Former California Code of Regulations, title 5, section 51802 (Register 75, no.26); renumbered to former California Code of Regulations, title 5, section 55827 (Register 83, No. 29); current California Code of Regulations, title 5, section 55180, subdivision (a) (Register 2008, No. 25).

³⁰⁴ In 2010, the Legislature added Education Code 66746 (Stats. 2010, ch. 428 (S.B. 1440)), which conditions receipt of state apportionment funding upon the development and granting of associate degrees for transfer to the California State University.

³⁰⁵ Test Claim 02-TC-31, p. 24. The claimants have pled the title 5 regulations in the “Degrees and Certificates” section of the test claim analysis as last amended in 1991, which coincides with Register 91, number 23. As a result, the language analyzed in this section will address the Register 91, number 23, version of the regulations.

Policy Regarding Degrees and Certificates (Cal. Code Regs., tit. 5, § 55800):

Section 55800 addresses the adoption of policy regarding the degrees and certificates awarded by the community college district. Section 55800 provides:

The governing board of community college districts shall adopt policy consistent with the provisions of this [subchapter].³⁰⁶ The policy shall be published in the college catalog under appropriate headings, and filed with the Chancellor's Office as required by section 51004 of this [division].³⁰⁷

The plain language of section 55800 requires community college districts to adopt policy consistent with the subchapter on "Degrees and Certificates" (Cal. Code Regs., tit. 5, §§ 55800-55810). In addition, the policy is required to be published in the college catalog under appropriate headings.

Although the requirements of California Code of Regulations, title 5, section 51004, do not independently impose state-mandated activities, section 55800 requires community college districts to file their district policies on degrees and certificates with the Chancellor's Office as required by section 51004. Section 51004, subdivision (b), requires districts to file a copy of their regulations, and any amendments, to the Chancellor's Office. As a result, community college districts are mandated to file a copy of their regulations, and any amendments thereto, adopted pursuant to section 55800 with the Chancellor's Office. Therefore, the Commission finds that California Code of Regulations, title 5, section 55800 mandates community college districts to engage in the following activities:

1. Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810.³⁰⁸ (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23).)
2. Publish the policy consistent with the subchapter regarding degrees and certificates in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23).)
3. File a copy of the policy regarding degrees and certificates, and any amendments, with the Chancellor. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23).)

Philosophy and Criteria for Associate Degree and General Education (Cal. Code Regs., tit. 5, §§ 55805 and 55805.5):

Sections 55805 and 55805.5 address the philosophies and criteria for associate degrees and general education of community college districts.

Section 55805, subdivision (a), provides, "[t]he governing board of a community college district shall adopt a policy which states its specific philosophy on General Education." When developing this policy the governing board is to consider the policy of the Board of Governors

³⁰⁶ See "Minimum Conditions Entitling Community College Districts to State Aid" section, regarding the discussion of the Nomenclature Cross-Reference issued by the Office of Administrative Law.

³⁰⁷ *Ibid.*

³⁰⁸ The language of California Code of Regulations, title 5, section 55750 provides, "... consistent with this chapter." However, see discussion regarding the Nomenclature Cross Reference in the "Minimum Conditions Entitling Community College Districts to State Aid" section above.

specified in subdivision (a) of section 55805 which generally states that an associate degree is more than just an accumulation of units, and that general education is central to an associate degree.³⁰⁹ Subdivision (b) of section 55805 provides that the governing board of a community college district shall establish criteria to determine which courses may be used in implementing its philosophy on the associate degree and general education. Subdivision (c) of section 55805 provides that the governing board of a community college district shall, on a regular basis, review the policy and criteria.

Section 55805.5 defines the scope of the type of courses that may be permitted by the criteria established by the governing board of a community college district pursuant to section 55805, subdivision (b). Section 55805.5 provides:

The criteria established by the governing board of a community college district to implement its philosophy on the associate degree shall permit only courses that conform to the standards specified in [California Code of Regulations, title 5,] section 55002 (a) and that fall into the following categories to be offered for associate degree credit:

- (a) All lower division courses accepted toward the baccalaureate degree by the California State University or University of California or designed to be offered for transfer.
- (b) Courses that apply to the major in non-baccalaureate occupational fields.
- (c) English courses not more than one level below the first transfer level composition course, typically known as English 1A. Each student may count only one such course as credit toward the associate degree.
- (d) All mathematics courses above and including Elementary Algebra.
- (e) Credit courses in English and mathematics taught in or on behalf of other departments and which, as determined by the local governing board require entrance skills at a level equivalent to those necessary for the courses specified in subsections (c) and (d) above.

As a result, the Commission finds that California Code of Regulations, title 5, sections 55805 and 55805.5 mandate community college districts to engage in the following activities:

1. Adopt a policy which states its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23).)
2. Consider the General Education policy of the Board of Governors specified in California Code Regulations, title 5, section 55805, subdivision (a) (Register 91, No. 23), when developing the policy stating its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23).)
3. Establish criteria, subject to the limitations in California Code of Regulations, title 5, section 55805.5 (Register 91, No. 23), to determine which courses may be used in implementing its philosophy on the associate degree and general education. (Cal. Code Regs., tit. 5, §§ 55805, subd. (b); and 55805.5 (Register 91, No. 23).)

³⁰⁹ For the text of the Board of Governors' policy see California Code of Regulations, title 5, section 55805, subdivision (a) (Register 91, No. 23).

4. Review the policy and criteria for General Education, established pursuant to California Code of Regulations, title 5, section 55805, subdivisions (a) and (b), on a regular basis. (Cal. Code Regs., tit. 5, § 55805, subd. (c) (Register 91, No. 23).)

Duty to Grant a Degree or Certificate of Achievement and the Minimum Requirements for the Associate Degree (Cal. Code Regs., tit. 5, §§ 55800.5, 55806, 55808, and 55809):

Title 5, sections 55800.5 and 55806, address the duty of community college districts to award an associate degree to students upon the successful completion of the course of study required by the students' majors and the criteria and minimum requirements that a student must satisfy as a condition to trigger the duty of community college districts. Section 55808 addresses the duty to issue a certificate of achievement when a student successfully completes a course of study for which a certificate of achievement is offered. Section 55809 clarifies that the duty to grant a diploma, degree, or certificate exists whenever a student has completed all requirements for the degree, diploma, or certificate without regard to length of time actually taken by the student to complete such requirements. Similarly, section 55809 clarifies that students who have satisfactorily completed the requirements of any course of study in less than the prescribed time are to receive credit for the full number of semester hours scheduled for such course.

When analyzing state mandate claims it is necessary for the Commission to look at the underlying program to determine if a claimant's participation in the underlying program is voluntary or legally compelled.³¹⁰ As discussed above, community colleges by definition are degree granting institutions. Thus, the requirements of title 5, sections 55800.5, 55806, and 55809, as they address and apply to associate degree standards or granting associate degrees constitute state-mandated activities.

However, absent from the regulatory definition of "colleges" and from the governing statutes and regulations, is a legal requirement to offer courses of study or curricula for which a certificate of achievement or diploma is offered. The duty to issue a certificate of achievement or diploma is triggered by the discretionary decision to offer a certificate of achievement or diploma. Thus, the requirements of title 5, sections 55808 and 55809, as they address and apply to certificates of achievement and diplomas, do not constitute state-mandated activities.

The claimants argue:

The community college course offerings are mandated by law to the extent that they comply with the primary mission (Education Code Section 66010.4). The DSA has not stated a basis to distinguish courses that can lead to a certificate or diploma from those which lead to a degree. Sections 55800.5, 55805, and 55809 establish independent legal compulsion to award either a degree, certificate, or a diploma when a student completes the designated curriculum. The compulsion derives from the student's completion of course work that is part of an educational plan that complies with the primary mission of the community college.

Although, the discretionary decision of a community college district to offer a certificate of achievement or diploma is consistent with the primary mission of community colleges, the plain language of Education Code section 66010.4 does not require community colleges to offer courses that lead to a certificate or diploma, nor does any other code section or regulation. In contrast, as noted above, community colleges are defined as degree granting institutions. Degrees are distinguished from certificates and diplomas. In addition, under the claimants'

³¹⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th at p. 743.

argument any activity that is consistent or complies with the primary mission of community colleges would constitute a reimbursable activity under article XIII B, section 6 of the California Constitution, regardless of whether the activity was done at the discretion of a community college district. Finding in this manner would be inconsistent with article XIII B and the case law interpreting article XIII B.³¹¹

Pursuant to the above discussion, the Commission finds that California Code of Regulations, title 5, sections 55800.5, 55806, and 55809, mandate community college districts to engage in the following activities:

1. Confer a degree of associate in arts or associate in science upon a student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average; demonstrated competence in reading, in written expression, and in mathematics. The degree shall be conferred to a student without regard to how long it takes for the student to complete the requirements. Credit for the full number of semester hours scheduled for a course shall be granted, even when the student has satisfactorily completed the requirements of any course of study in less than the prescribed time. (Cal. Code Regs., tit. 5, §§ 55800.5, 55806, and 55809 (Register 91, No. 23).)
2. Condition receipt of an associate degree upon a student who has satisfactorily completed at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

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

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

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

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

3. Offer ethnic studies in at least one of the general education areas of learning listed in California Code of Regulations, title 5, section 55806, subdivision (b)(1)(A)-D) (i.e. Natural Sciences, Social and Behavioral Sciences, Humanities, Language and Rationality-English Composition, and Language and Rationality-Communication and Analytical Thinking) (Cal. Code Regs., tit. 5, § 55806, subd. (b)(3) ((Register 91, No. 23).)
4. Design a course to help students develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science

³¹¹ *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d at p. 174; *Kern High School Dist., supra*, 30 Cal.4th at p. 743;

and other human activities, in order to satisfy the general education requirement in natural sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(A) (Register 91, No. 23).)

5. Design a course to develop an awareness of the method of inquiry used by the social and behavioral sciences and to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate, in order to satisfy the general education requirement in social and behavioral sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(B) (Register 91, No. 23).)
6. Design a course to help students to develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and ability to make value judgments, in order to satisfy the general education requirement in humanities. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(C) (Register 91, No. 23).)
7. Design courses fulfilling the written composition (English composition) requirement to include both expository and argumentative writing. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(1) (Register 91, No. 23).)
8. Design a course to fulfill the communication and analytical thinking requirement. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(2) (Register 91, No. 23).)

Conversion of Noncredit Courses to Credit Counted Toward an Associate Degree (Cal. Code Regs., tit. 5, § 55807):

Title 5, section 55807, addresses the conversion of noncredit courses to credit courses counted toward an associate degree. Section 55807 provides:

Upon student petition to and certification by a governing board of credit-level achievement and prescribed academic rigor, and evidence of prescribed competence as approved by the faculty, noncredit courses may count toward associate degrees.

The claimants assert that section 55807 requires community colleges to establish and implement a process to respond to a student petition requesting that non credit courses be counted toward associate degrees.³¹² However, the plain language of section 55807 does not require community colleges to engage in any activities, including those asserted by the claimants. Rather, the plain language of section 55807 provides community colleges the authority to count noncredit courses toward associate degrees upon the occurrence of specified actions by a student and the governing board of a community college. The language of section 55807 does not require a community college to allow the conversion of noncredit courses to credit courses counted toward an associate degree. As a result, the Commission finds that California Code of Regulations, title 5, section 55807, does not impose any state-mandated activities upon community colleges.

(i) Summary of state-mandated activities

1. Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23).)

³¹² Test Claim 02-TC-31, p. 192.

2. Publish the policy consistent with the subchapter regarding degrees and certificates in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23).)
3. File a copy of the policy regarding degrees and certificates, and any amendments, with the Chancellor. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23).)
4. Adopt a policy which states its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23).)
5. Consider the policy of the Board of Governors specified in California Code Regulations, title 5, section 55805, subdivision (a) (Register 91, No. 23), when developing the policy stating its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23).)
6. Establish criteria, subject to the limitations in California Code of Regulations, title 5, section 55805.5 (Register 91, No. 23), to determine which courses may be used in implementing its philosophy on the associate degree and general education. (Cal. Code Regs., tit. 5, §§ 55805, subd. (b); and 55805.5 (Register 91, No. 23).)
7. Review the policy and criteria for General Education, established pursuant to California Code of Regulations, title 5, section 55805, subdivisions (a) and (b), on a regular basis. (Cal. Code Regs., tit. 5, § 55805, subd. (c) (Register 91, No. 23).)
8. Confer a degree of associate in arts or associate in science upon a student who successfully completes the prescribed course of study for the degree while maintaining the requisite grade point average; demonstrated competence in reading, in written expression, and in mathematics. The degree shall be conferred to a student without regard to how long it takes for the student to complete the requirements. Credit for the full number of semester hours scheduled for a course shall be granted, even when the student has satisfactorily completed the requirements of any course of study in less than the prescribed time. (Cal. Code Regs., tit. 5, §§ 55800.5, 55806, and 55809 (Register 91, No. 23).)
9. Condition receipt of an associate degree upon a student who has satisfactorily completed at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

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

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

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

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

10. Offer ethnic studies in at least one of the general education areas of learning listed in California Code of Regulations, title 5, section 55806, subdivision (b)(1)(A)-D) (i.e.

Natural Sciences, Social and Behavioral Sciences, Humanities, Language and Rationality-English Composition, and Language and Rationality-Communication and Analytical Thinking) (Cal. Code Regs., tit. 5, § 55806, subd. (b)(3) (Register 91, No. 23).)

11. Design a course to help students develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities, in order to satisfy the general education requirement in natural sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(A) (Register 91, No. 23).)
12. Design a course to develop an awareness of the method of inquiry used by the social and behavioral sciences and to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate, in order to satisfy the general education requirement in social and behavioral sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(B) (Register 91, No. 23).)
13. Design a course to help students to develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and ability to make value judgments, in order to satisfy the general education requirement in humanities. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(C) (Register 91, No. 23).)
14. Design courses fulfilling the written composition (English composition) requirement to include both expository and argumentative writing. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(1) (Register 91, No. 23).)
15. Design a course to fulfill the communication and analytical thinking requirement. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(2) (Register 91, No. 23).)
 - b. The state-mandated activities imposed by California Code of Regulations, title 5, sections 55800, 55805, 55805.5, and 55806 (Register 83, No. 29; Register 88, No. 42; Register 91, No. 43) constitute a new program or higher level of service

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

The claimants have pled title 5, sections 55800, 55805, 55806, and 55809, as added in 1983 and last amended in 1991; section 55800.5, as added in 1991; and section 55805.5, as added in 1988.³¹³ Many of the activities mandated by these title 5 sections are derived from former title 5

³¹³ Test Claim 02-TC-31, pgs. 20-24. The dates coincide with Register 83, number 29, Register 88, number 42, and Register 91, number 43. The Commission notes that the claimants have pled title 5, sections 55806 and 55808, as added in 1988, and title 5, section 55805.5, as added in 1983. However, in 1983 title 5, section 55805.5 did not exist, instead it was added in 1988. In addition, both title 5, sections 55806 and 55808, were added in 1983. From the claimants’ narrative, it is clear that the claimants have transposed the adoption dates for title 5, sections 55806 and 55808, with the adoption date of title 5, section 55805.5. Thus, the Commission will treat sections 55806 and 55808 as pled as added in 1983, and section 55805.5 as pled as added in 1988.

regulations existing prior to 1983.³¹⁴ However, the former title 5 regulations were all part of former “Division 2” of the title 5 regulations, the provisions of which:

[C]omprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.³¹⁵

Thus, the pre-1983 title 5 regulations which contain the same requirements as the regulations pled in this section of the analysis did not legally require community college districts to engage in activities prior to 1983 for the same reasons that the regulations pled in the “Minimum Conditions” section of this analysis did not impose state-mandated activities. Specifically, the requirements of the pre-1983 title 5 regulations are downstream activities triggered by the discretionary decision to become *entitled to receive state aid*. In addition, with one exception, community college districts were not practically compelled to engage in the activities contained in the pre-1983 regulations, and thus constitute a new program or higher level of service.³¹⁶ In 2007, the title 5 regulations pled in this section of the analysis were repealed and renumbered to title 5, section 55060 et seq., without any substantive changes to the new program or higher level of service found above.³¹⁷

The exception to the above finding of a new program or higher level of service is the requirement for community college districts to confer an associate degree. The court in *Kern High School Dist.* left open the possibility that a state mandate might be found in circumstances of practical compulsion, where a local entity faced certain and severe penalties such as double taxation or other draconian consequences as a result of noncompliance with a program that is not legally compelled.³¹⁸ In 1975, former title 5, section 51802, defined “colleges” as degree-granting institutions.³¹⁹ In other words, to *exist* community colleges were required to grant degrees. Thus, community colleges districts were practically compelled to grant degrees, rather than face the draconian consequence of not existing, *before and after 1983*. As a result, the mandate to confer a degree does not constitute a *new program or higher level* of service subject to article XIII B, section 6 of the California Constitution.

³¹⁴ California Code of Regulations, title 5, section 55800, addressing a district’s policy regarding degrees and certificates, was derived from former title 5, section 51621, as added in 1971 by Register 71, number 40. Title 5, sections 55800.5 and 55809, which addresses a district’s duty to award an associate degree, was derived from former title 5, section 51626, as added in 1977 by Register 77, number 45. Title 5, section 55806, was derived from former title 5, section 55626, as amended in 1982 by Register 82, number 24. Title 5, section 55808, was derived from former title 5, section 51625, as added in 1971 by Register 71, number 40.

³¹⁵ Former California Code of Regulations, title 5, section 51000 (Register 80, number 11).

³¹⁶ *POBRA*, *supra*, 170 Cal.App.4th at pgs. 1366-1369, in which the court explained that a finding of “practical compulsion” requires a concrete showing in the record that a failure to engage in the activity/activities at issue will result in certain and severe penalties.

³¹⁷ Register 2007, number 35, operative August 16, 2007.

³¹⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

³¹⁹ Former California Code of Regulations, title 5, section 51802 (Register 75, no.26).

(i) Summary of state-mandated new program or higher level of service

Pursuant to the above discussion, the Commission finds that the following state-mandated activities constitute a new program or higher level of service subject to article XII B, section 6 of the California Constitution:

1. Adopt policy consistent with the subchapter regarding degrees and certificates consisting of California Code of Regulations, title 5, section 55800 – 55810. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)
2. Publish the policy consistent with the subchapter regarding degrees and certificates in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)
3. File a copy of the policy regarding degrees and certificates, and any amendments, with the Chancellor. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)
4. Adopt a policy which states its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061, subd. (a) (Register 2007, No. 35).)
5. Consider the policy of the Board of Governors specified in California Code Regulations, title 5, section 55805, subdivision (a) (Register 91, No. 23), when developing the policy stating its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061, subd. (a) (Register 2007, No. 35).)
6. Establish criteria, subject to the limitations in California Code of Regulations, title 5, section 55805.5 (Register 91, No. 23), to determine which courses may be used in implementing its philosophy on the associate degree and general education. (Cal. Code Regs., tit. 5, §§ 55805, subd. (b); and 55805.5 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, §§ 55061, subd. (b), and 55062 (Register 2007, No. 35).)
7. Review the policy and criteria for General Education, established pursuant to California Code of Regulations, title 5, section 55805, subdivisions (a) and (b), on a regular basis. (Cal. Code Regs., tit. 5, § 55805, subd. (c) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061, subd. (c) (Register 2007, No. 35).)
8. Condition receipt of an associate degree upon a student who has satisfactorily completed at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

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

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

(1) Natural Sciences, (2) Social and Behavioral Sciences, (3) Humanities, (4) Language

and Rationality – English Composition, and (5) Language and Rationality – Communication and Analytical Thinking.

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

9. Offer ethnic studies in at least one of the general education areas of learning listed in California Code of Regulations, title 5, section 55806, subdivision (b)(1)(A)-D) (i.e. Natural Sciences, Social and Behavioral Sciences, Humanities, Language and Rationality-English Composition, and Language and Rationality-Communication and Analytical Thinking) (Cal. Code Regs., tit. 5, § 55806, subd. (b)(3) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(2) (Register 2007, No. 35).)
10. Design a course to help students develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities, in order to satisfy the general education requirement in natural sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(A) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(A) (Register 2007, No. 35).)
11. Design a course to develop an awareness of the method of inquiry used by the social and behavioral sciences and to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate, in order to satisfy the general education requirement in social and behavioral sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(B) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(B) (Register 2007, No. 35).)
12. Design a course to help students to develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and ability to make value judgments, in order to satisfy the general education requirement in humanities. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(C) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(C) (Register 2007, No. 35).)
13. Design courses fulfilling the written composition (English composition) requirement to include both expository and argumentative writing. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(1) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(D)(1) (Register 2007, No. 35).)
14. Design a course to fulfill the communication and analytical thinking requirement. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(2) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(D)(2) (Register 2007, No. 35).)

(13) Open Courses (Cal. Code Regs., tit. 5, §§ 58102, 58104, 58106, 58107, and 58108)

This section addresses regulations that set forth standards regarding the provision of courses open to enrollment by any student admitted to the community college.

- a. California Code of Regulations, title 5, sections 58102 and 58104, impose state-mandated activities

Course Description and Dissemination of Information (Cal. Code Regs., tit. 5, §§ 58102 and 58104)

Section 58102 addresses the description of each course offered by a community college. Section 58102 provides:

The description of each course shall be clear and understandable to the prospective student and shall be published in the official catalog, and/or schedule of classes, and/or addenda.

A course description may indicate that the course is designed to meet certain specialized needs. If so indicated, the availability of the course to all qualified students must also be affirmed.

Section 58104 addresses the dissemination of the course descriptions. Specifically, section 58104 provides:

All courses to be conducted shall be described in the official general catalog and/or addenda and listed in the schedules of classes.

Courses which are established or conducted after publication of the general catalog or regular schedule of classes shall be reasonably well publicized.

Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individual receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or exclusion of qualified students.

Read together, the first paragraph of section 58102 and the first and second paragraphs of section 58104 require community college districts to publish each course to be conducted in the official catalogs, schedules of classes, and the addenda. In addition, the description is required to be clear and understandable to the prospective student.

The claimants assert that section 58102 also mandates community college districts to establish and implement procedures to ensure, if a course description indicates a course is designed to meet certain specialized needs, that the district affirms the availability of the course to all qualified students, pursuant to the second paragraph of section 58102.³²⁰

The plain language of the second paragraph of section 58102 does not mandate any activities on community college districts as alleged by the claimants. As quoted above, section 58102 provides that a “course description *may* indicate that the course is designed to meet specialized needs;” however, districts are not required to make this indication. Only when districts decide to indicate that a course meets specialized needs are the districts then required to affirm the availability of the course. Under *Kern High School Dist.*, a requirement resulting from an underlying discretionary decision does not constitute a state-mandated activity. As a result, the

³²⁰ Test Claim 02-TC-31, p. 194. Claimant response to draft staff analysis, *supra*, p. 9-11.

Commission finds that the second paragraph of section 58102 does not mandate any activity on community college districts.

Thus, the Commission finds that California Code of Regulations, title 5, section 58102 imposes the following state-mandated activity:

Publish a description of each course that is clear and understandable to the prospective student in the official catalog, schedule of classes, and addenda. (Cal. Code Regs., tit. 5, §§ 58102 and 58104.)

Limitations on Enrollment (Cal. Code Regs., tit. 5, § 58106)

Section 58106 addresses the ability of community college districts to limit enrollment in courses offered by the district. Section 58106 provides:

In order to be claimed for purposes of state apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, provided that enrollment in specific courses or programs may be limited as follows:

(a) Enrollment may be limited to students meeting prerequisites and corequisites established pursuant to Sections 55200-55202 of this Division,

(b) Enrollment may be limited due to health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning or legal requirements imposed by statutes, regulations, or contracts. The governing board shall adopt policies identifying any such limitations and requiring fair and equitable procedures for determining who may enroll in affected courses or programs. Such procedures shall be consistent with one or more of the following approaches:

(1) limiting enrollment to a "first-come, first-served" basis or using other nonevaluative selection techniques to determine who may enroll; or

(2) limiting enrollment using a registration procedure authorized by Section 58108; or

(3) in the case of intercollegiate completion, honors courses, or public performance courses, allocating available seats to those students judged most qualified; or

(4) limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions; or

(5) with respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of Sections 55754-55755 of this Part, limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan.

(c) A student may challenge an enrollment limitation established pursuant to Subsection (b) of this Section on any of the following grounds:

(1) the enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(2) the district is not following its policy on enrollment limitations;

(3) the basis upon which the district has established an enrollment limitation does not in fact exist; or

(4) any other criteria established by the district.

(d) The student shall bear the burden of showing that grounds exists for the challenge. Challenges shall be handled in a timely manner, and if the challenge is upheld, the district shall waive the enrollment limitation with respect to that student.

(e) In the case of a challenge under Subsection (c)(1) of this Section, the district shall, upon completion of the challenge procedure established pursuant to this Section, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Subchapter 5 (commencing with Section 59300) of Chapter 10 of this Division. Completion of the challenge procedure shall be deemed to satisfy the requirement of Section 59328(b) that the district and the student attempt informal resolution of the complaint.

The language of section 58106 requires all courses to be open for enrollment to any student admitted by the community college, except in specified situations in which enrollment may be limited. If a district limits enrollment, students have the ability to challenge the enrollment limitation on specific grounds. Community college districts are then required to handle the challenges in a timely manner, and waive the limitation if the challenge is upheld.

The claimants allege that section 58106, requires community college districts “to permit enrollment to be limited.”³²¹ However, the language of section 58106 does not require districts to permit enrollment to be limited, because the section 58106, itself, permits enrollment to be limited.

The Commission finds that title 5, section 58106, requires community college districts to engage in the following activities:

1. Make all courses open to enrollment to any student that has been admitted to the college, except in the specified situations listed in title 5, section 58106, subdivisions (a) and (b), in which enrollment may be limited. (Cal. Code Regs., tit. 5, § 58106.)
2. Handle challenges to enrollment limitations made by students pursuant to title 5, section 58106, subdivision (c), in a timely manner. (Cal. Code Regs., tit. 5, § 58106.)
3. Waive the enrollment limitation with respect to a student that challenged an enrollment limitation, if the challenge is upheld. (Cal. Code Regs., tit. 5, § 58106.)
4. Advise a student that he or she may file a formal complaint of unlawful discrimination pursuant to title 5, section 59300 et seq., upon completion of handling a challenge to an enrollment limitation made by a student alleging that an enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 58106, subd. (c)(1) (Register 93, No. 42)). (Cal. Code Regs., tit. 5, § 58106.)

Although title 5, section 58106, requires the activities listed above, Article XIII B places spending limits on both the state and local governments; however, costs mandated by courts or federal law are expressly excluded from these spending limits. Article XIII B, section 9, subdivision (b), of the California Constitution excludes from either the state or local spending limit any “[a]ppropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly.”

³²¹ Test Claim 02-TC-31, pgs. 195-199.

When analyzing federal law in the context of a test claim under article XIII B, section 6, the court in *Hayes v. Commission on State Mandates* held that “[w]hen the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies’ taxing and spending limitations” under article XIII B.³²² Also, the court in *San Diego Unified School Dist.* found that “for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law—and whose costs are, in context, de minimis—should be treated as part and parcel of the underlying federal mandate.”³²³ However, the court in *Hayes* also found when federal law imposes a mandate on the state, and the state “freely [chooses] to impose the costs upon the local agency as a means of implementing a federal program, then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.”³²⁴

Under the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, “States [are denied] the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute.”³²⁵ In addition, a classification that does not involve fundamental rights or proceed along suspect lines is accorded a strong presumption of validity, such that it will not run afoul of the Equal Protection Clause “if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.”³²⁶

As applicable here, the Equal Protection clause requires community college districts to provide enrollment in their courses on an equal basis, absent a rational relationship to a legitimate district interest.³²⁷ Thus, under the Equal Protection clause districts are mandated to have courses open to enrollment to any student admitted to a college, except where a community college district has a legitimate interest to limit enrollment that is rationally related to the limitation.

As a result, the following activity imposed by title 5, section 58106, constitutes a federal mandate:

Make all courses open to enrollment to any student that has been admitted to the college, except in the specified situations listed in title 5, section 58106, subdivisions (a) and (b), in which enrollment may be limited. (Cal. Code Regs., tit. 5, § 58106)

However, under the Equal Protection Clause, community college districts are not required to have a complaint process for students to challenge limitations on enrollment. As a result, the following activities imposed by title 5, section 58106, constitute state-mandated activities:

1. Handle challenges to enrollment limitations made by students pursuant to title 5, section 58106, subdivision (c), in a timely manner. (Cal. Code Regs., tit. 5, § 58106.)

³²² *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593 citing *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76; see also, Government Code section 17513.

³²³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 890.

³²⁴ *Hayes*, *supra*, 11 Cal.App.4th at p. 1594.

³²⁵ *Reed v. Reed* (1971) 404 U.S. 71, 75-76.

³²⁶ *Heller v. Doe by Doe* (1993) 509 U.S. 312, 319-320.

³²⁷ Because postsecondary education is not a fundamental right (*Gurfinkel v. Los Angeles Community College Dist.*, *supra*, 121 Cal.App.3d 1, 5-7) the “rational basis” test applies.

2. Waive the enrollment limitation with respect to a student that challenged an enrollment limitation, if the challenge is upheld. (Cal. Code Regs., tit. 5, § 58106.)
3. Advise a student that he or she may file a formal complaint of unlawful discrimination pursuant to title 5, section 59300 et seq., upon completion of handling a challenge to an enrollment limitation made by a student alleging that an enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 58106, subd. (c)(1) (Register 93, No. 42)). (Cal. Code Regs., tit. 5, § 58106.)

Facilities and Opportunities for Participation (Cal. Code Regs., tit. 5, § 58107)

Section 58107 addresses the use of public funds for athletic programs and the provision of facilities and opportunities for participation in the programs. In relevant part, section 58107 provides:

Notwithstanding any other provision of law, no public funds shall be used in connection with athletic programs conducted under the auspices of a community college district governing board or any student organization within the district, which do not provide facilities and opportunities for participation by both sexes on an equitable basis. . . .

The claimants argue that the “language of the section is replete with words and phrases that require further description in order to determine compliance. It would seem reasonable and necessary for the district to adopt policies and implement procedures to avoid the prohibited use of funding.”³²⁸ However, the claimants are reading activities into section 58107 that are not present in the section. The plain language of section 58107 sets forth a prohibited activity, specifically the use of public funds in connection with athletic programs that do not provide facilities and opportunities to participate in the programs by both sexes on an equitable basis. As a result, section 58107 does not require any activities of community college districts. Rather, section 58107 prohibits community college districts from engaging in a specified activity. Thus, the Commission finds that California Code of Regulations, title 5, section 58107, does not impose any state-mandated activities.

Registration and Standards for Enrollment (Cal. Code Regs., tit. 5, § 58108)

Section 58108 addresses the procedures for registration and standards for enrollment in courses offered by community colleges. Section 58108 provides:

Procedures for registration and standards for enrollment in any course shall be only those which are consistent with these and other sections of Title 5 and uniformly administered by appropriately authorized employees of the district.

Except as otherwise provided by state law, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district.

Students will not be required to participate in any preregistration activity not uniformly required; nor shall the college or district allow anyone to place or enforce nonacademic requisites as barriers to enrollment in or the successful completion of a class.

No registration procedures shall be used that result in restricting enrollment to a specialized clientele.

³²⁸ Claimants’ response to draft staff analysis, *supra*, p. 11.

The following registration procedures are permissible: special registration assistance to the handicapped or disadvantaged student as defined by statute, for the purpose of providing equalization of educational opportunity; and enrollment of students in accordance with a priority system established pursuant to legal authority by the local board of trustees.

With respect to accessibility to off-campus sites and facilities, no student is to be required to make any special effort not required of all students to register in any class or course section. Once enrolled in the class, all students must have equal access to the site.

The claimants argue that the above language requires districts to take some affirmative action to avoid the prohibited activity.³²⁹ However, the Commission cannot read a mandated activity into the section that is not present in the section. The plain language of section 58108 does not impose any state-mandated activities on community college districts. The first paragraph prohibits community college district procedures for registration and standards for enrollment from being in noncompliance with the Board of Governor’s regulations, and from being inconsistently administered by unauthorized employees. The prohibitive nature of the first paragraph is indicated by the usage of the language “shall be only those” with reference to district procedures for registration and standards for enrollment. This language indicates intent to limit a district’s authority in regard to establishing procedures for registration and standards for enrollment. Similarly, the remaining language of section 58108 prohibits community college districts from engaging in specified activities. As a result, the Commission finds that California Code of Regulations, title 5, section 58108 does not impose any state-mandated activities.

(i) Summary of state-mandated activity:

Pursuant to the above discussion, the Commission finds that California Code of Regulations, title 5, sections 58102 and 58104, impose the following state-mandated activity:

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

b. California Code of Regulations, title 5, sections 58102 and 58104, constitute a new program or higher level of service

To constitute a “new program or higher level of service” the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on local governments that do not apply to all residents and entities in the state in order to implement

³²⁹ *Ibid.*

a state policy.³³⁰ In addition, the requirements must be new in comparison with the pre-existing scheme and must be intended to provide an enhanced service to the public.³³¹ To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.³³²

The activities mandated by sections 58102, 58104, and 58106, carry out the governmental function of education by assisting students in enrollment and registration. As a result, the activities mandated by sections 58102 and 58104 constitute a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The claimants have pled sections 58102 and 58104 of title 5 of the California Code of Regulations, as added in 1982 and last amended in 1993.³³³ Sections 58102 and 58104 mandate community college districts to engage in the following activities:

Publish a description of each course that is clear and understandable to the prospective student in the official catalog, schedule of classes, and addenda. (Cal. Code Regs., tit. 5, §§ 58102 and 58104 (Register 93, No. 25).)

The activities mandated by title 5, sections 58102 and 58104, are derived from former title 5, sections 51822 and 51824, as added in 1976 by Register 76, number 51. However, former title 5, sections 51822 and 51824, are part of former “Division 2” of the title 5 regulations, the provisions of which:

[C]omprise the rules and regulations affirming and fixing the minimum standards, satisfaction of which entitles a district maintaining community colleges to receive state aid for the support of their community colleges.³³⁴

Thus, the former title 5 regulations which contain the same requirements as the regulations pled in this section of the analysis did not impose state-mandated activities prior to 1983 for the same reasons that the regulations pled in the “Minimum Conditions” section of this analysis did not impose state-mandated activities. Specifically, the requirements of the former title 5 regulations are downstream activities triggered by the discretionary decision to become *entitled to receive state aid*. As a result, immediately prior to the adoption of title 5, sections 51822 and 51824, community college districts were not required to engage in the activities mandated by the sections, and therefore, title 5, sections 58102 and 58104, constitute a “new program or higher level of service” subject to article XIII B, section 6 of the California Constitution.

The claimants have pled section 58106 as added in 1993.³³⁵ Immediately prior to the adoption of section 58106, community colleges were not required to engage in the activities mandated by section 58106. As a result, the activities mandated by title 5, section 58106, constitutes a “new program or higher level of service” subject to article XIII B, section 6 of the California Constitution.

³³⁰ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

³³¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

³³² *Ibid.*

³³³ Test Claim 02-TC-31, p. 25. These dates coincide with Register 82, number 31; and Register 93, number 25.

³³⁴ Former California Code of Regulations, title 5, section 51000 (Register 80, number 11).

³³⁵ Test Claim 02-TC-31, p. 26. This date coincides with Register 93, No. 42.

(i) Summary of state-mandated new program or higher level of service

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

(14) Student Fees (Ed. Code, § 70902, subd. (b)(9))

This section addresses Education Code section 70902, subdivision (b)(9), which addresses the establishment of student fees.

- a. Education Code section 70902, subdivision (b)(9), does not impose any state-mandated activities

Education Code section 70902, subdivision (b)(9), provides that community college districts are to:

Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

The language of Education Code section 70902, subdivision (b)(9), on its own does not require community college districts to engage in any activities. Instead, it provides that districts are required to establish fees as required by law. However, the claimants have not pled any statutes or regulations that require the establishment of any student fees. As a result, the Commission finds that Education Code section 70902, subdivision (b)(9), does not impose any state-mandated activities.

(15) Notice to Students (Cal. Code Regs., tit. 5, §§ 54626, 54805, 59404, and 59410)

This section addresses California Code of Regulations, title 5, sections 54626, 54805, 59404, and 59410. These regulations address the adoption of policies or the provision of information or notices to students regarding various issues related to the operation and governing of community colleges and community college districts, including: (1) student directory information (Cal. Code Regs., tit. 5, § 54626); (2) student representation fees (Cal. Code Regs., tit. 5, § 54805); (3) the provision of instructional or other materials (Cal. Code Regs., tit. 5, § 59404); and (4) the possible consequences of failing to pay a proper financial obligation due to the district or college (Cal. Code Regs., tit. 5, § 59410).

- a. Student Directory Information (Cal. Code Regs., tit. 5, § 54626 (Register 83, No. 18))

Title 5, section 54626, addresses the ability of community college districts to release student directory information and the steps that a community college district must take in order to so.

- (i) California Code of Regulations, Title 5, Section 54626, imposes a requirement on community college districts

Section 54626 addresses the release of student directory information. Section 54626, subdivision (a), requires a community college district engage in the one-time activity of adopting a policy identifying, from a specified list provided in subdivision (a) of section 54626, categories of student directory information that the district's local governing board decides may be released.

Subdivision (b) provides in part:

Directory information, as established by the local governing board, *may be* released as to any student or former student currently attending the community college, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients. (Emphasis added.)

Subdivision (b) further provides that the notice must specify the period of time within which a student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. The plain language of subdivision (b) does not require community college districts to engage in any activity. Instead, the language of subdivision (b) authorizes community college districts to release directory information on the condition that it provides public notice. The language does not, however, require districts to use this authority, and thus, the Commission finds that subdivision (b) does not impose any requirements on community college districts.

Similarly, the plain language of subdivision (c) does not require community college districts to engage in any activities. Subdivision (c) provides that “[o]ther information may be added to the categories set forth in [Cal. Code Regs., tit. 5, § 54626, subd. (a),] provided that release of such information shall be authorized in writing by the student.” Thus, as indicated by the word “may” districts are authorized to add other information if the district receives authorization from the student. Districts, however, are not required to utilize this authority.

Subdivision (d) provides that the district has the discretion to limit or deny the release of specific information to specific organizations based on the best interest of students. In addition, the names and addresses of students may be provided to certain private schools or colleges. Thus, the plain language of subdivision (d) does not require community college districts to engage in any activities.

In summary, the Commission finds that California Code of Regulations, title 5, section 54626, requires community college districts to do the following:

Adopt a policy identifying, from a specified list provided in California Code of Regulations, title 5, subdivision (a) (Register 83, subdivision (a), categories of student directory information that the district's local governing board decides may be released. (Cal. Code Regs., title 5, § 54626, subd. (a) (One-time activity.)

(ii) The requirement of California Code of Regulations, title 5, section 54626, subdivision (a), does not constitute a federal mandate

The Chancellor's Office asserts that the activities contained in section 54626 are federally mandated activities, and thus, not reimbursable pursuant to Government Code section 17556, subdivision (c). The Chancellor's Office argues that the claimant "undoubtedly receives federal funds and is therefore bound by [Family Educational Rights and Privacy Act (FERPA) and its implementing regulations."³³⁶

FERPA (20 U.S.C., § 1232g) and its implementing regulations (34 C.F.R. § 99.1 et seq.), as with many other federal laws, condition federal funding to educational agencies and institutions on compliance with the provisions of FERPA and its implementing regulations. Because the California Legislature adopted section 54626 with the intent that it conform to FERPA and its implementing regulations, the requirements of section 54626 generally contain the same requirements as FERPA and its implementing regulations.³³⁷ The exception is that FERPA and its implementing regulations do not require educational agencies to specifically adopt a policy identifying what directory information it decides to release.

Government Code section 17556, subdivision (c), provides that the Commission shall not find costs mandated by the state if the test claim statute imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, *unless* the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. In addition, in *Hayes v. Commission on State Mandates*, the court, while discussing the Education of the Handicapped Act, found:

While the act includes certain substantive and procedural requirements which must be included in the state's plan for implementation of the act, it leaves primary responsibility for implementation to the state ... In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of services are state mandated and subject to subvention."³³⁸ (Citations omitted.)

Here, the state has chosen to require community college districts to specifically adopt a policy identifying what information it decides to release. Thus, the requirements of section 54626 exceed those of FERPA and its implementing regulations. As a result, the requirement of California Code of Regulations, title 5, section 54626 is not federally mandated pursuant to Government Code section 17556, subdivision (c).

(iii) The requirement of California Code of Regulations, title 5, section 54626, subdivision (a), constitutes a state mandate

Pursuant to the language of section 54626, community college districts are required to adopt a policy identifying student directory information that the district decides to release, if any. As a

³³⁶ Chancellor's Office Comments on Test Claim 02-TC-25, *supra*, p. 13.

³³⁷ See Education Code section 76200 et seq. See also, 20 United States Code section 1232g (a)(5) and (6), and 34 Code of Federal Regulations part 99.37.

³³⁸ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1594.

result, the Commission finds that California Code of Regulations, title 5, section 54626 imposes the following state-mandated activity on community college districts:

Adopt a policy identifying, from a specified list provided in California Code of Regulations, title 5, subdivision (a) (Register 83, subdivision (a), categories of student directory information that the district's local governing board decides may be released (Cal. Code Regs., title 5, § 54626, subd. (a) (One-time activity).)

(iv) The mandate of California Code of Regulations, title 5, section 54626, subdivision (a), does not constitute new program or higher level of service

The claimant has pled section 54626, as added in 1976 and last amended in 1983.³³⁹ Section 54626 was filed on March 5, 1976 and effective on the 30th day thereafter (April 4, 1976).³⁴⁰ Section 54626 was adopted to implement Education Code section 76240, which was originally enacted as former Education Code section 25430.12 in 1975.³⁴¹ Former Education Code section 25430.12, which was not pled by the claimants, required a community college district to adopt a policy identifying, from a specified list identical to section 54626, subdivision (a),³⁴² categories of student directory information that the district's local governing board decides may be released. The effective date of former Education Code section 25430.12 was January 1, 1976.³⁴³ As a result, as compared to the statutes and regulations pled, pre-existing law already required community college districts to adopt a policy identifying categories of student directory information that the district's local governing board decides may be released. Therefore, the requirement of California Code of Regulations, title 5, section 54626 does not constitute a "new program or higher level of service" subject to article XIII B, section 6 of the California Constitution.³⁴⁴

In addition, any costs associated with the alleged state-mandated program incurred before July 1, 2001 are not reimbursable, as the reimbursement period begins with the 2001-2002 fiscal year. As a result, costs associated with one-time activities occurring before July 1, 2001, are not reimbursable. As noted above, the activity mandated by California Code of Regulations, title 5, section 54626, subdivision (a), is a one-time activity. As such, any policy adopted by a community college district, pursuant to California Code of Regulations, title 5, section 54626, subdivision (a), prior to July 1, 2001 would not be reimbursable.

³³⁹ Test Claim 02-TC-25, pg. 5. These dates coincide with Register 76, Number 10 (March 6, 1976), and Register 83, Number 18 (April 30, 1983).

³⁴⁰ See History for California Code of Regulations, title 5, section 54600 (Register 76, No. 10 (March 6, 1976)).

³⁴¹ Former Education Code section 25430.12 (Stats. 1975, ch. 816).

³⁴² Former Education Code section 25430.1, subdivision (c) (Stats. 1975, ch. 816).

³⁴³ See Government Code section 9600.

³⁴⁴ The claimants raise the "new program standard of review" argument that is addressed at the beginning of the test claim analysis. For claimants' argument see Claimant response to draft staff analysis, *supra*, pgs. 2 and 28.

b. Student Representation Fee (Cal. Code Regs., tit. 5, § 54805)

(i) California Code of Regulations, title 5, section 54805, does not impose state-mandated activities

Section 54805 addresses the “student representation fee” that is used to provide support for student organizations. Section 54805 provides:

District governing boards shall include in the materials given to each student at registration, information pertaining to the representation fee. The form used by a college for the purpose of collecting the fee shall contain, at minimum, the following:

- (a) a statement indicating that the money collected pursuant to this article shall be expended to provide support for students or representatives who may be stating their positions and viewpoints before city, county, and district government, and before offices and agencies of the state and federal government;
- (b) the amount of the fee;
- (c) a statement informing the students of their right to refuse to pay the fee for religious, political, moral, or financial reasons.

The claimants assert that section 54805 requires community college districts to include in the materials given to each student at registration, information pertaining to the student representation fee which shall include the information set forth in subdivisions (a)-(c) of section 54805.³⁴⁵ The claimants argue that a student representation fee is created by an independent action of a third party (the student body), which triggers the requirement of districts to give students information regarding the fee.³⁴⁶

The language of section 54805, however, must be read in context with the whole statutory and regulatory scheme surrounding section 54805.³⁴⁷ In addition, pursuant to *Kern High School Dist.* a requirement resulting from an underlying discretionary decision does not constitute a state-mandated activity.³⁴⁸ Section 54805 was adopted as part of “Article 1. Student Representation Fee” of title 5 of the California Code of Regulations, which consists of regulation sections 54801, 54803, and 54805. Section 54801 et seq., was adopted to implement Education Code sections 76060 and 76060.5. Education Code section 76060 provides, “the governing board of a community college district *may* authorize the students of a college to organize a student body association.”³⁴⁹ Education Code section 76060.5 provides, “*If* a student body association has been established at a community college as authorized by Section 76060, the governing body of the association may order that an election be held for the purpose of establishing a student representation fee of one dollar (\$1) per semester.”³⁵⁰ California Code of Regulations, title 5, sections 54801 and 54803 set forth the election procedures with which student body associations

³⁴⁵ Test Claim 02-TC-25, p. 15

³⁴⁶ Claimants’ response to draft staff analysis, *supra*, p. 28.

³⁴⁷ *Fontana Unified School Dist. v. Burman*, *supra*, 45 Cal.3d 208, 218.

³⁴⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

³⁴⁹ Education Code section 76060. (Emphasis added.)

³⁵⁰ Education Code section 76060.5. (Emphasis added.)

may establish and terminate a student representation fee. Thus, a student body association may establish a student representation fee *only if* a community college district decides to authorize students of a college to organize a student body association.

It is in the context of the community college district's discretion to authorize the formation of a student body association and subsequently the possible imposition of a student representation fee that California Code of Regulations, title 5, sections 54801 and 54803, set forth procedures to hold an election to vote on the establishment and termination of a representation fee. It is also in this context that California Code of Regulations, title 5, section 54805, provides that district governing boards are to include in the materials given to each student at registration, "information pertaining to the representation fee." In addition, it is in this context that the form used by a college for the purpose of collecting the fee is required to include specific information.³⁵¹ Without a community college district's authorization to organize a student body association, the subsequent activities of calling an election for the creation or termination of a student representation fee, the provision of information regarding the representation fee, and collection of the representation fee are not required. Thus, the activities required by section 54805 is triggered by a community college district's underlying decision to authorize the organization of a student body association, and therefore under *Kern High School Dist.*, is not mandated by the state.

As a result, the Commission finds that California Code of Regulations, title 5, section 54805, does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

- c. District Policies and Regulations for Instructional and Other Materials (Cal. Code Regs., tit. 5, § 59404)
 - (i) California Code of Regulations, title 5, section 59404, does not impose state-mandated activities

Section 59404 addresses a district's policies or regulations regarding instructional and other materials that the district requires a student to provide. Subdivision (a) provides that when a student is required by the district to provide instructional and other materials, the district must adopt policies or regulations which specify the conditions under which such materials will be required. Subdivision (b) requires the policies or regulations to be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and published in each college catalog developed after the date of adoption.

The plain language of section 59404 indicates that the requirements of section 59404 are only applicable to a "community college district which requires that students provide instructional or other materials..." Education Code section 76365, which is implemented by section 59404, provides that "[t]hese regulations shall specify the conditions under which districts *may* require students to provide those materials..."³⁵² Thus, the requirements of section 59404 are downstream activities resulting from a community college district's decision to require students provide instructional and other materials.

The Commission finds that California Code of Regulations, title 5, section 59404 does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

³⁵¹ California Code of Regulations, title 5, section 54805, subs. (a)-(c).

³⁵² Education Code section 76365. (Emphasis added.)

- d. Withholding Grades, Transcripts, Diplomas, and Registration Privileges (Cal. Code Regs., tit. 5, § 59410)
- (i) California Code of Regulations, title 5, section 59410, does not impose state-mandated activities

Section 59410 provides that a community college district may withhold the grades, transcripts, diplomas, and registration privileges of a student who has been provided with written notice of his or her failure to pay a financial obligation due to the district or college.

The plain language of section 59410 does not require community college districts to issue written notices to students regarding a failure to pay a financial obligation. Rather, the language of section 59410 authorizes, but does not require, community college districts to withhold grades, transcripts, diplomas, and registration privileges on the condition of providing a notice to students regarding their failure to pay a financial obligation. Thus, the provision of a notice is a downstream activity of a community college district's decision to seek to withhold the grades, transcripts, diplomas, and registration privileges from a student owing a financial obligation to the district or college.

As a result, the Commission finds that California Code Regulations, title 5, section 59410, does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

C. The state-mandated new program or higher level of service impose costs mandated by the state on community college districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.³⁵³ Government Code section 17514 defines "cost mandated by the state" as follows:

[A]ny 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.

The claimants estimate that more than \$1,000 in staffing and other costs in excess of any funding provided to districts was incurred between July 1, 2001 through June 30, 2002 to implement all the duties alleged by the claimants to be mandated by the state.³⁵⁴ Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, the Chancellor's Office and Finance assert that the claimants are not entitled to reimbursement for the state-mandated new programs or higher levels of service found in this analysis. The Chancellor's Office and Finance argue that community college districts receive general apportionments found in Schedule (1) of line item 6870-101-0001 of the annual Budget Act and nothing prevents the districts from using these general purpose funds from satisfying the

³⁵³ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

³⁵⁴ "Test Claim Filing and Attachments for 02-TC-25," Exhibit 1, Declaration of Vicky Fong, Associate Vice President of Instruction, Los Rios Community College District. "Test Claim Filing and Attachments for 02-TC-31," Exhibit 1, Declaration of Piedad F. Robertson, President of Santa Monica Community College District.

costs of the state-mandated new programs or higher levels of service found in this test claim analysis.^{355 356}

Each annual Budget Act provides for state aid to community college districts from the state General Fund in line item 6870-101-0001. This line item includes Schedule (1) “Apportionments” (general purpose funds) and categorical funding that must be spent for a variety of specific purposes and programs that are outside of the scope of the state-mandated new programs or higher levels of service found in this analysis. The general purpose funds are unrestricted and can be used for any purpose, unless otherwise provided by law.³⁵⁷ One of the limitations for the state aid provided by line item 6870-101-0001, including general purpose funds, is provided in Education Code section 84362, which is better known as the “Fifty Percent Law.” The Fifty Percent Law, which was not pled in this test claim, requires community college districts to spend at least 50 percent of their current expense of education on salaries and benefits of faculty and instructional aids engaged in direct classroom instruction.

As described above, community college districts are not required to use general purpose funds to fund the costs of the state-mandated new programs or higher levels of service found in this analysis, nor is there evidence that the general purpose funds were specifically intended to fund the costs. Moreover, the full amount of the general purpose funds is not available to fund the costs imposed by the state-mandated new programs or higher levels of service found in this test claim, because the general purpose funds are restricted by state law not pled in this test claim. As a result, the Commission finds that the new programs or higher levels of service imposed by the test claim statutes and regulations addressing “faculty participation in district and college governance,” “transfer centers,” “vocational education,” “standards of scholarship,” “curriculum,” “degrees and certificates,” and “open courses,”³⁵⁸ impose costs mandated by the state the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

³⁵⁵ Chancellor’s Office Comments on 02-TC-31, dated March 11, 2004, p. 2. Chancellor’s Office Comments on 02-TC-25, dated March 16, 2004, p. 11. Department of Finance Comments on 02-TC-25, dated November 6, 2007, p. 3.

³⁵⁶ In the Budget Acts of 2001 and 2002 (Stats. 2001, ch. 106 (SB 739); and Stats. 2002, ch. 379 (AB 425)) for the 2001-2002 and 2002-2003 fiscal years about \$1.7 billion was scheduled for general purpose funding (See line item 6870-101-0001, schedule 1). In the Budget Act of 2003 (Stats. 2003, ch. 157 (AB 1765)) this amount was decreased to about \$1.4 billion. In the Budget Act of 2004 (Stats. 2004, ch. 208 (SB 1113)) the amount was increased to about \$1.9 billion. In the Budget Act of 2005 (Stats. 2005, ch. 38 (SB 77)) the amount was increased again to about \$2.4 billion.

³⁵⁷ California Code of Regulations, title 5, section 58140 (Register 95, No. 23). See also, Education Code sections 84001 and 85230 recognizing the policy of local responsibility for governance including the “grant of substantial fiscal autonomy to community college districts.”

³⁵⁸ Specifically, portions of the following test claim regulations regarding “faculty participation in district and college governance” constitute a state-mandated new program or higher level of service: California Code of Regulations, title 5, sections 53203 and 53207. Portions of the following test claim statutes regarding “transfer centers” constitute a state-mandated new program or higher level of service: Education Code sections 66721.5, 66731, 66732, 66736, 66738, 66740, and 66742. Portions of the following test claim statutes regarding “vocational education” constitute a state-mandated new program or higher level of service: Education Code sections 78015 and 78016. Portions of the following test claim regulations regarding “standards of scholarship” constitute a state-mandated new program or higher level of service: California

CONCLUSION

For the reasons discussed above, the Commission finds that the following activities constitute a reimbursable state-mandated new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission notes that some of the activities found to be reimbursable are broad and could be interpreted as including a wide range of activities in order to be implemented. However, these broad activities do not include activities that have been specifically denied in this analysis. Where necessary, the scope of the approved activities will be limited in the parameters and guidelines.

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

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

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

2. Participate in the consultation process established by the Board of Governors for the development and review of policy proposals pursuant to Education Code section 70901, subdivision (e). (Ed. Code, § 70902, subd. (b)(14) (Stats. 1988, Ch. 973).)
3. Adopt policies for appropriate delegation of authority and responsibility to its college or district academic senate.

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

4. Consult collegially with representatives of the academic senate when adopting the policies for appropriate delegation of authority and responsibility to its college or district academic senate pursuant to California Code of Regulations, title 5, section 53202, subd. (a). (Cal. Code Regs., tit. 5, § 53203, subd. (b) (Register 94, No. 38).)

Code of Regulations, title 5, sections 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, and 55765. Portions of the following test claim regulations regarding “curriculum” constitute a state-mandated new program or higher level of service: California Code of Regulations, title 5, sections 55001, 55002, 55005, 55006, 55130, 55150, 55200, 55201, and 55202. Portions of the following test claim regulations regarding “degrees and certificates” constitute a state-mandated new program or higher level of service: California Code of Regulations, title 5, sections 55800, 55805, and 55806. Finally, portions of the test claim regulations regarding “open courses” constitute a state-mandated new program or higher level of service: California Code of Regulations, title 5, sections 58102 and 58104.

5. Adopt procedures for responding to recommendations of the academic senate that incorporate the following:
 - a. In instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate. (Cal. Code Regs., tit. 5, § 53203, subd. (d)(1) (Register 94, No. 38).)
 - b. In instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons. (Cal. Code Regs., tit. 5, § 53203, subd. (d)(2) (Register 94, No. 38).)
6. Grant faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges release or reassigned time from their terms of office. This activity is subject to offsetting revenue from reimbursement of release or reassigned time and administrative costs for hiring faculty to replace the faculty serving as president or vice president pursuant to title 5 section 53207, subdivision (b) (Register 2003, No. 18). (Cal. Code Regs., tit. 5, § 53207, subd. (a) (Register 2003, No. 18).)
7. Identify release or reassigned time prior to September of each year for employees elected to serve as president and vice president of the Academic Senate of the California Community Colleges for reimbursement at the part-time replacement cost. (Cal. Code Regs., tit. 5, § 53207, subd. (c) (Register 2003, No. 18).)
8. If the release or reassigned time need identified by the district is 100 percent and the position is in a hard to replace discipline area, certify this to the Chancellor by August 1 for reimbursement at the full-time temporary replacement cost of the employee released. (Cal. Code Regs., tit. 5, § 53207, subd. (c) (Register 2003, No. 18).)

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

1. The governing board of each community college district direct the appropriate officials at their respective campuses to provide each of their students with a copy of the current transfer core curriculum (Ed. Code § 66721.5, subd. (a)(1) (Stats. 2000, ch. 187).)
2. Distribute a copy of the current transfer core curriculum to each community college student who is enrolled in a degree or certification program and is physically in attendance at the institution (Ed. Code § 66721.5, subd. (b) (Stats. 2000, ch. 187).)
3. Including the text of the current transfer core curriculum in the published class schedule for each academic term, or distribute the transfer core curriculum during the registration process, or by mail, or during the issuance of student identification cards, or during student orientation programs (Ed. Code § 66721.5, subd. (c) and (d) (Stats. 2000, ch. 187).)

4. Recognize student matriculation from community colleges through the University and California State University as a central institutional priority of all segments of higher education. (Ed. Code, § 66731 (Stats. 1991, ch. 1188).)
5. Declare as policy that the student transfer agreement program shall constitute a significant role in achieving the goal of student diversity within their segments, and in ensuring that all students, particularly those currently underrepresented in higher education, have access to a university education. (Ed. Code, § 66732 (Stats. 1991, ch. 1188).)
6. Design, adopt, and implement policies intended to facilitate successful movement of students from community colleges through the University of California and the California State University. (Ed. Code, § 66732(Stats. 1991, ch. 1188).)
7. Ensure that its college or colleges maintain student transfer counseling centers or other counseling and student services designed and implemented to affirmatively seek out, counsel, advise, and monitor the progress of potential and identified community college transfer students. All policies and procedures adopted for this purpose must give preference and emphasis toward enhancing the transfer of students from economically disadvantaged families and students from traditionally underrepresented minorities, to the fullest extent possible under state and federal statutes and regulations. (Ed. Code, § 66736 (Stats. 1991, ch. 1188).)
8. Be accountable for the development and implementation of formal system wide articulation agreements and transfer agreement programs, including those for general education or a transfer core curriculum, and other appropriate procedures to support and enhance the transfer function. (Ed. Code, § 66738, subds. (a) (Stats. 1991, ch. 1188).)
9. Expand existing practices related to concurrent enrollment, in which community college students are provided the opportunity to take courses at University of California and California State University campuses, as space is available, and to expand opportunities for potential transfer students to participate in activities that familiarize them with the university campus. (Ed. Code, § 66738, subd. (c) (Stats. 1991, ch. 1188).)
10. Act in conjunction with each department, school, major in the University of California and California State University to develop discipline-specific articulation agreements and transfer program agreements for those majors that have lower division prerequisites. In doing so, faculty from community colleges and university campuses are to participate in discipline-specific curriculum development to coordinate course content and expected levels of student competency. (Ed. Code, § 66740, first paragraph (Stats. 1991, ch. 1188).)
11. Develop discipline-based agreements in conjunction with the California State University and the University of California with as many campuses of the two university segments as feasible, but no fewer than three University of California campuses and five California State University campuses. No one segment should bear the organizational or financial responsibility for accomplishing these goals. (Ed. Code, § 66740, third paragraph (Stats. 1991, ch. 1188).)
12. Present annual statistical reports with the California Community Colleges, California State University, and the University of California on transfer patterns to the Governor and Legislature via the California Postsecondary Education Commission. Include in these reports statistics and information as described in Education Code section 66742. (Education Code section 66742 (Stats. 1991, ch. 1188).)

Vocational Education (Ed. Code, §§ 78015 and 78016)

1. Conduct a job market study of the labor market area, as defined by Education Code section 52301.5, in which it proposes to establish the program prior to establishing the program.³⁵⁹

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

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

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

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

6. Terminate any program that does not meet the requirements of Education Code section 78016, subdivision (a), and the standards promulgated by the governing board within one year. (Ed. Code, § 78016, subd. (b) (Stats. 1998, ch. 365).)
7. Include the review and comments by the local Private Industry Council, established pursuant to Unemployment Insurance Code section 15000 et seq., in the review process of every vocational or occupational training program offered by the district and commenced subsequent to July 28, 1983, the review and comments by the Private

³⁵⁹ Education Code section 52301.5 defines "Labor Market Area" as "a county or aggregation of counties designated by the Employment Development Department (EDD) that has one or more central core cities and that meets criteria of population, population density, commute patterns, and social and economic integration specified by the EDD."

Industry Council shall occur prior to any decision by the district governing board. (Ed. Code, § 78016, subd. (c) (Stats. 1998, ch. 365).)

8. Make a written summary of the findings of each review available to the public. (Ed. Code, § 78016, subd. (e) (Stats. 1998, ch. 365).)

Standards of Scholarship (Ed. Code, § 70902, subd. (b)(3), and Cal. Code Regs., tit. 5, §§ 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, and 55765)

1. Adopt regulations consistent with the subchapter regarding standards of scholarship consisting of California Code of Regulations, title 5, section 55750 – 55765.³⁶⁰ (Ed. Code, § 70902, subd. (b)(3), and Cal. Code Regs., tit. 5, § 55750 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55020 (Register 2007, No. 35).)
2. Publish the regulations consistent with the subchapter regarding standards of scholarship in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55750 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55020 (Register 2007, No. 35).)
3. File a copy of the community college district’s regulations regarding standards of scholarship, and any amendments of the regulations, with the Chancellor. (Cal. Code Regs., tit. 5, § 55750 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55020 (Register 2007, No. 35).)
4. Determine a uniform grading practice for the district based on sound academic principles. (Cal. Code Regs., tit. 5, § 55751 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55021, subd. (a) (Register 2007, No. 35).)
5. Conform the uniform grading practices to the standard that work in all courses acceptable in the fulfillment of the requirements for an associate or baccalaureate degree, a certificate, diploma or license is graded in accordance with a grading scale adopted by the governing board consistent with section 55758, and sections 55752 (Credit-No Credit Options) or 55753 (Credit by Examination). (Cal. Code Regs., tit. 5, § 55751, subds. (a) and (b) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55021, subd. (c) (Register 2007, No. 35).)
6. Adopt and publish regulations pertaining to credit by examination in accordance with the provisions of Subchapter 9 “Standards of Scholarship” (Cal. Code Regs., tit. 5, § 55750 et seq.). (Cal. Code Regs., tit. 5, § 55753, subd. (a) (Register 2002, No. 8); for current requirement see Cal. Code Regs., tit. 5, § 55050, subd. (a) (Register 2007, No. 35).)
7. Place a student on academic probation when he/she has attempted at least 12 semester or 18 quarter units as shown by the official academic record and earned a grade point average below 2.0 in all units which were graded on the basis of the grading scale. (Cal. Code Regs., tit. 5, § 55754, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55031, subd. (a) (Register 2007, No. 35).)
8. Remove a student from academic probation when the student’s accumulated grade point average is 2.0 or higher. (Cal. Code Regs., tit. 5, § 55755, subd. (a) (Register 91,

³⁶⁰ The language of California Code of Regulations, title 5, section 55750 provides, “... consistent with this chapter.” However, see discussion regarding the Nomenclature Cross Reference in the “Minimum Conditions Entitling Community College Districts to State Aid” section above.

No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55032, subd. (a) (Register 2007, No. 35).)

9. Adopt and publish procedures and conditions for probation and appeal of probation and request for removal from probation. (Cal. Code Regs., tit. 5, § 55755, subd. (c) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55032, subd. (c) (Register 2007, No. 35).)
10. Make a student subject to dismissal if the student is on academic probation and has earned a cumulative grade point average of less than 1.75 in all units attempted in each of 3 consecutive semesters or 5 consecutive quarters which were graded on the basis of a grading scale. (Cal. Code Regs., tit. 5, § 55756, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55033, subd. (a) (Register 2007, No. 35).)
11. Adopt and publish procedures and conditions for dismissal and appeal of dismissal and request for reinstatement. (Cal. Code Regs., tit. 5, § 55756, subd. (c) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55033, subd. (c) (Register 2007, No. 35).)
12. Adopt rules setting forth the circumstances that warrant exceptions to the standards for dismissal. (Cal. Code Regs., tit. 5, § 55756, subd. (d) (Register 91, No. 23) ending August 16, 2007.)
13. File a copy of the rules setting forth the circumstances that warrant exceptions to the standards for dismissal with the Chancellor. (Cal. Code Regs., tit. 5, § 55756, subd. (d) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55033, subd. (d) (Register 2007, No. 35).)
14. Determine a student's need for remedial coursework using appropriate assessment instruments, methods, or procedures, including, but not limited to, interviews; standardized tests; holistic scoring processes; attitude surveys; vocational or career aptitude and interest inventories; high school or college transcripts; specialized certificates or licenses; educational histories; other measures of performance; and assessment procedures such as identification of test cores which measure particular skill levels, the administrative process by which students are referred for assessment, the manner in which assessment results are made available, and the length of time required before such results are available. (Cal. Code Regs., tit. 5, § 55756.5, subd. (b) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55035, subd. (a) (Register 2007, No. 35).)
15. Dismiss and refer students that have exhausted the remedial coursework unit limitation to appropriate adult noncredit education services, provided by college, adult school, community-based organization, or other appropriate local provider which the district has an established referral agreement. (Cal. Code Regs., tit. 5, § 55756.5, subs. (b) and (e) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55035, subd. (a) and (e) (Register 2007, No. 35).)
16. Submit, through the established Management Information System, information necessary to enable the Chancellor to determine the effect of the California Code of Regulations, title 5, section 55756.5, on students by sex, age, and ethnicity, and the success rates for students enrolled in "remedial coursework." (Cal. Code Regs., tit. 5, § 55756.5, subd. (g) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55035, subd. (g) (Register 2007, No. 35).)

17. Adopt rules and regulations governing the inclusion in or exclusion of units, for the purpose of determining whether to place a student on probation or dismissal, in which a student did not receive a grade or “credit-no credit” or from which the student withdrew in accordance with rules adopted by the district governing board. (Cal. Code Regs., tit. 5, § 55757 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55030, subd. (a) (Register 2007, No. 35).)
18. Determine a student’s grade point average using the grades from a grading scale and the corresponding point equivalencies set forth in California Code of Regulations, title 5, section 55758, subdivision (a). (Cal. Code Regs., tit. 5, § 55758, subd. (a) (Register 2000, No. 50); for current requirement see Cal. Code Regs., tit. 5, § 55023, subd. (a) (Register 2007, No. 35).)
19. Publish the point equivalencies for the grades used in California Code Regulations, title 5, section 55758, subdivision (a), in the catalog or catalogs of the community college district as part of its grading practices. “Point equivalencies for the grades” that are to be published excludes the symbols for credit (CR) and no credit (NC). (Cal. Code Regs., tit. 5, § 55758, subd. (d) (Register 2000, No. 50); for current requirement see Cal. Code Regs., tit. 5, § 55023, subd. (d) (Register 2007, No. 35).)
20. Make reasonable efforts to notify a student subject to academic probation or dismissal at or near the beginning of the semester or quarter which it will take effect, but no later than the start of the fall semester or quarter. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
21. Make reasonable efforts to notify a student of removal from probation or reinstatement after dismissal within timelines established by the district. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
22. Publish the policies and procedures regarding probation and dismissal in the college catalog. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
23. Make reasonable effort to provide counseling and other support services to a student on probation to help the student overcome any academic difficulties. (Cal. Code Regs., tit. 5, § 55759 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55034 (Register 2007, No. 35).)
24. The instructor of the course is to determine the grade to be awarded each student in accordance with the California Code of Regulations, title 5, section 55758 (“Academic Record Symbols and Grade Point Average”). (Cal. Code Regs., tit. 5, § 55760, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025, subd. (a) (Register 2007, No. 35).)
25. Include in the procedures for the correction of grades given in error the expunging of the incorrect grade from the record. (Cal. Code Regs., tit. 5, § 55760, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55025, subd. (d) (Register 2007, No. 35).)
26. Adopt and publish regulations for repeating courses in which substandard work has been recorded. (Cal. Code Regs., tit. 5, §§ 55760, subd. (b); and 55761 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, §§ 55040, subd. (a), and 55042, subd. (a) (Register 2007, No. 35).)

27. Adopt and publish regulations for alleviation of previously recorded substandard academic performance that is not reflective of a student's demonstrated ability. (Cal. Code Regs., tit. 5, § 55764 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55046, subd. (a) (Register 2007, No. 35).)

Curriculum (Ed. Code, § 70902, subd. (b)(2)(A), and Cal. Code Regs., tit. 5, §§ 55001, 55002, 55005, 55006, 55130, 55150, 55200, 55201, and 55202)

1. Report the classification of all courses, classes, and activities offered in accordance with California Code of Regulations, title 5, sections 55001, subdivision (a) (describing instructional services of community colleges), and 55002 (standards and criteria for associate degree credit course, nondegree credit course, and noncredit course) by transmitting the following information to the Chancellor's Office:
 - a. The unique static course identifier and the course title for all credit and noncredit courses. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(1) (Register 94, No. 38) ending April 14, 2006.)
 - b. The classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(2) (Register 94, No. 38) ending April 14, 2006.)
 - c. Whether the course is offered as credit or noncredit. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(3) (Register 94, No. 38) ending April 14, 2006.)
 - d. Whether the course transfers to the California State University or the University of California or both. (Cal. Code Regs., tit. 5, § 55001, subd. (c)(4) (Register 94, No. 38) ending April 14, 2006.)
2. Establish a college or district curriculum committee by mutual agreement of the college or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college or district administration and academic senate. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(1) (Register 93, No. 42).)
3. When seeking to offer a course as an associate degree credit course, nondegree credit course, or noncredit course, the course must be recommended by the college or district curriculum committee and approved by the district governing board. (Cal. Code Regs., tit. 5, § 55002, subs. (a), (b), and (c) (Register 93, No. 42).)
4. Each section of an associate degree course, nondegree course, or noncredit course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record. (Cal. Code Regs., tit. 5, § 55002, subs. (a)(4), (b)(4), and (c)(3) (Register 93, No. 42).)
5. Proposed associate degree credit courses and nondegree credit courses must meet the following requirements found in California Code of Regulations, title 5, section 55002, subdivisions (a)(2) and (b)(2), in order to receive a recommendation by the college or district curriculum committee:
 - a. Grading policy: The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with California Code of Regulations, title 5, section 55758 (Register 2000, No. 50), which details the

academic record symbols and associated grade points to be used by community colleges.

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

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

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

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

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

- a. Prerequisites and Corequisites: Require prerequisites or corequisites when: (a) the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course; or (b) success in the course is dependent upon communication or computation skills, then the course shall require as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(2)(D) and (E) (Register 93, No. 42).)
- b. Difficulty: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(2)(F) (Register 93, No. 42).)
- c. Level: The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level. (Cal. Code Regs., tit. 5, § 55002, subd. (a)(2)(G) (Register 93, No. 42).)

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

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

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

8. Proposed noncredit courses must treat subject matter and use resource materials, teaching methods, and standards of attendance and achievement that is deemed appropriate for the enrolled students by the college or district curriculum committee in order to receive a recommendation by the college or district curriculum committee. (Cal. Code Regs., tit. 5, § 55002, subd. (c)(1) (Register 93, No. 42).)
9. Make available to students through college publications all of the following facts regarding each course offered before they enroll in the course: (1) whether the course is offered as a credit or noncredit course; (2) whether the course is transferable to four-year colleges and universities; and (3) whether the course fulfills a major or general education requirement. (Cal. Code Regs., tit. 5, § 55005 (Register 91, No. 23).)
10. Each community college must keep and submit such current records and reports concerning their total activities as may be required by the Chancellor to fulfill statutory responsibilities. (Cal. Code Regs., tit. 5, §§ 55006 and 55150, subd. (c) (Register 91, No. 23).)
11. Establish policies for and approve educational programs (Ed. Code, § 70902, subd. (b)(2)(A) (Stats. 1988, ch. 973).)
12. Adopt policies for the following in accordance with the Board of Governors regulations addressing faculty participation in district and college governance (Cal. Code Regs., tit. 5, §§ 53200-53204) when establishing prerequisites or corequisites for an associate degree credit course as required by California Code of Regulations, title 5, section 55002, subdivisions (a)(2)(D) and (E) (e.g. a student is unlikely to receive a satisfactory grade in a course without the prerequisite or corequisite, or success in a course is dependent on communication or computation skills):
 - a. The process for establishing prerequisites and corequisites. The policy for the process for establishing prerequisites or corequisites shall be based on content review with additional methods of scrutiny being applied depending on the type of prerequisite or corequisite established. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(1) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(1) (Register 2007, No. 35).)
 - b. The procedures to assure that courses for which prerequisites or corequisites are established will be taught in accordance with the course outline that are the basis for the requirement to establish the prerequisite or corequisite. (Cal. Code Regs.,

tit. 5, § 55201, subd. (b)(2) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(2) (Register 2007, No. 35).)

- c. The process, including levels of scrutiny, for reviewing prerequisites and corequisites to assure that they remain necessary and appropriate. The process shall provide that at least once each six years all prerequisites and corequisites established by the district shall be reviewed. (Cal. Code Regs., tit. 5, § 55201, subd. (b)(3) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(3) (Register 2007, No. 35).)
 - d. The bases and process for an individual student to challenge the application of a prerequisite or corequisite. The bases to challenge a prerequisite or corequisite are:
 - i. The prerequisite or corequisite was not established in accordance with the district's process for establishing prerequisites and corequisites;
 - ii. The prerequisite or corequisite violates California Code of Regulations, title 5, sections 55200-55202, which address the authority, requirements, and limitations on authority, when establishing prerequisites and corequisites;
 - iii. The prerequisite or corequisite are either unlawfully discriminatory or are being applied in an unlawfully discriminatory manner;
 - iv. The student has the knowledge or ability to succeed in the course or program despite not meeting the prerequisite or corequisite; and
 - v. The student will be subject to undue delay in attaining the goal of his or her educational plan because the prerequisite or corequisite course has not been made reasonably available. (Cal. Code Regs., tit. 5, § 55201, subsd. (b)(2) and (f)(1)-(5) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (b)(2) and (m)(1)-(5) (Register 2007, No. 35).)
13. Gather data according to sound research practices and show that a student is highly unlikely to succeed in the course unless the student has met the proposed prerequisite or corequisite, in addition to conducting a content review, if the community college district seeks to establish a course in communication or computation skills as a prerequisite or corequisite for any non-communication or non-computation skills course.

This data gathering requirement does not apply when:

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

Chancellor, and if there is a disproportionate impact the district in consultation with the Chancellor develops and implements a plan setting forth the steps the district will take to correct the disproportionate impact. (Cal. Code Regs., tit. 5, § 55201, subd. (e) (Register 98, No. 7) ; for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (e) (Register 2007, No. 35).)

14. If a prerequisite or corequisite is challenged on the basis that it is either unlawfully discriminatory or applied in an unlawfully discriminatory manner (pursuant to Cal. Code Regs., tit. 5, § 55201, subd. (f)(3)), advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to the title 5 regulations addressing discrimination complaint procedures (Cal. Code Regs., tit. 5, § 59300 et seq.). (Cal. Code Regs., tit. 5, § 55201, subd. (g) (Register 98, No. 7); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (n) (Register 2007, No. 35).)
15. Identify prerequisites and corequisites in college publications available to students as well as in the course outline of any course for which they are established. (Cal. Code Regs., tit. 5, § 55202, subd. (a) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (f) (Register 2007, No. 35).)
16. Determine whether a student meets a prerequisite based on successful completion of an appropriate course. (Cal. Code Regs., tit. 5, § 55202, subd. (c) (Register 93, No. 42) ; for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (h) (Register 2007, No. 35).)
17. Ensure precollegiate basic skills courses designed to teach the required skills in reading, written expression, or mathematics, are offered with reasonable frequency and that the number of sections available is reasonable given the number of students who are required to meet the associated skills prerequisites and who diligently seek enrollment in the prerequisite course, if a prerequisite requires precollegiate skills in reading, written expression, or mathematics. (Cal. Code Regs., tit. 5, § 55202, subd. (d) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (i) (Register 2007, No. 35).)
18. Offer sufficient sections of a corequisite course to reasonably accommodate all students who are required to take the corequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (j) (Register 2007, No. 35).)
19. Waive a corequisite for any student whom space in the corequisite course is not available. (Cal. Code Regs., tit. 5, § 55202, subd. (e) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (j) (Register 2007, No. 35).)
20. Make a determination of whether a student meets a prerequisite prior to the student's enrollment in the course requiring the prerequisite. (Cal. Code Regs., tit. 5, § 55202, subd. (g) (Register 93, No. 42); for current requirement see Cal. Code Regs., tit. 5, § 55003, subd. (l) (Register 2007, No. 35).)

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

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

2. Publish the policy consistent with the subchapter regarding degrees and certificates in the college catalog under appropriate headings. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)
3. File a copy of the policy regarding degrees and certificates, and any amendments, with the Chancellor. (Cal. Code Regs., tit. 5, § 55800 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55060 (Register 2007, No. 35).)
4. Adopt a policy which states its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061, subd. (a) (Register 2007, No. 35).)
5. Consider the policy of the Board of Governors specified in California Code Regulations, title 5, section 55805, subdivision (a) (Register 91, No. 23), when developing the policy stating its specific philosophy on General Education. (Cal. Code Regs., tit. 5, § 55805, subd. (a) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061, subd. (a) (Register 2007, No. 35).)
6. Establish criteria, subject to the limitations in California Code of Regulations, title 5, section 55805.5 (Register 91, No. 23), to determine which courses may be used in implementing its philosophy on the associate degree and general education. (Cal. Code Regs., tit. 5, §§ 55805, subd. (b); and 55805.5 (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, §§ 55061, subd. (b), and 55062 (Register 2007, No. 35).)
7. Review the policy and criteria for General Education, established pursuant to California Code of Regulations, title 5, section 55805, subdivisions (a) and (b), on a regular basis. (Cal. Code Regs., tit. 5, § 55805, subd. (c) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55061, subd. (c) (Register 2007, No. 35).)
8. Condition receipt of an associate degree upon a student who has satisfactorily completed at least 60 semester units or 90 quarter units of college work that is fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). This course work includes 18 semester or 27 quarter units in general education and at least 18 semester or 27 quarter units in a major, at least 12 semester or 18 quarter units completed in residence at the college granting the degree.

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

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

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

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

9. Offer ethnic studies in at least one of the general education areas of learning listed in California Code of Regulations, title 5, section 55806, subdivision (b)(1)(A)-D) (i.e. Natural Sciences, Social and Behavioral Sciences, Humanities, Language and Rationality-English Composition, and Language and Rationality-Communication and

Analytical Thinking) (Cal. Code Regs., tit. 5, § 55806, subd. (b)(3) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(2) (Register 2007, No. 35).)

10. Design a course to help students develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities, in order to satisfy the general education requirement in natural sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(A) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(A) (Register 2007, No. 35).)
11. Design a course to develop an awareness of the method of inquiry used by the social and behavioral sciences and to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate, in order to satisfy the general education requirement in social and behavioral sciences. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(B) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(B) (Register 2007, No. 35).)
12. Design a course to help students to develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and ability to make value judgments, in order to satisfy the general education requirement in humanities. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(C) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(C) (Register 2007, No. 35).)
13. Design courses fulfilling the written composition (English composition) requirement to include both expository and argumentative writing. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(1) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(D)(1) (Register 2007, No. 35).)
14. Design a course to fulfill the communication and analytical thinking requirement. (Cal. Code Regs., tit. 5, § 55806 (b)(1)(D)(2) (Register 91, No. 23); for current requirement see Cal. Code Regs., tit. 5, § 55063, subd. (b)(1)(D)(2) (Register 2007, No. 35).)

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

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

In addition, the Commission finds that all other test claim statutes, regulations, and alleged executive orders do not constitute a reimbursable state-mandated program because they either do not require any activities on community college districts, are voluntary or are downstream of a voluntary activity, or are not new as compared to the legal requirements in effect immediately prior to their enactment.