

COMMISSION ON STATE MANDATES

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July 10, 2013

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

Ms. Jill Kanemasu
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

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

RE: Final Staff Analysis, Proposed Statewide Cost Estimate, and Notice of Hearing
Discrimination Complaint Procedures
02-TC-46 (and a portion of 02-TC-25 and 02-TC-31)
Education Code Sections 66010.2, et. al.
Santa Monica Community College District, Los Rios Community College District, and
West Kern Community College District, Co-Claimants

Dear Mr. Petersen:

The final staff analysis and proposed statewide cost estimate for the above-named matter are enclosed.

Hearing

This matter is set for hearing on **Friday July 26, 2013**, at 10:00 a.m., in the State Capitol, Room 447, Sacramento, California. This matter is proposed for the Consent Calendar. Please let us know in advance if you object to this item being on consent and therefore 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(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 five to seven *working* days prior to the meeting.

Please contact Kerry Ortman at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

Item 11
Final Staff Analysis
And
Proposed Statewide Cost Estimate
\$8,820,764

(Approximately \$801,888 Annually)

Education Code Sections 66010.2, 66010.7, and 87102, as amended by Statutes 1988,
Chapter 973 and Statutes 1991, Chapter 1198

California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022,
53023, 53024, 53025, 53026, and 53034, as added or amended by Register 92, Number 17;
Register 96, Number 23; and Register 2002, Number 35

(Consolidated With)

Government Code Section 11135, as added or amended by Statutes 1992, Chapter 913; Statutes
1994, Chapter 146; Statutes 2001, Chapter 708; Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328,
59330 , 59332, 59334, 59336, 59338, 59340, and 59342, as added or amended by Register 81,
Number 16; Register 92, Number 17; Register 96, Number 23;
Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35

Discrimination Complaint Procedures

02-TC-46

(And a Portion of 02-TC-25 and 02-TC-31)

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

STAFF ANALYSIS

Background and Summary of the Mandate

The *Discrimination Complaint Procedures* (02-TC-46) test claim addresses state antidiscrimination laws as they apply to community college districts. On March 24, 2011, the Commission adopted a statement of decision¹ finding that the test claim statutes and regulations impose a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.² The Commission separated the activities found to be reimbursable into the following three program areas: (1) student equity; (2) equal employment opportunity; and (3) discrimination complaint procedures, which includes the state's requirement to comply with section 202 of the federal Americans with Disabilities Act (ADA) for employment programs and

¹ Exhibit A.

² Exhibit B.

the accessibility requirements of section 508 of the Rehabilitation Act for information technology.

Based on the number of activities approved in the test claim and the varying subjects that the reimbursable activities addressed, the Commission chose to adopt separate parameters and guidelines based on subject matter and on the period of reimbursement in order to reduce confusion in the claiming process. The Commission adopted seven sets of parameters and guidelines for the *Discrimination Complaint Procedures* program and separated them as follows: (1) equal employment opportunity program (3 sets); (2) federal rights for individuals with disabilities (2 sets); and (3) discrimination complaint procedures (2 sets). All seven sets of parameters and guidelines were adopted on September 28, 2012.³

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2001, and June 30, 2012) with the State Controller's Office (SCO) by May 3, 2013. Late initial reimbursement claims may be filed until May 2, 2014, subject to a 10% penalty for late filing. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014, but may be filed until February 17, 2015, subject to a 10% penalty for late filing.

Eligible Claimants and Period of Reimbursement

Any community college district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 27, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2001.

Reimbursable Activities

Reimbursement is authorized for the activities listed in the parameters and guidelines.⁴

Statewide Cost Estimate

Assumptions

Staff reviewed the reimbursement claims data submitted by two community college districts (Long Beach and Los Rios) and compiled by the SCO. The *Discrimination Complaint Procedures* program has seven sets of parameters and guidelines. Three of the sets of parameters and guidelines cover multiple fiscal years. Each set of parameters and guidelines includes specific reimbursable activities over specific fiscal years that may be claimed by eligible claimants. The actual claims data showed that Los Rios Community College District filed 22 claims under 6 of the 7 sets of parameters and guidelines for this program. Long Beach Community college filed 11 claims under 3 of the 7 sets of parameters and guidelines for this program. There were a total of 33 claims filed for fiscal years 2001-2002 through 2011-2012 for a total of \$8,820,764.⁵ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

³ Exhibit B.

⁴ See Exhibit B.

⁵ Claims data reported as of May 17, 2013.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
 - There are currently 72 community college districts in California. Of those, only two districts filed initial reimbursement claims totaling \$8,820,764 for this program for fiscal years 2001-2002 through 2011-2012. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2001-2002 through 2011-2012 may be filed until May 3, 2014.
- *The number of claims filed will vary from year to year based on the number of community college districts that are required to update their policies and procedures regarding discrimination complaint procedures during that fiscal year.*

Community college districts are required to review the equal employment opportunity plan, excluding goals and timetables, at least every three years and if necessary revise the plan and submit it to the Chancellor's Office for approval. Since this is not an annual activity for each district, there will be some variation in the amount of claims filed from year to year.

- *The number of claims filed may increase as community college districts update and expand their use of information technology systems and equipment.*

The test claim statutes require community college districts to comply with the accessibility requirements of section 508 of the Rehabilitation Act, and its implementing regulations in developing, procuring, maintaining, or using electronic or information technology (IT), which are otherwise only applicable to federal agencies. It is reasonable to assume that the integration of IT in community college programs will increase as new technology becomes available and as community colleges provide services such as online courses and other distance learning tools, as well as new classroom technologies, to a growing student population. As a result, the activities required to comply with the accessibility requirements of section 508 of the Rehabilitation Act and its implementing regulations, and the costs incurred as a result, are expected to increase as well.

- *The number of reimbursement claims filed will vary from year to year depending on the number of discrimination complaints filed with the community college districts.*

Community college districts are required to investigate complaints of unlawful discrimination (i.e., discrimination on the basis of ethnic group identification, national origin, religion, age, race, color, ancestry, and sexual orientation) in district programs or activities and to seek to resolve those complaints. This activity is driven by the complaints filed rather than by scheduled program requirements. The number of complaints may increase as enrollment does but may also decrease as a result of ongoing policy and program implementation aimed at curbing incidences of discrimination.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may audit and reduce reimbursement claims.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

Methodology

Fiscal Years 2001-2002 through 2011-2012

The statewide cost estimate for fiscal years 2001-2002 through 2011-2012 was developed by totaling the 33 reimbursement claims filed with the SCO for these years, for a total of \$8,820,764. This averages to \$801,888 annually in costs for the state over this eleven-year period. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2001-2002	3	\$397,260
2002-2003	3	\$490,407
2003-2004	3	\$490,536
2004-2005	3	\$605,753
2005-2006	3	\$672,353
2006-2007	3	\$756,708
2007-2008	3	\$1,002,349
2008-2009	3	\$952,585
2009-2010	3	\$934,866
2010-2011	3	\$1,065,667
2011-2012	3	\$1,452,280
TOTAL	33	\$8,820,764

Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate

On June 25, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate⁶ for comments. No comments were received.

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$8,820,764** for costs incurred in complying with the *Discrimination Complaint Procedures* program.

⁶ Exhibit C.