

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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March 11, 2004

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**COMMISSION ON
STATE MANDATES**

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

Re: CSM 02-TC-27 Employment of College Faculty and Administrators
Santa Monica Community College District, Claimant
Education Code, sections 70901, 87356, 87357, 87358, 87359, 87360, 87360.1,
87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, and 87743.5
California Code of Regulations, title 5, sections 53130, 53403, 53406, 53407,
53410, 53410.1, 53412, 53414, 53416, 53417, 53420, and 53430

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above-referenced test claim in light of the following questions addressing key issues before the Commission:

Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

This test claim ("Claim") alleges mandated costs reimbursable by the state for community college district activities related to the employment of academic employees (e.g., faculty), including the assessment of the qualifications of applicants for academic employment, academic employee evaluation, and addressing academic employee grievances. Test Claimant Santa Monica Community College District ("Claimant") alleges that reimbursable mandated costs arise from a variety of Education Code sections and regulations that appear in title 5 of the California Code of Regulations.

Given the number of statutes and regulations that are invoked by Claimant, and the fact that different potential reimbursement issues affect different provisions, we must address most provisions separately.

Education Code section 70901(b)(1)(B).

Claimant asserts that this section requires establishing and implementing minimum standards for the employment of academic and administrative staff.

This section cannot serve as the basis for a claim for at least two reasons.

First, the section does not apply to local districts. The section directs actions to be taken by the state Board of Governors of the California Community Colleges, not by local districts. Local districts cannot claim reimbursement for the cost of actions to be taken by the Board of Governors.

Second, Education Code section 70901(b)(1)(B) was originally enacted in 1969 (Stats. 1969, c. 1026, p. 1996) as section 200.11. When it was amended in 1970, it provided: "The board of governors shall establish minimum standards for the employment of academic and administrative staff in community colleges."

Section 200.11 was renumbered to section 71068 and subsequently to section 70901(b)(1)(B), all without any change in the language. "Costs mandated by the state" do not include costs associated with statutes that were enacted prior to January 1, 1975. (Government Code section 17514.) The requirements of section 70901(b)(1)(B) existed long before January 1, 1975, and therefore cannot be the basis for reimbursement.

Any Claim under this section should be rejected for the foregoing reasons.

Education Code section 87356.

Claimant asserts that section 87356 requires the Board of Governors to establish and maintain minimum qualifications for the hiring of faculty. It is not clear how Claimant believes this section creates any local mandate.

Section 87356 requires the Board of Governors of the California Community Colleges to adopt regulations regarding minimum qualifications for service as an academic employee of a community college district. Nothing in the section requires any conduct by the community college districts. Therefore, no local mandate is involved.

Moreover, subsection (b) confirms that the Legislature declared that no mandate was implicated because faculty compensation is established through collective bargaining or meet and confer processes.

Any Claim under this section should be rejected for the foregoing reasons.

Education Code section 87357(a)(1).

Claimant asserts that this section requires consulting with and advising the State Board of Governors regarding minimum qualifications for faculty and administrators.

Claimant is misinformed about this section. The section requires the Board of Governors (not community college districts) to consult with the statewide Academic Senate and with a statewide organization of administrators regarding faculty and administrator qualifications. Claimant is neither the statewide Academic Senate nor a statewide organization of administrators so neither of these directives to the Board of Governors affects Claimant in any way.

The section also requires the Board of Governors to consult with appropriate apprenticeship teaching faculty and labor organizations with regard to minimum qualifications for apprenticeship faculty. Claimant is not a labor organization.

Although the Board of Governors is required to consult with appropriate apprenticeship teaching faculty concerning minimum qualifications for apprenticeship instructors, there is no mandate that requires Claimant's apprenticeship teachers, to consult with the Board of Governors.

In short, Claimant does not identify any provision of this section that requires it to act. Any Claim under this section should be rejected.

Education Code section 87357(a)(2).

Claimant asserts that this section requires it to conduct or assist in any review of the appropriateness of minimum qualifications for the employment of faculty and administrators.

Claimant is misinformed about this section. The section mandates the Board of Governors of the California Community Colleges (not Claimant or any other community college district) to establish a process for reviewing minimum qualifications. The process provides for the assistance of representative groups of faculty, administrators, students, and trustees. Particular emphasis is on the participation of academic senates, bargaining organizations, and state-wide faculty associations; Claimant is none of these.

The section includes no mandate that either Claimant or any other particular community college district participate in the Board of Governors' review. If Claimant is asked to participate, it has the option to decline. To the extent that participation in such a review is elective, there is no mandate.

The California Supreme Court recently addressed the circumstances that will give rise to a mandate for purposes of reimbursement. (*Department of Finance v. Commission on State Mandates*, Kern High School, Real Party in Interest, 134 Cal.Rptr. 2d 237 (2003).) In that case, the Kern High School District sought reimbursement for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that no mandates exist where a district voluntarily participates in a program.

The California Supreme Court noted that where an entity "elects" to participate in a program, there is no legal compulsion at issue, and therefore, there is no mandated cost: "Accordingly, no reimbursable state

mandate exists with regard to any of these programs based upon a theory that such costs were incurred under legal compulsion." (*Id.*, at 252.)

Any claim under this section should be rejected.

Education Code section 87358.

Claimant asserts that this section requires its participation, as designated by the Board of Governors, in the review of each community college district's application of minimum qualifications to faculty and administrators.

The section does not require the Claimant's participation in the review of "each district's use of minimum qualifications." The section requires the Board of Governors to periodically designate a team (of faculty, administrators, and trustees) to review use of minimum qualifications by community college districts. At most, the section authorizes the Board of Governors to require Claimant to demonstrate that it has been properly applying minimum qualification standards when it hires its academic employees. Any cost associated with the section depends on when and if the Board of Governors requires Claimant to verify its use of minimum qualifications. If the Board of Governors determined to review Claimant's use of minimum qualifications, Claimant would have to cooperate in the review. However, our office has no record that the Board of Governors has ever conducted a review of Claimant with respect to this issue.

If the Board of Governors determined to review the use of some other community college district's use of minimum qualifications, it would request faculty, administrators, and trustees to volunteer for such a project, but no participation by any specific faculty, administrators or trustees is mandated by this section. Claimant has not alleged that any of its faculty, administrators, or trustees have ever participated in the review of any other district's use of minimum qualifications under this section. Even if Claimant made that allegation, it cannot demonstrate that the participation was anything but voluntary.

No mandate has been identified, and any claim under this section should be rejected.

Education Code section 87359.

Claimant asserts that section 87359 requires districts to ensure that persons who do not possess minimum qualifications for employment that are established by the Board of Governors pursuant to section 87356 possess qualifications that are equivalent to those minimum qualifications, and that equivalency processes are developed jointly with the academic senates.

Sections 87356 and 87359 were added to the Education Code as part of Chapter 2.5 of Part 51 of the Education Code. New Chapter 2.5 was added pursuant to SEC. 28 of Stats. 1988, c. 973. SEC. 70(d) of that same measure provided that none of the provisions added by SEC. 28, including Education Code sections 87356 and 87359, would become operative unless and until the Legislature provided adequate funding. In fact, the Legislature did provide funding.

Following the first infusion of funds for the activities described in sections 87356 and 87359, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87360.

Claimant asserts that subsection (a) of this section requires the development of hiring criteria, policies and procedures for new faculty, including hiring criteria that include a sensitivity toward and understanding of students. Claimant asserts that subsection (b) requires joint agreement between a district governing board and the academic senate regarding hiring criteria, policies and procedures for hiring new faculty.

Like section 87359 discussed above, section 87360 was added pursuant to SEC. 28 of Stats. 1988, c. 973, and therefore the requirements have already been funded.

Education Code section 87610.1(a), (b) and (d).

Claimant asserts that subsection (a) requires districts that collectively bargain tenure evaluation procedures to consult with the faculty's exclusive representative prior to engaging in collective bargaining. Claimant asserts that subsection (b) requires participation in arbitration procedures concerning the discontinuance of probationary status. Claimant asserts that subsection (d) requires compliance with a make-whole remedy if a district is found to have made an inappropriate decision regarding continuing a probationary faculty member.

Claimant has misread the requirement in (a). It requires faculty exclusive representatives (unions), not districts, to consult with the academic senate (not the exclusive representative) prior to collective bargaining. Subsection (a) includes no directives to districts.

Subsection (b) provides an optional mechanism for addressing decisions to discontinue the service of probationary faculty. Prior to the addition of section 87610.1, districts were required to follow section 87740 when they decided to terminate the probationary period of new faculty members. As explained below, section 87740 has been in the Education Code since prior to January 1, 1975, and it cannot be the basis for a mandated cost.

Section 87610.1 represents an alternative to the provisions of section 87740. Districts are never required to proceed under section 87610.1. As the section indicates, "If there is no contractual grievance procedure resulting in arbitration, these allegations [to challenge a decision not to continue a probationary faculty member] shall proceed to hearing in accordance with Section 87740." If districts choose to collectively bargain a grievance procedure that results in arbitration, section 87610.1 applies; otherwise, districts continue to follow section 87740. Because the decision to come under section 87610.1 is voluntary, the provisions of section 87610.1 cannot be the basis of a claim.

Section 87740 was originally added to the Education Code as section 13443 by stats of 1965. It established due process requirements for the nonhire of probationary employees, including notice to the affected employee and a hearing. When the Education Code was reorganized in 1976 to separate sections that applied to both K-12 districts and to community colleges into two distinct sets of statutes, the community college version of section 13443 became section 87740.

Accordingly, since the mid-1960's community college districts have had a process they are required to

follow when they chose not to continue the probationary employment of a faculty member. With the addition of 87610.1, they were given an optional alternative to the use of the procedures set out in section 87740.

Nothing in the section represents a mandate because the mechanism is purely optional, as an alternative to the processes of section 87740.

Another point should be made regarding subsection (d). Claimant asserts that this provision describes make-whole remedies for an improper probationary decision.

Claimant misunderstands the process. If the District improperly attempts to end the employment of a probationary employee, it will be responsible for making the employee whole, including back pay and benefits in the proper case. Claimant is apparently attempting to claim that the State should reimburse it when it takes improper action against an employee. Nothing mandates that Claimant take improper action against an employee, so the State is not responsible for the Claimant's conduct in this regard.

Furthermore, like sections 87356, 87359 and 87360, discussed above, section 87610.2 was added pursuant to SEC. 28 of Stats. 1988, c. 973, and therefore, it has already been funded for those districts that decided to embrace this option.

Finally, if both of the foregoing arguments for disallowing claims under this section are rejected, to the extent that it implicates collective bargaining, and districts collective bargaining activities are otherwise eligible for reimbursement, there should be no duplication of reimbursement under this claim and any collective bargaining claim.

The Claim related to this section should be rejected.

Education Code section 87611.

Claimant asserts that this section mandates legal costs of appearing in court to appeal or respond to an appeal concerning a grievance or hearing conducted under section 87610.1.

First, as noted above, Claimant is not required to proceed under section 87610.1; it chooses to be subject to this section.

Second, section 87611 makes no mention of any costs, it merely indicates that arbitration decisions regarding the release of a probationary faculty member can be judicially reviewed pursuant to section 1094.5 of the Code of Civil Procedure.

Finally, section 87611 does not establish the scope of legal actions that may be brought under Code of Civil Procedure section 1094.5; section 1094.5 has been in effect since stats of 1945, and the availability of judicial review under its provisions does not depend on the existence of section 87611. Judicial review under Code of Civil Procedure section 1094.5 has long been available for review of community college decisions concerning probationary employees. See, for example, *Stewart v. San Mateo Junior College District et al*, (1974) 37 Cal.App.3d 345.

The claim related to this section should be rejected.

Education Code section 87663.

Claimant asserts that (c) and (d) require evaluations of faculty using a peer review process on a departmental or divisional basis, that the process must address principles of affirmative action, and that peer reviewers represent the diversity of California and be sensitive to affirmative action principles without compromising quality and teaching excellence. Claimant asserts that subsection (e) requires a district that has bargained evaluation processes, to follow those processes.

Claimant asserts that subsection (f) requires districts that collectively bargain evaluation processes to consult with the faculty's exclusive representative prior to bargaining. Claimant misstates subsection (f). Subsection (f) requires the exclusive representative to consult with the academic senate prior to bargaining. Subsection (f) includes no district obligations.

Claimant asserts that subsection (g) requires faculty evaluations to include student evaluations to the extent practicable. Subsection (g) includes no mandate; it merely states that it is the intent of the Legislature that faculty evaluations include student evaluations if practicable. Statements of intent and possibilities are not legal mandates.

Education Code section 1009, was enacted by stats. of 1968, and it became section 72208 when the Education Code was reorganized in 1976. Section 72208 provided "the governing board of a community college district shall adopt and cause to be printed and made available to each certificated employee of the district reasonable rules and regulations providing for the evaluation of the performance of certificated employees in their assigned duties." Clearly, the obligation of districts to provide for the evaluation of faculty and administrators (both of which fell under the rubric of "certificated" employees) preceded the January 1, 1975, reimbursement date.

Additionally, districts have been required to periodically evaluate faculty since at least 1972. Former sections 13481 and section 13481.05 required evaluations of probationary faculty every academic year and of tenured faculty at least once every two academic years. Section 87663 reduced the number of evaluations by requiring the evaluation of tenured faculty once every three years rather than once every two years. Districts were also required to consult with the faculty regarding the evaluation procedures to be used.

Claimant asserts that subsection (e) requires districts to conduct evaluations in accordance with collective bargaining agreements if evaluation procedures have been bargained.

This claim must fail as a mandate for at least two reasons. First, only those districts that have chosen to bargain evaluation procedures are affected by this provision. As noted above, if a district elects to do something, it is not reimbursable as a mandate. (*Department of Finance v. Commission on State Mandate.*)

Second, this section adds nothing to common bargaining obligations if districts bargained evaluation procedures prior to the 1988 amendments. Similarly, if Claimant has made any mandate claims for collective bargaining activities, it should not also be paid under this process because that would be double recovery.

The final reason for rejecting this claim is that section 87663(c) and (d) were added to existing 87663 by SEC. 51 of AB 1725. SEC. 70(d) of AB 1725 provided that SEC. 51 (i.e., the amendments for Education Code section 87663) would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87663, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87714.

Claimant asserts that section 87714 was added in 1981 and that it requires community college district's chief executive officers to certify to the state Board of Governors that the district's academic employees possess the minimum qualifications for the positions they hold.

Section 87714 did not originate in 1981. It was added in 1959 as section 13566 to require district superintendents of schools to annually report that all employees in positions requiring certification qualification were properly certificated for the work performed. Because community college districts grew out of K-12 districts, the terminology has changed somewhat since 1959, but the underlying obligation has been in place.

When the statutes that applied to both K-12 and community college districts were separated through stats. 1976 c. 1010, section 13566 became section 87714 that provided:

"Each general superintendent of community colleges shall make an annual report of the schools under his jurisdiction to the county superintendent of schools on forms furnished by the board of governors which report shall include an affidavit that all employees in positions requiring certification qualifications were properly certificated for the work performed."

The version of section 87714 that was added in 1981 repealed the foregoing provision, but did not create a new mandate; the obligation to ensure that all academic employees were qualified has existed since stats. 1959.

Additionally, the early Education Code included specific duties to be performed by the superintendents of each community college district. These duties were added by stats. 1963, c. 629, p. 1514, as Education Code section 939 and were later renumbered to Education Code section 72413. Section 939, and later section 72413, required the chief executive officer to "determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him to serve in the position to which he is assigned." Section 72413 remained in effect until January 1, 1991.

Based on the foregoing, the obligations to verify that employees were qualified for their position existed since 1964 and the duty to report existed since 1960 in substantially the same form as current Education Code section 87714.

There is another aspect to this section that should further remove the ability to claim reimbursement: the current requirement for certification is only triggered if the Board of Governors requires the certification. We have no records indicating that we have required Claimant to submit the affidavit described in this

section.

For all the foregoing reasons, any Claim under this section should be rejected.

Education Code section 87740(c).

In Claimant's allegations concerning section 87610.1, it asserts that section 87740(c) requires a hearing process to consider a board's decision not to continue the employment of a probationary faculty member. As noted above in our report on section 87610.1, section 87740 was originally added to the Education Code as section 13443 by stats of 1965. That section established due process requirements for the nonrehire of probationary employees, including notice to the affected employee and a hearing. When the Education Code was reorganized in 1976 to separate sections that applied to both K-12 districts and to community college into two distinct sets of statutes, the community college version of section 13443 became section 87740.

Accordingly, since the mid-1960's community college districts have had a process they are required to follow when they choose not to continue the probationary employment of a faculty member. Nonsubstantive changes were made to section 87740 in 1995, to add formatting and to change the term "probationary" employee to "contract" employee. The requirement to notify the employee of the need to file a notice of defense, the discovery requirements, and the hearing descriptions were all included in section 13443 and required well before January 1, 1975.

Any claim under section 87740 should be rejected.

Education Code section 87743.2.

Claimant asserts that section 87743.2 requires it to establish and update faculty service areas within the scope of bargaining. The section also requires the exclusive representative to consult with the academic senate in developing its proposals.

Claimant overstates the requirement - there is no express updating requirement. The requirement is that by July 1, 1990, the faculty service areas were to be established.

Claimant also includes the requirement of consultation between the exclusive representative (union) and the academic senates, but neither of these entities is the Claimant; Claimant cannot secure reimbursement for activities that do not apply to it.

Section 87743.2 was added to the Education Code through SEC 53 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 53 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.2, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Finally, to the extent the Claimant has made any mandate claims for its collective bargaining activities in this area, it should not also be paid under this process because that would be double recovery.

Education Code section 87743.3.

Claimant asserts that this section requires it to receive and assess faculty applications for adding faculty

service areas for which faculty members qualify. Claimant also asserts that disputes over denials of faculty service areas must be addressed as grievances, or in the absence of a grievance process, by fair and equitable procedures.

Section 87743.3 was added to the Education Code through SEC 54 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 54 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.3, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87743.4.

Claimant asserts that this section requires it to maintain a permanent record of each faculty member's faculty service areas.

Section 87743.4 was added to the Education Code through SEC 55 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 55 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.4, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87743.5.

Claimant asserts that this section requires it to establish and update competency criteria for faculty members within the scope of meeting and negotiating under the Government Code.

Claimant does not accurately state the language of this section. The section requires that competency criteria were to have been established no later than July 1, 1990. There is no express updating requirement. The section further states that the development and establishment of competency criteria shall be within the scope of bargaining.

The section mandated certain conduct by July 1, 1990. Nothing in the section refers to updating activities.

Additionally, section 87743.5 was added to the Education Code through SEC 56 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 56 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.5, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Additionally, if the Claimant has made any mandate claims for collective bargaining activities in this area, it should not also be paid under this process because that would be double recovery.

California Code of Regulations, title 5, section 53130 ("Title 5").

Claimant asserts that this section requires districts to adopt, print, and make available to each academic employee evaluation rules and regulations.

Prior to its adoption as a title 5 regulation, section 53130 appeared as section 72208 in the Education

Code. As noted above in our review of Education Code section 87663, prior to being renumbered in 1976, section 1009 provided that "the governing board of a community college district shall adopt and cause to be printed and made available to each certificated employee of the district reasonable rules and regulations providing for the evaluation of the performance of certificated employees in their assigned duties."

Whether in statute or regulation, the requirements that currently appear in section 53130 have existed without lapse since before January 1, 1975 and cannot be claimed for reimbursement under this process.

Title 5, section 53403.

Claimant asserts that this section requires it to establish and implement policies to recognize faculty who were qualified to teach in their respective discipline under the minimum qualifications when hired.

Claimant misunderstands the regulation. The section permits districts to "grandparent" employees in under the minimum qualifications or faculty service areas in effect when the employees were hired, even if those qualifications or faculty service areas later change. There is no mandate involved.

The section also verifies that persons who have credentials are authorized to serve under those credentials until they expire. Education Code section 87355 requires that persons who had credentials prior to the establishment of minimum qualifications for service in academic positions are entitled to serve under those credentials until they expire.

Since they were originally established well before January 1, 1975, credentials were to be recognized as minimum qualification for hire. The fact that credentials continue to establish minimum qualifications does not create any new mandate; they were always a standard of required qualifications and they continue to be such a standard. A fuller explanation regarding credentials is included with our review of section 53430 which follows.

Any claim under this section should be rejected.

Title 5, section 53430.

Claimant notes that section 53430 requires it to engage in a number of activities related to ensuring that individuals meet minimum qualifications for employment. Claimant alleges the obligations of 53430 embrace requirements under section 53406, 53407, 53410, 53410.1, 53412, 53414, 53415, 53416, 53417 and 53420.

AB 1725 partially changed the way academic employees (faculty and educational administrators) were deemed to be eligible for employment with districts. Prior to AB 1725, the Chancellor's Office issued credentials, and the possession of an appropriate credential was required before a person could be hired as a faculty member (including teaching faculty, counselors, librarians, etc.) or an academic administrator. Individuals who were interested in academic service would apply to the Chancellor's Office, and this office would review applicants' education and experience to determine if they were eligible for a credential.

The focus partially shifted with AB 1725. Rather than demonstrating minimum qualifications for academic employment through the possession of a credential, minimum qualifications were to be assessed

by individual districts. In many cases, the qualifications necessary for credentials were reestablished in nearly identical form as minimum qualifications for different types of service. That is, the qualifications that were necessary to secure a counselor's credential might be adopted as the minimum qualifications for service as a counselor. Instead of this office reviewing education and experience and issuing a credential, districts would review education and experience according to state regulations that set minimum qualifications.

Credentials that were issued under the old system remain in effect, such that districts do not need to make minimum qualifications assessments for any persons who hold credentials under the credential system. (Education Code section 87355.)

Additionally, and very importantly, even when it issued credentials, the Chancellor's Office did not assess the qualifications of persons to teach classes for adults (noncredit classes). Those assessments were made by the individual districts, from as early as 1970.

Title 5, section 52600 was filed with the Secretary of State on May 11, 1970. It addressed qualifications for teachers of classes for adults (noncredit classes). Subsection (b) provided:

"The district, which maintains the Community College which will employ the applicant, certifies that the applicant has adequate training and experience to teach the classes for which the applicant is to be employed."

Accordingly, even though the system changed from a system based on credentials to a system based on minimum qualifications, there should be no reimbursement for district assessments of "minimum qualifications" for noncredit faculty because districts have been continually required to assess qualifications for noncredit faculty.

Although the shift from the credentials system to the minimum qualifications system represented new obligations for the districts, those mandates were funded through AB 1725. SEC. 70(b)(2) of AB 1725 described the "phase II" funding that would finance minimum qualifications. It provided that "It is the intent of the Legislature that moneys appropriated through phase II fully fund any state-mandate created pursuant to this section." Funding was provided. Following the first infusion of funds for the activities described in section 70, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Community college districts had the opportunity in fiscal years 1989-90 and 1990-91 to report costs for:

- Developing articulated programs.
- Applying minimum qualifications to all newly hired faculty and administrators as required by Section 87356.
- Developing and administering a process for waiver of minimum qualifications as required by Section 87359.
- Establishing and applying local hiring criteria as required by Section 87360.
- Establishing and applying local hiring criteria as required by Sections 87743 to 87743.5.
- Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.
- Establishing and applying new processes for tenure evaluation required by Section 87610.1.

- Establishing and applying the tenure denial grievance procedure required by Section 87610.1.
- Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458.
- Publishing and distributing a report on the affirmative action success rate as required by Section 87102.
- Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.
- Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.
- Augmenting budgets for college libraries and learning resources.
- Augmenting budgets for plant maintenance and operations.
- Adding new courses or programs to serve community need.
- Making progress towards affirmative action goals and timetables established by the district.
- Developing and maintaining programs and services authorized by Section 78212.5.
- Augmenting budgets for student services in the areas of greatest need.
- Providing for release time for faculty and staff as deemed appropriate by community college district governing boards, to enable faculty and staff participation in implementing reforms. Monies for these items were subsequently built into the base funding for community college districts.

For the reasons stated above, we believe there is no basis for reimbursement and we recommend rejection of the Claim.

Sincerely,

A handwritten signature in black ink that reads "Frederick E. Harris". The signature is written in a cursive style with a large, stylized initial "F".

FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning