

ITEM 4
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4

Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117;
Statutes 1988, Chapters 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417;
Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123;
Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587;
Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and
Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622, 4630,
4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and 4670

Register 92, Number 3; Register 92; Number 18; and Register 93, Number 51

Uniform Complaint Procedures (K-12)

03-TC-02

Solana Beach School District, Claimant

Table of Contents

Exhibit A

Test Claim filed by claimants, dated July 23, 20033

Exhibit B

Comments filed by the Department of Education,
dated November 5, 2003148

Exhibit C

Comments filed by the claimants in response to comments filed by
the Department of Education, dated December 5, 2003153

Exhibit D

Supplemental information for the test claim filed by the claimant,
dated January 8, 2007.....170

Exhibit E

Request for additional information issued by the Commission staff,
dated April 30, 2012.....195

Exhibit F

Response to Commission staff's request for additional information
filed by the claimant, dated June 7, 2012.....197

Exhibit G

Response to Commission staff's request for additional information,
dated June 15, 2012.....199

Exhibit H

Draft Staff Analysis205

Exhibit I

Supporting Documentation.....256

- Regulations:
 - Former California Code of Regulations, title 5, sections 3080-3082
(Register 88, No. 15) (April 20, 1988)

SixTen and Associates

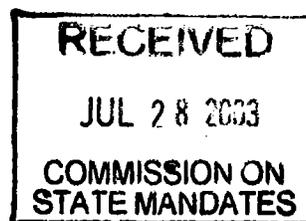
Mandate Reimbursement Services

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July 23, 2003

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



Re: TEST CLAIM OF Solana Beach School District
Statutes of 2002/Chapter 1102
Uniform Complaints Procedures (K-12)

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Solana Beach School District test claim for the above referenced mandate.

I have been appointed by the District as its representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Ellie Topolovac, Superintendent
Solana Beach School District
309 North Rios Avenue
Solana Beach, California 92075-1298

The Commission regulations provide for an informal conference of the interested parties

TEST CLAIM FORM

Claim No. 03-TC-02

Local Agency or School District Submitting Claim

SOLANA BEACH SCHOOL DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

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

Claimant Address

Solana Beach School District
309 North Rios Avenue
Solana Beach, CA 92075-1298

Representative Organization to be Notified

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

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

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

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable. **Uniform Complaint Procedures (K-12)**

Chapter 1102, Statutes of 2002 Chapter 1123, Statutes of 1993 Education Code Sections 200, 220,
Chapter 300, Statutes of 2002 Chapter 913, Statutes of 1992 231.5, 250, 251, 253, 260, 261,
Chapter 708, Statutes of 2001 Chapter 906, Statutes of 1992 262.3 and 262.4

Chapter 591, Statutes of 1999 Chapter 417, Statutes of 1992
Chapter 587, Statutes of 1999 Chapter 1372, Statutes of 1990 Government Code Sections 11135,
Chapter 914, Statutes of 1998 Chapter 1514, Statutes of 1988 11136, 11137, 11138 and 11139

Chapter 146, Statutes of 1994 Chapter 1117, Statutes of 1982
Chapter 972, Statutes of 1977

Title 5, California Code of Regulations Sections 4600, 4610, 4611, 4620, 4621, 4622, 4630,
4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665 and 4670

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

Name and Title of Authorized Representative

Telephone No.

Ellie Topolovac, Superintendent

Voice: 858-794-3914
Fax: 858-755-0814

Signature of Authorized Representative

Date

X *Ellie Topolovac*

July 22, 2003

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

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

14)
15) No. CSM 03-TC-02
16)
17)
18) Chapter 1102, Statutes of 2002
19 Test Claim of:) Chapter 300, Statutes of 2002
20) Chapter 708, Statutes of 2001
21) Chapter 591, Statutes of 1999
22) Chapter 587, Statutes of 1999
23) Chapter 914, Statutes of 1998
24 Solana Beach School District) Chapter 146, Statutes of 1994
25) Chapter 1123, Statutes of 1993
26) Chapter 913, Statutes of 1992
27) Chapter 906, Statutes of 1992
28 Test Claimant) Chapter 417, Statutes of 1992
29) Chapter 1372, Statutes of 1990
30) Chapter 1514, Statutes of 1988
31) Chapter 1117, Statutes of 1982
32) Chapter 972, Statutes of 1977
33)
34) Education Code Sections 200, 220,
35) 231.5, 250, 251, 253, 260, 261,
36) 262.3 and 262.4
37)
38) Government Code Sections 11135,
39) 11136, 11137, 11138 and 11139
40)
41) (Continued on Next Page)
42)
43) Uniform Complaint Procedures (K-12)
44)

45) TEST CLAIM FILING
46)
47)

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

) Title 5, California Code of Regulations
) Sections 4600, 4610, 4611, 4620, 4621,
) 4622, 4630, 4631, 4632, 4640, 4650,
) 4651, 4652, 4660, 4661, 4662, 4663,
) 4664, 4665, and 4670

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Solana Beach Unified School District is a "school district" as defined in Government Code section 17519.¹

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs reimbursable by the state for school districts and county offices of education to establish and implement uniform complaint procedures as required by the Education Code, Government Code and Chapter 5.1, Title 5, California Code of Regulations, commencing with Section 4600, governing "Uniform Complaint Procedures",.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

Prior to January 1, 1975, there was no statute or regulation which mandated any

¹ Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county superintendent of schools."

1 uniform complaint resolution procedures.

2 SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974

3 Education Code Sections

4 Chapter 1117, Statutes of 1982, Section 1, added Education Code Section 200²
5 which stated it is the policy of the State of California to afford all persons, regardless of
6 their sex, equal rights and opportunities in the educational institutions of the state. The
7 purpose of the chapter was to prohibit acts which are contrary to that policy and to
8 provide remedies therefor.

9 Chapter 1117, Statutes of 1982, Section 1, added Education Code Section 220³
10 which provides that no person shall be subjected to discrimination on the basis of sex in
11 any program or activity conducted by an educational institution which receives, or
12 benefits from, state financial assistance or enrolls students who receive state student
13 financial aid.

² Education Code Section 200, added by Chapter 1117, Statutes of 1982, Section 1:

“It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.”

³ Education Code Section 220, added by Chapter 1117, Statutes of 1982, Section 1:

“No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.”

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 Chapter 1117, Statutes of 1982, Section 1, added Education Code Section 250⁴
2 which provides that, prior to receipt of any state financial assistance or state student
3 financial aid, an educational institution is required to provide assurance to the agency
4 administering the funds, in the manner required by the funding agency, that each
5 program or activity conducted by the educational institution will be conducted in
6 compliance with the provisions of the chapter and all other applicable provisions of state
7 law prohibiting discrimination on the basis of sex. A single assurance, not more than
8 one page in length and signed by an appropriate responsible official of the educational
9 institution, may be provided for all the programs and activities conducted by an
10 educational institution.

11 Chapter 1117, Statutes of 1982, Section 1, added Education Code Section 251⁵

⁴ Education Code Section 250, added by Chapter 1117, Statutes of 1982, Section 1:

"Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution."

⁵ Education Code Section 251, added by Chapter 1117, Statutes of 1982, Section 1:

"A school district or a community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities may require.

All reports submitted pursuant to this section shall be made available by the

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 which required each school district and community college district to submit timely,
2 complete, and accurate compliance reports to the State Department of Education or to
3 the chancellor's office, as those entities may require. In addition, all reports submitted
4 pursuant to this section shall be made available by the educational institution for public
5 inspection during regular business hours.

6 Chapter 1117, Statutes of 1982, Section 1, added Education Code Section 260⁶
7 provided that the governing board of a school district shall have the responsibility for
8 ensuring that district programs and activities are free from discrimination based on
9 ethnic group identification, religion, age, sex, color, or physical or mental disability, and
10 for monitoring compliance with any and all rules and regulations promulgated pursuant
11 to Section 11138 of the Government Code.

12 Chapter 1117, Statutes of 1982, Section 1, added Education Code Section 261⁷

educational institution for public inspection during regular business hours.”

⁶ Education Code Section 260, added by Chapter 1117, Statutes of 1982, Section 1:

“The governing board of a school district shall have the responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.”

⁷ Education Code Section 261, added by Chapter 1117, Statutes of 1982, Section 1:

“The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.”

1 which required that the provisions of the chapter shall be implemented pursuant to
2 existing regulations and procedures promulgated pursuant to Section 11138 of the
3 Government Code, governing the filing and handling of written complaints of prohibited
4 discrimination.

5 Chapter 1514, Statutes of 1988 amended Education Code Section 260⁸ to clarify
6 that the governing board of a school district had the "primary" responsibility for ensuring
7 that school district programs and activities are free from discrimination.

8 Chapter 1514, Statutes of 1988, Section 5, added Education Code Section 262.3⁹
9 which provides that a party to a written complaint of prohibited discrimination pursuant to
10 the article may appeal the action taken by the governing board of a school district, the
11 governing board of a community college district, the president of a campus of the

⁸ Education Code Section 260, added by Chapter 1117, Statutes of 1982, Section 1, as amended by Chapter 1514, Statutes of 1988, Section 1:

"The governing board of a school district shall have the primary responsibility for ensuring that school district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code."

⁹ Education Code Section 262.3, added by Chapter 1514, Statutes of 1988, Section 5:

"A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University, or the chancellor of a campus of the University of California, pursuant to this article, to the State Department of Education, the Chancellor of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable."

1 California State University, or the chancellor of a campus of the University of California,
2 to the State Department of Education, the Chancellor of the California Community
3 Colleges, the Chancellor of the California State University, or the President of the
4 University of California, as applicable.

5 Chapter 1372, Statutes of 1990, Section 8, amended Education Code Section
6 262.3¹⁰ to add a subdivision (b) which requires districts to advise persons, who have
7 filed a complaint with a district pursuant to the chapter, that civil law remedies, including,
8 but not limited to, injunctions, restraining orders, or other remedies or orders may also
9 be available to complainants. The district shall make this information available by
10 publication in appropriate informational materials. The original paragraph was lettered
11 as subdivision (a) and other technical changes were also made.

12 Chapter 417, Statutes of 1992, Section 1, amended Education Code Section

¹⁰ Education Code Section 262.3, added by Chapter 1514, Statutes of 1988, Section 5, as amended by Chapter 1372, Statutes of 1990, Section 9:

“(a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, or the president of a campus of the California State University, or the chancellor of a campus of the University of California, pursuant to this article, to the State Department of Education, the ~~chancellor~~ Board of Governors of the California Community Colleges, or the Chancellor of the California State University, or the President of the University of California, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.”

1 262.3, subdivision (a)¹¹, to delete references to the University of California.

2 Chapter 906, Statutes of 1992, Section 1, added Education Code Section
3 212.6¹².

¹¹ Education Code Section 262.3, added by Chapter 1514, Statutes of 1988, Section 5, as amended by Chapter 417, Statutes of 1992, Section 1:

“(a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, or the president of a campus of the California State University, ~~or the chancellor of a campus of the University of California~~, pursuant to this article, to the State Department of Education, the Board of Governors of the California Community Colleges, or the Chancellor of the California State University, ~~or the President of the University of California~~, as applicable.

(b) ...”

¹² Education Code Section 231.5 (formerly Education Code Section 212.6) as renumbered and amended by Chapter 914, Statutes of 1998, Section 13:

“(a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as

1 Subdivision (a) stated that the policy of the State of California, pursuant to Section 200,
2 was that all persons, regardless of their sex, should enjoy freedom from discrimination of
3 any kind in the educational institutions of the state; and provided that the purpose of the
4 section is to provide notification of the prohibition against sexual harassment as a form
5 of sexual discrimination and to provide notification of available remedies. Subdivision (b)
6 requires that each educational institution in the State of California shall have a written
7 policy on sexual harassment. Subdivision (c) requires the district's written policy on
8 sexual harassment to include information on where to obtain the specific rules and
9 procedures for reporting charges of sexual harassment and for pursuing available
10 remedies. Subdivision (d) requires a copy of the district's written policy on sexual
11 harassment to be displayed in a prominent location in the main administrative building or
12 other area of the campus or schoolsite. "Prominent location" means that location, or
13 those locations, in the main administrative building or other area where notices
14 regarding the institution's rules, regulations, procedures, and standards of conduct are
15 posted. Subdivision (e) requires a copy of the educational institution's written policy on
16 sexual harassment, as it pertains to students, to be provided as part of any orientation

applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution."

1 program conducted for new students at the beginning of each quarter, semester, or
2 summer session, as applicable. Subdivision (f) requires a copy of the educational
3 institution's written policy on sexual harassment to be provided for each faculty member,
4 all members of the administrative staff, and all members of the support staff at the
5 beginning of the first quarter or semester of the school year, or at the time that there is a
6 new employee hired. Subdivision (g) requires that a copy of the educational institution's
7 written policy on sexual harassment shall appear in any publication of the institution that
8 sets forth the comprehensive rules, regulations, procedures, and standards of conduct
9 for the institution.

10 Chapter 1123, Statutes of 1993, Section 2, added Education Code Section 253¹³.

¹³ Education Code Section 253, added by Chapter 1123, Statutes of 1993,
Section 2:

“(a) Compliance with the sex discrimination provisions of this chapter and regulations adopted pursuant to this chapter shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction. Any review of that compliance shall also include a review of the school district's records of complaints of sexual harassment brought by pupils and employees of the school district.

(b) The superintendent shall annually review 20 school districts for compliance with sex discrimination laws and regulations as specified in subdivision (a). The superintendent shall select from those districts subject to review, in a given year, a sampling of districts from each of the following categories:

- (1) Those districts within which the greatest number of sex discrimination complaints have been filed since its previous coordinated compliance review.
- (2) Those districts with the largest enrollments.
- (3) All other districts, selected on a random basis.

(c) The superintendent and the department shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes.”

1 Subdivision (b) requires the superintendent to annually review 20 school districts for
2 compliance with sex discrimination laws and regulations and to select from those
3 districts subject to review, in a given year, a sampling of districts from each of the
4 following categories:

5 (1) Those districts within which the greatest number of sex discrimination
6 complaints have been filed since its previous coordinated compliance review.

7 (2) Those districts with the largest enrollments.

8 (3) All other districts, selected on a random basis.

9 Chapter 914, Statutes of 1998, Section 7, amended Education Code Section
10 200¹⁴ to emphasize that the policy included "public schools" and expanded the prohibited
11 basis to include ethnic group identification, race, national origin, religion, or mental or
12 physical disability.

13 Chapter 914, Statutes of 1998, Section 17, amended Education Code Section
14 220¹⁵ to expand the basis for which discrimination is prohibited to include ethnic group

¹⁴ Education Code Section 200, added by Chapter 1117, Statutes of 1982,
Section 1, as amended by Chapter 914, Statutes of 1998, Section 7:

"(a) It is the policy of the State of California to afford all persons in public schools,
regardless of their sex, ethnic group identification, race, national origin, religion, or
mental or physical disability, equal rights and opportunities in the educational institutions
of the state. The purpose of this chapter is to prohibit acts which are contrary to that
policy and to provide remedies therefor."

¹⁵ Education Code Section 220, added by Chapter 1117, Statutes of 1982,
Section 1, as amended by Chapter 914, Statutes of 1998, Section 17:

"No person shall be subjected to discrimination on the basis of sex, ethnic group

1 identification, race, national origin, religion, color, or mental or physical disability.

2 Chapter 914, Statutes of 1998, Section 13, renumbered former Education Code

3 Section 212.6 as Education Code Section 231.5¹⁶.

identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by an educational institution which that receives, or benefits from, state financial assistance or enrolls students pupils who receive state student financial aid.”

¹⁶ Education Code Section 231.5 (formerly Education Code Section 212.6) as renumbered and amended by Chapter 914, Statutes of 1998, Section 13:

“(a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules,

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 Chapter 914, Statutes of 1998, Section 30, amended Education Code Section
2 250¹⁷ to expand the prohibition to all forms of discrimination.

3 Chapter 914, Statutes of 1998, Section 31, amended Education Code Section
4 251¹⁸ to remove community college districts from its requirements.

5 Chapter 914, Statutes of 1998, Section 32, amended Education Code Section
6 253 only to include the section in new Article 8.

7 Chapter 914, Statutes of 1998, Section 37, amended Education Code Section

regulations, procedures, and standards of conduct for the institution.”

¹⁷ Education Code Section 250, added by Chapter 1117, Statutes of 1982, Section 1, as amended by Chapter 914, Statutes of 1998, Section 30:

“Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination ~~on the basis of sex~~. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.”

¹⁸ Education Code Section 251, added by Chapter 1117, Statutes of 1982, Section 1, as amended by Chapter 914, Statutes of 1998, Section 31:

“(a) A school district ~~or a community college district~~ shall submit timely, complete, and accurate compliance reports to the State Department of Education ~~or to the chancellor’s office, as those entities~~ as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.”

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 262.3¹⁹. Subdivision (a) was amended to delete all references to institutions other than
2 school districts. Subdivision (c) was added to clarify that the chapter shall not be
3 construed to require an exhaustion of the administrative process before civil law
4 remedies could be pursued. Subdivision (d) was added to provide, with some
5 exceptions, that a person alleging he or she is a victim of discrimination may not seek a
6 civil remedy until 60 days have elapsed from the filing of an appeal to the State Board of
7 Education.

8 Chapter 914, Statutes of 1998, Section 38, added Education Code Section

¹⁹ Education Code Section 262.3, added by Chapter 1514, Statutes of 1988, Section 5, as amended by Chapter 914, Statutes of 1998, Section 37:

“(a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, ~~the governing board of a community college district, or the president of a campus of the California State University,~~ pursuant to this article, to the State Department of Education, ~~the Board of Governors of the California Community Colleges, or the Chancellor of the California State University, as applicable.~~

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the administrative complaint process before civil law remedies may be pursued.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 60 days have elapsed from the filing of an appeal to the State Department of Education pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations. The moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.”

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 262.4²⁰ to provide that the chapter may be enforced through a civil action.”

2 Chapter 587, Statutes of 1999, Section 3, amended Education Code Section
3 200²¹ to expand the prohibited basis to include hate crimes as described in subdivision
4 (a) of Section 422.6 of the Penal Code.

5 Chapter 587, Statutes of 1999, Section 4, amended Education Code Section
6 220²² to expand the basis for which discrimination is prohibited to include hate crimes as
7 described in subdivision (a) of Section 422.6 of the Penal Code.

²⁰ Education Code Section 262.4, added by Chapter 914, Statutes of 1998,
Section 37:

“This chapter may be enforced through a civil action.”

²¹ Education Code Section 200, added by Chapter 1117, Statutes of 1982,
Section 1, as amended by Chapter 587, Statutes of 1999, Section 3:

“(a) It is the policy of the State of California to afford all persons in public schools,
regardless of their sex, ethnic group identification, race, national origin, religion, or
mental or physical disability, or regardless of any basis that is contained in the
prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code.
equal rights and opportunities in the educational institutions of the state. The purpose of
this chapter is to prohibit acts which are contrary to that policy and to provide remedies
therefor.”

²² Education Code Section 220, added by Chapter 1117, Statutes of 1982, Section
1, as amended by Chapter 587, Statutes of 1999, Section 4:

“No person shall be subjected to discrimination on the basis of sex, ethnic group
identification, race, national origin, religion, color, or mental or physical disability, or any
basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of
Section 422.6 of the Penal Code in any program or activity conducted by an educational
institution that receives, or benefits from, state financial assistance or enrolls pupils who
receive state student financial aid.”

1 **Government Code Sections**

2 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
3 11135²³ which provides that no person in the State of California shall be unlawfully
4 denied the benefits of any program or activity that is funded directly by the state or
5 receives any financial assistance from the state based on their ethnic group
6 identification, religion, age, sex, color, or physical or mental disability.

7 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
8 11136²⁴ which provides that, whenever a state agency that administers a program or

²³ Government Code Section 11135, added by Chapter 972, Statutes of 1977,
Section 1:

“No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.”

²⁴ Government Code Section 11136, added by Chapter 972, Statutes of 1977,
Section 1:

“Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.”

1 activity funded directly by the state, or which receives financial assistance from the
2 state, has reasonable cause to believe that a local agency has violated the provisions of
3 11135 or any regulation adopted to implement the section, the head of the state agency
4 is required to notify the local agency of such violation and, after considering all relevant
5 evidence, determine whether there is probable cause to believe that a violation of
6 Section 11135 has occurred. If probable cause is established, the head of the state
7 agency shall cause a hearing to be conducted pursuant to the provisions of Chapter 5
8 (Government Code Sections 11500 through 11529) to determine whether a violation
9 occurred.

10 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
11 11137²⁵ which provides that, if it is determined that a local agency has violated the
12 provisions of the article, the state agency that administers the program or activity
13 involved shall take action to curtail state funding in whole or in part to such local agency.

14 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
15 11138²⁶ which requires that each state agency that administers a program or activity that

²⁵ Government Code Section 11137, added by Chapter 972, Statutes of 1977,
Section 1:

“If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.”

²⁶ Government Code Section 11138, added by Chapter 972, Statutes of 1977,
Section 1:

1 is funded directly by the state or receives any financial assistance from the state and
2 that enters into contracts for the performance of services to be provided to the public in
3 an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year
4 shall, in accordance with the provisions of Chapter 4.5 (commencing with Section
5 11371), adopt such rules and regulations as are necessary to carry out the purposes
6 and provisions of the article. Test claimant believes and thereon alleges that the
7 California State Department of Education is the only state agency to adopt rules and
8 regulations which require local government to implement duties assigned by law to be
9 performed by the responsible state agency, in this case, the governing boards of the
10 individual school districts.

11 Chapter 972, Statutes of 1977, Section 1, added Government Code Section
12 11139²⁷ which provides that the prohibitions and sanctions imposed by this article shall

“Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.”

²⁷ Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1:

“The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.”

1 be in addition to any other prohibitions and sanctions imposed by law.

2 Chapter 913, Statutes of 1992, Section 18, amended Government Code Section
3 11135²⁸, subdivision (a), to delete "physical or mental" as modifiers of "disability".

4 Subdivision (b) was added to require that programs and activities, at a minimum, shall
5 meet the protections and prohibitions of the Americans with Disabilities Act of 1990.

6 Subdivision (c) was added to define "disability" as any of the following: (1) a physical or
7 mental impairment that substantially limits one or more of the major life activities of the
8 individual, (2) a record of an impairment, or (3) being regarded as having such an
9 impairment.

10 Chapter 146, Statutes of 1994, Section 66, amended Government Code Section
11 11135 to make non-substantive technical changes.

²⁸ Government Code Section 11135, added by Chapter 972, Statutes of 1977,
Section 1, as amended by Chapter 913, Statutes of 1992, Section 18:

"(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or ~~physical or mental~~ disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 115. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment, (3) being regarded as having such an impairment."

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 Chapter 591, Statutes of 1999, Section 3, amended Government Code Section
2 11139²⁹ to add a provision that allows enforcement of the article and regulations to be
3 enforced by a civil action for equitable relief.

4 Chapter 708, Statutes of 2001, Section 1, amended Government Code Section
5 11135³⁰, subdivision (a), to clarify that no person shall be denied full and equal access to

²⁹ Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 591, Statutes of 1999, Section 3:

“The prohibitions and sanctions imposed by this article ~~shall be~~ are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in ~~such a~~ manner ~~so as to~~ that would frustrate its purpose.

This article shall not be interpreted in ~~such a~~ manner ~~so as to~~ that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief.”

³⁰ Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 708, Statutes of 2001, Section 1:

“(a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 115. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, “disability” means any ~~of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one~~

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 the benefits of any program or activity that is conducted, operated, or administered by
2 the state or by any state agency. Subdivision (c) was amended to redefine "disability"
3 by reference to Section 12926.

4 Chapter 708, Statutes of 2001, Section 2, amended Government Code Section
5 11139³¹ which clarified that enforcement by a civil action for equitable relief is
6 independent of any other rights and remedies.

7 Chapter 300, Statutes of 2002, Section 4, amended Government Code Section
8 11135³², subdivision (a), to add "race" and "national origin" to the list of prohibited basis

~~or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1): mental or physical disability as defined in Section 12926.~~"

³¹ Government Code Section 11139, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 708, Statutes of 2001, Section 2:

"The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies."

³² Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 300, Statutes of 2002, Section 4:

"(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state or receives any financial assistance from the state."

1 for discrimination.

2 Chapter 1102, Statutes of 2002, Section 2.5, amended Government Code
3 Section 11135³³ by adding subdivision (d) which requires compliance with federal laws
4 regulating electronic or information technology for the blind and visually impaired and
5 deaf and hard-of-hearing persons.

6 California Code of Regulations

7 Chapter 5.1 [Articles 1-8, Sections 4600-4671 (not consecutive), initially adopted
8 in 1991], establishes regulations for Uniform Complaint Procedures. These Title 5 Code

³³ Government Code Section 11135, added by Chapter 972, Statutes of 1977, Section 1, as amended by Chapter 1102, Statutes of 2002, Section 2.5:

“(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 115. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.”

1 of Regulations Sections are attached hereto as Exhibit 4 and are incorporated herein by
2 reference.

3 Article 1. Definitions

4 Title 5, California Code of Regulations, Section 4600, [added August 26, 1991]
5 provides definitions as used in the Chapter.

6 Article 2. Purpose and Scope

7 Title 5, California Code of Regulations, Section 4610, subdivision (a), [added
8 August 26, 1991] provides that the Chapter applies to the filing, investigation and
9 resolution of a complaint regarding an alleged violation by a local agency³⁴ of federal or
10 state law or regulations governing educational programs, including allegations of
11 unlawful discrimination, in accordance with identified federal and state codes and
12 regulations. Subdivision (b) provides that the chapter applies to the following programs
13 administered by the Department³⁵:

- 14 (i) Adult Basic Education;
- 15 (ii) Consolidated Categorical Aid Programs;
- 16 (iii) Migrant Education;

³⁴ Title 5, California Code of Regulations, Section 4600, subdivision (j), defines "Local Agency" to mean a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services.

³⁵ Title 5, California Code of Regulations, Section 4600, subdivision (h), defines "Department" to mean the California Department of Education.

- 1 (iv) Vocational Education;
- 2 (v) Child care and development programs;
- 3 (vi) Child Nutrition programs established pursuant to Education Code sections
- 4 49490 through 49560; and
- 5 (vii) Special Education programs established pursuant to Education Code
- 6 sections 56000 through 56885 and 59000 through 59300.

7 Subdivision (c) provides that the Chapter also applies to the filing of complaints which

8 allege unlawful discrimination on the basis of ethnic group identification, religion, age,

9 sex, color, or physical or mental disability, in any program or activity conducted by a

10 local agency, which is funded directly by, or that receives or benefits from, any state

11 financial assistance.

12 Title 5, California Code of Regulations, Section 4611, [added August 26, 1991 -

13 last amended December 16, 1993] sets forth certain complaints which are not subject to

14 the local and Department complaint procedures set forth in the Chapter and requires

15 districts to refer them to other specified agencies.

16 Article 3. Local Agency Compliance

17 Title 5, California Code of Regulations, Section 4620, [added August 26, 1991]

18 provides that each local education agency³⁶ shall have the primary responsibility to

19 insure compliance with applicable state and federal laws and regulations, shall

³⁶ Title 5, California Code of Regulations, Section 4600, subdivision (j), defines "local educational agency" to include any public school district and county office of education".

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 investigate complaints alleging failure to comply, and seek to resolve those complaints in
2 accordance with the procedures set out in the Chapter.

3 Title 5, California Code of Regulations, Section 4621, subdivision (a), [added
4 August 26, 1991] requires each local educational agency to adopt policies and
5 procedures consistent with the Chapter for the investigation and resolution of
6 complaints. Local policies shall ensure that complainants are protected from retaliation
7 and that the identity of the complainant alleging discrimination remain confidential as
8 appropriate. School Districts and County Offices of Education shall submit their policies
9 and procedures to the local governing board for adoption within one year from the
10 effective date of the chapter. Upon adoption, the district may forward a copy to the
11 Superintendent.³⁷

12 Title 5, California Code of Regulations, Section 4621, subdivision (b), [added
13 August 26, 1991] requires each local educational agency to identify in its policies and
14 procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for
15 receiving complaints, investigating complaints and ensuring local educational agency
16 compliance. The local educational agency's policies shall ensure that each of the
17 person(s), employee(s), position(s) or unit(s) responsible for compliance and/or
18 investigations shall be knowledgeable about the laws/programs that he/she is assigned
19 to investigate.

³⁷ Title 5, California Code of Regulations, Section 4600, subdivision (n), defines
"Superintendent" as the Superintendent of Public Instruction or his or her designee.

1 Title 5, California Code of Regulations, Section 4622, [added August 26, 1991]
2 requires each local educational agency to annually notify in writing, as applicable, its
3 students, employees, parents or guardians of its students, the district advisory
4 committee, school advisory committees, and other interested parties of its local
5 educational agency complaint procedures, including the opportunity to appeal to the
6 Department and the provisions of this Chapter. The notice shall include the identity
7 (identities) of the person(s) responsible for processing complaints. The notice shall also
8 advise the recipient of the notice of any civil law remedies that may be available, and of
9 the appeal and review procedures contained in sections 4650, 4652, and 4671 of this
10 Chapter. Pursuant to section 48985³⁸ of the Education Code, this notice shall be in
11 English, and when necessary, in the primary language, or mode of communication of the
12 recipient of the notice.

13 Article 4. Local Complaint Procedures

14 Title 5, California Code of Regulations, Section 4630, subdivision (a), [added
15 August 26, 1991] provides that for other than discrimination complaints, any individual,

³⁸ Education Code Section 48985, added by Chapter 36, Statutes of 1977, as amended by Chapter 219, Statutes of 1981, Section 2:

“When 15 percent or more of the pupils enrolled in a public school that provides instruction in kindergarten or any of grades 1 through 12 speak a single primary language other than English, as determined from the census data submitted to the Department of Education pursuant to Section 52164 in the preceding year, all notices, reports, statements, or records sent to the parent or guardian of any such pupil by the school or school district shall, in addition to being written in English, be written in such primary language, and may be responded to either in English or the primary language.”

1 public agency or organization may file a written complaint with the administrator/
2 superintendent of the local educational agency, alleging a matter which, if true, would
3 constitute a violation by that local educational agency of federal or state law or
4 regulation governing the programs listed in section 4610(b) of this Chapter.

5 Title 5, California Code of Regulations, Section 4630, subdivision (b), [added
6 August 26, 1991] requires a district to initiate an investigation³⁹ upon receipt of a
7 complaint⁴⁰ alleging unlawful discrimination. The complaint shall be filed not later than
8 six months from the date the alleged discrimination occurred, or the date the
9 complainant first obtained knowledge of the facts of the alleged discrimination unless the
10 time for filing is extended by the Superintendent, upon written request by the
11 complainant setting forth the reasons for the extension. Such extension by the
12 Superintendent shall be made in writing. The period for filing may be extended by the
13 Superintendent for good cause for a period not to exceed 90 days following the
14 expiration of the time allowed. The Superintendent shall respond immediately upon
15 receipt of requests for extensions.

³⁹ Title 5, California Code of Regulations, Section 4600, subdivision (d), defines a "Complaint Investigation" as an administrative process used by the Department or local agency for the purpose of gathering data regarding the complaint.

⁴⁰ Title 5, California Code of Regulations, Section 4600, subdivision (c), defines a "complaint" as a written and signed statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination. If the complainant is unable to put the complaint in writing, due to conditions such as illiteracy or other handicaps, the public agency shall assist the complainant in the filing of the complaint.

1 (1) The complaint shall be filed by one who alleges that he or she has
2 personally suffered unlawful discrimination, or by one who believes an individual
3 or any specific class of individuals has been subjected to discrimination prohibited
4 by this part.

5 (2) The complaint shall be filed with the local educational agency
6 director/district superintendent or his or her designee, unless the complainant
7 requests direct intervention by the Department pursuant to Article 6 of this
8 Chapter.

9 (3) An investigation of a discrimination complaint shall be conducted in a
10 manner that protects confidentiality of the parties and the facts.

11 Title 5, California Code of Regulations, Section 4631, subdivision (a), [added
12 August 26, 1991] requires the local educational agency superintendent or his or her
13 designee to complete the investigation of the complaint in accordance with the local
14 procedures developed pursuant to section 4621 within 60 days from receipt of the
15 complaint, and prepare a written Local Educational Agency Decision. This time period
16 may be extended by written agreement of the complainant.

17 Title 5, California Code of Regulations, Section 4631, subdivision (b), [added
18 August 26, 1991] provides that the investigation shall provide an opportunity for the
19 complainant, or the complainant's representative, or both, and local educational agency
20 representatives to present information relevant to the complaint. The investigation may
21 include an opportunity for the parties to the dispute to meet to discuss the complaint or

1 to question each other or each other's witnesses.

2 Title 5, California Code of Regulations, Section 4631, subdivision (c), [added
3 August 26, 1991] provides that the Local Educational Agency Decision (the Decision),
4 shall be in writing and sent to the complainant within sixty (60) days from receipt of the
5 complaint by the local agency. The Decision shall contain the findings and disposition of
6 the complaint, including corrective actions if any, the rationale for such disposition,
7 notice of the complainant's right to appeal the local educational agency decision to the
8 Department, and the procedures to be followed for initiating an appeal to the
9 Department.

10 Title 5, California Code of Regulations, Section 4631, subdivision (d), [added
11 August 26, 1991] provides that Local Educational Agencies may establish procedures
12 for attempting to resolve complaints through mediation prior to the initiation of a formal
13 compliance investigation. Conducting local mediation shall not extend the local time lines
14 for investigating and resolving complaints at the local level unless the complainant
15 agrees, in writing, to the extension of the time line. In no event shall mediation be
16 mandatory in resolving complaints.

17 Title 5, California Code of Regulations, Section 4632, [added August 26, 1991]
18 requires the local educational agency, upon notification by the Superintendent that the
19 Local Educational Agency Decision has been appealed to the state level pursuant to
20 section 4652, to forward the following to the Superintendent:

21 (a) The original complaint;

1 by this Chapter;

2 (ii) Discrimination is alleged by the complainant and the facts alleged indicate
3 that the complainant will suffer an immediate loss of some benefit such as
4 employment or education if the Department does not intervene. However, nothing
5 in this section gives the Department jurisdiction over employment discrimination
6 claims.

7 (iii) The complaint relates to agencies other than local educational agencies
8 funded through the Child Development and Child Nutrition Programs;

9 (iv) The complainant requests anonymity and presents clear and convincing
10 evidence and the Department verifies that he or she would be in danger of
11 retaliation if a complaint were filed locally, or has been retaliated against because
12 of past or present complaints;

13 (v) The complainant alleges that the local educational agency failed or refused
14 to implement the final decision resulting from its local investigation or local
15 Mediation Agreement;

16 (vi) The local agency refuses to respond to the Superintendent's request for
17 information regarding a complaint;

18 (vii) The complainant alleges and the Department verifies, or the Department
19 has information, that no action has been taken by the local educational agency
20 within 60 calendar days of the date the complaint was filed locally; and/or

21 (viii) For complaints relating to special education the following shall also be

1 conditions for direct state intervention:

2 (A) The complainant alleges that a public agency, other than a local
3 educational agency, as specified in Government Code section 7570 et
4 seq., fails or refuses to comply with an applicable law or regulation relating
5 to the provision of free appropriate public education to handicapped
6 individuals;

7 (B) The complainant alleges that the local educational agency or public
8 agency fails or refuses to comply with the due process procedures
9 established pursuant to federal and state law and regulation; or has failed
10 or refused to implement a due process hearing order;

11 (C) The complainant alleges facts that indicate that the child or group of
12 children may be in immediate physical danger or that the health, safety or
13 welfare of a child or group of children is threatened;

14 (D) The complainant alleges that a handicapped pupil is not receiving
15 the special education or related services specified in his or her
16 Individualized Educational Program (IEP); and/or

17 (E) The complaint involves a violation of federal law governing special
18 education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

19 Subdivision (b) requires that the complaint shall identify upon which basis, as described
20 in paragraph (a) of this section, that direct filing to the State is being made.

21 Title 5, California Code of Regulations, Section 4651, [added August 26, 1991]

1 provides that when the Superintendent receives a complaint requesting direct State
2 intervention, the Superintendent shall determine whether the complaint meets one or
3 more of the criterion specified in Section 4650 for direct State intervention and shall
4 immediately notify the complainant by mail of his or her determination. If the complaint is
5 not accepted, it shall be referred for local investigation pursuant to section 4631, or
6 referred to another agency pursuant to Section 4611.

7 Title 5, California Code of Regulations, Section 4652, subdivision (a), [added
8 August 26, 1991] provides that any complainant(s) may appeal a Local Educational
9 Agency Decision to the Superintendent by filing a written appeal with the Superintendent
10 within (15) days of receiving the Local Educational Agency Decision. Extensions for filing
11 appeals may be granted, in writing, for good cause. Subdivision (b) provides that the
12 complainant shall specify the reason(s) for appealing the local educational agency
13 decision. Subdivision (c) provides that the appeal shall include:

- 14 (1) A copy of the locally filed complaint; and
- 15 (2) A copy of the Local Educational Agency Decision.

16 Article 7. State Resolution Procedures

17 Title 5, California Code of Regulations, Section 4660, subdivision (a), [added
18 August 26, 1991] provides that when direct state intervention is warranted pursuant to
19 any provision of section 4650, or when an appeal has been filed of a local agency
20 decision pursuant to Section 4652, the following procedures shall be used to resolve the
21 issues of the complaint:

1 (1) The Department shall offer to mediate the dispute which may lead to a
2 state mediation agreement; and

3 (2) The Department shall conduct an on-site investigation if either the district
4 or the complainant waives the mediation process or the mediation fails to resolve
5 the issues.

6 Subdivision (b) provides that, if the complaint involves several issues, nothing shall
7 prohibit the parties from agreeing to mediate some of the issues while submitting the
8 remainder for Department investigation. Mediation shall be conducted within the 60 day
9 time line specified in Section 4662(d), and subdivision (c) provides that mediation shall
10 not exceed thirty (30) days unless the local or public agency and the complainant agree
11 to an extension.

12 Title 5, California Code of Regulations, Section 4661, subdivision (a), [added
13 August 26, 1991] provides that each party in the dispute shall be contacted by the
14 Department and offered the mediation process as a possible means of resolving the
15 complaint. Should the parties agree to enter into mediation, written confirmation shall be
16 sent indicating the time and place of the mediation conference, and the allegations to be
17 addressed. Upon local agency and complainant acceptance of the Department's offer to
18 mediate, the allegations to be addressed shall be sent by certified mail to each party.
19 The Superintendent shall appoint a trained mediator or mediation team to assist the
20 parties in reaching a voluntary agreement.

21 Title 5, California Code of Regulations, Section 4661, subdivision (b), [added

1 August 26, 1991] provides that the mediation results will be documented in a state
2 mediation agreement and signed by the involved parties to the dispute using designated
3 forms. The mediator or mediation team shall confirm that the agreement is consistent
4 with all applicable state and federal laws and regulations. A copy of the written state
5 mediation agreement shall be sent to each party. The compliance status of a local
6 agency will revert to noncompliance if the local agency does not perform the provisions
7 of the mediation agreement within the time specified in the mediation agreement.

8 Title 5, California Code of Regulations, Section 4662, subdivision (a), [added
9 August 26, 1991] provides that if either party waives mediation or the mediation fails, in
10 part or in whole, those remaining unresolved issues shall be addressed through the
11 investigation process.

12 Title 5, California Code of Regulations, Section 4662, subdivision (b), [added
13 August 26, 1991] provides that if an on-site investigation is necessary, an investigator(s)
14 shall be appointed by the Superintendent.

15 Title 5, California Code of Regulations, Section 4662, subdivision (c), [added
16 August 26, 1991] provides that, at least two weeks prior to the date of an investigation,
17 each party in the dispute shall be sent written notification by the Department of the
18 name(s) of the investigator(s) and the investigation date(s). The notice shall explain the
19 investigation process.

20 Title 5, California Code of Regulations, Section 4662, subdivision (d), [added
21 August 26, 1991] requires that an investigation shall be completed within sixty (60) days

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 after receiving a request for direct intervention or an appeal request, unless the parties
2 have agreed to mediate and agree to extend the time lines. The Superintendent or his or
3 her designee may grant extensions for the investigation only if exceptional
4 circumstances exist with respect to the particular complaint, and provided that the
5 complainant is informed of the extension and the reasons therefore and provided that
6 the facts supporting the extension are documented and maintained in the complaint file.

7 Title 5, California Code of Regulations, Section 4663, subdivision (a), [added
8 August 26, 1991] provides that the investigator(s) shall request all documentation
9 regarding the allegations. The investigator(s) shall interview the complainant(s), agency
10 administrators, staff, related committees/groups, and any other involved persons, as
11 appropriate, to determine the facts in the case. An opportunity shall be provided for the
12 complainant(s), or the complainant's(s)' representative, or both, and the agency involved
13 to present information.

14 Title 5, California Code of Regulations, Section 4663, subdivision (b), [added
15 August 26, 1991] provides that refusal by the local agency or complainant to provide the
16 investigator with access to records and other information relating to the complaint which
17 the investigator is privileged to review, or any other obstruction of the investigative
18 process, shall result in either a dismissal of the complaint or imposition of official
19 applicable sanctions against the local agency.

20 Title 5, California Code of Regulations, Section 4664, [added August 26, 1991]
21 requires that an investigation report shall be submitted to the Superintendent for review

1 and approval. The investigation report shall include the following information:

- 2 (1) A transmittal Letter that includes information about how the agency or the
- 3 complainants may appeal the decision to the Office of the State Superintendent;
- 4 (2) General procedures of the investigation;
- 5 (3) Citations of applicable law and regulations;
- 6 (4) Department findings of facts;
- 7 (5) Department conclusions;
- 8 (6) Department required actions, if applicable;
- 9 (7) Department recommended actions, if applicable; and
- 10 (8) Time line for corrective actions, if applicable.

11 An investigation report shall be mailed to the parties within sixty (60) days from the date
12 of receipt of the request for direct state intervention or an appeal, unless the parties
13 have participated in mediation and agreed to an extension of the mediation time lines or
14 the Superintendent has granted an extension pursuant to Section 4662(d).

15 Title 5, California Code of Regulations, Section 4665, subdivision (a), [added
16 August 26, 1991] provides that within 35 days of receipt of the Department investigation
17 report, either party may request reconsideration by the Superintendent. The
18 Superintendent may, within fifteen (15) days of receipt of the request, respond in writing
19 to the parties either modifying the conclusions or required corrective actions of the
20 Department report or denying the request outright. During the pending of the
21 Superintendent's reconsideration, the Department report remains in effect and

1 enforceable.

2 Article 8. Enforcement - State Procedures to Effect Compliance

3 Title 5, California Code of Regulations, Section 4670, subdivision (a), [added
4 August 26, 1991] provides that upon determination that a local agency violated the
5 provisions of this chapter, the Superintendent shall notify the local agency of the action
6 he or she will take to effect compliance. The Superintendent may use any means
7 authorized by law to effect compliance, including;

8 (1) The withholding of all or part of the local agency's relevant state or federal
9 fiscal support;

10 (2) Probationary eligibility for future state or federal support, conditional on
11 compliance with specified conditions;

12 (3) Proceeding in a court of competent jurisdiction for an appropriate order
13 compelling compliance.

14 Title 5, California Code of Regulations, Section 4670, subdivision (b), [added
15 August 26, 1991] provides that no decision to curtail state or federal funding to a local
16 agency under this chapter shall be made until the Superintendent has determined that
17 compliance cannot be secured by voluntary means.

18 Title 5, California Code of Regulations, Section 4670, subdivision (d), [added
19 August 26, 1991] provides that if the Superintendent determines that a school district or
20 county office has failed to comply with any provision of sections 49550 through 49554 of
21 the Education Code ("Meals for Needy Pupils"), the Superintendent shall certify such

1 noncompliance to the Attorney General for investigation pursuant to section 49556 of
2 the Education Code.

3 PART III. STATEMENT OF THE CLAIM

4 SECTION 1. COSTS MANDATED BY THE STATE

5 The Statutes, Education and Government Code Sections, and California Code of
6 Regulations sections referenced in this test claim result in school districts incurring costs
7 mandated by the state, as defined in Government Code section 17514⁴¹, by creating
8 new state-mandated duties related to the uniquely governmental function of providing
9 public services and these statutes and regulations apply to school districts and do not
10 apply generally to all residents and entities in the state.⁴²

11 The new duties mandated by the state upon school districts and county offices of

⁴¹ Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

⁴² Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case; although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 education require state reimbursement of the direct and indirect costs of labor, materials
2 and supplies, data processing services and software, contracted services and
3 consultants, equipment and capital assets, staff and student training and travel to
4 implement the following activities:

5 A) Pursuant to the Education and Government Code Sections cited and Title 5,
6 California Code of Regulations, Section 4621, to establish and implement policies
7 and procedures, and to periodically update those policies and procedures to
8 prevent unlawful discrimination and comply with the Uniform Complaint
9 Procedures required therein.

10 Activities Required by Statutes

11 B) Pursuant to Education Code Section 231.5, subdivisions (b) and (c), having a
12 written policy on sexual harassment which shall include information on where to
13 obtain the specific rules and procedures for reporting charges of sexual
14 harassment and for pursuing available remedies

15 C) Pursuant to Education Code Section 231.5, subdivision (d), displaying a copy of
16 the educational institution's written policy on sexual harassment in a prominent
17 location in the main administrative building or other area of the campus or
18 schoolsite.

19 D) Pursuant to Education Code Section 231.5, subdivision (e), providing a copy of
20 the educational institution's written policy on sexual harassment, as it pertains to
21 students, as part of any orientation program conducted for new students at the

1 beginning of each quarter, semester, or summer session, as applicable.

2 E) Pursuant to Education Code Section 231.5, subdivision (f), providing a copy of
3 the educational institution's written policy on sexual harassment for each faculty
4 member, all members of the administrative staff, and all members of the support
5 staff at the beginning of the first quarter or semester of the school year, or at the
6 time that there is a new employee hired.

7 F) Pursuant to Education Code Section 231.5, subdivision (g), including a copy of
8 the district's written policy on sexual harassment in any publication of the district
9 that sets forth the comprehensive rules, regulations, procedures, and standards
10 of conduct for the district.

11 G) Pursuant to Education Code Section 250, prior to receipt of any state financial
12 assistance or state student financial aid, providing assurance to the agency
13 administering the funds, in the manner required by the funding agency, that each
14 program or activity conducted by the district will be conducted in compliance with
15 the provisions of the chapter and all other applicable provisions of state law
16 prohibiting discrimination.

17 H) Pursuant to Education Code Section 251, submitting timely, complete, and
18 accurate compliance reports to the State Department of Education, as that entity
19 may require and making those reports available for public inspection during
20 regular business hours.

21 I) Pursuant to Education Code Section 253, subdivision (a), complying with the sex

1 discrimination provisions of this chapter and regulations adopted pursuant to this
2 chapter as included in the annual Coordinated Compliance Review Manual
3 provided to school districts by the Superintendent of Public Instruction.

4 J) Pursuant to Education Code Section 253, subdivision (b), to cooperate with the
5 superintendent if selected in his or her annual review for compliance with sex
6 discrimination laws and regulations as specified in subdivision (a).

7 K) Pursuant to Education Code Section 262.3, subdivision (b), advising persons who
8 have filed a complaint, pursuant to the chapter, that civil law remedies, including,
9 but not limited to, injunctions, restraining orders, or other remedies or orders may
10 also be available to complainants. The district shall make this information
11 available by publication in appropriate informational materials.

12 L) Pursuant to Education Code Section 262.4 and Government Code Section
13 11139, appearing and defending in civil actions brought by persons seeking to
14 enforce the chapter.

15 Activities Required by Regulations

16 B) Pursuant to Title 5, California Code of Regulations, Section 4611, referring
17 the following complaints to the following agencies:

- 18 (1) Allegations of child abuse shall be referred to the applicable County
19 Department of Social Services (DSS), Protective Services Division
20 or appropriate law enforcement agency.
21 (2) Health and safety complaints regarding a Child Development

1 Program shall be referred to Department of Social Services for
2 licensed facilities, and to the appropriate Child Development
3 regional administrator for licensing-exempt facilities.

4 (3) Discrimination issues involving Title IX of the Educational
5 Amendments of 1972 shall be referred to the U.S. Office of Civil
6 Rights (OCR). Title IX complainants will only be referred to the OCR
7 if there is no state discrimination law or regulation at issue. The
8 complainant shall be notified by certified mail if his or her complaint
9 is transferred to OCR by the Superintendent.

10 (4) Complaints of discrimination involving Child Nutrition Programs
11 administered by the Department from program participants or
12 applicants shall be referred to either Administrator, U.S. Department
13 of Agriculture, Food and Nutrition Service or U.S. Secretary of
14 Agriculture. Discrimination complaints received by a local agency or
15 the Department shall be immediately directed to U.S. Department of
16 Agriculture, Food and Nutrition Service, Western Regional Office.

17 (5) Employment discrimination complaints shall be sent to the State
18 Department of Fair Employment and Housing (DFEH). The
19 complainant shall be notified by certified mail of any DFEH
20 transferral.

21 (6) Allegations of fraud shall be referred to the responsible Department

1 Division Director and the Department's Legal Office.

2 C) Pursuant to Title 5, California Code of Regulations, Section 4620, insuring
3 district compliance with applicable state and federal laws and regulations;
4 investigating complaints alleging failure to comply; and seeking to resolve
5 those complaints in accordance with the procedures set out in the
6 Chapter.

7 D) Pursuant to Title 5, California Code of Regulations, Section 4621,
8 subdivision (a), ensuring that complainants are protected from retaliation
9 and that the identity of the complainant alleging discrimination remain
10 confidential as appropriate; submitting their policies and procedures (and
11 subsequent amendments thereto) to the local governing board for adoption
12 within one year from the effective date of this chapter, and upon adoption,
13 forwarding a copy to the Superintendent.

14 E) Pursuant to Title 5, California Code of Regulations, Section 4621,
15 subdivision (b), training the district's person(s), employee(s) and agency
16 position(s) or unit(s) responsible for receiving complaints, investigating
17 complaints, and ensuring local educational agency compliance about the
18 laws/programs that he/she is assigned to investigate.

19 F) Pursuant to Title 5, California Code of Regulations, Section 4622, notifying
20 annually in writing, as applicable, students, employees, parents or
21 guardians of their students, the district advisory committee, school

1 advisory committees, and other interested parties of the district's complaint
2 procedures, including the opportunity to appeal to the Department and the
3 provisions of this Chapter, including the identity (identities) of the person(s)
4 responsible for processing complaints. The notice shall also advise the
5 recipient of the notice of any civil law remedies that may be available, and
6 of the appeal and review procedures contained in sections 4650, 4652,
7 and 4671 of the Chapter.

8 G) Pursuant to Title 5, California Code of Regulations, Section 4622, when 15
9 percent or more of the pupils enrolled in a school that provides instruction
10 in kindergarten or any of grades 1 through 12 speak a single primary
11 language other than English, the notice required by the section shall also
12 be written in such primary language, and may be responded to either in
13 English or in the primary language.

14 H) Pursuant to Title 5, California Code of Regulations, Section 4631, upon
15 receipt of a complaint,

16 (1) Within 60 days from receipt of a complaint, completing an
17 investigation of the complaint in accordance with the local
18 procedures developed pursuant to section 4621 and preparing a
19 written district decision.

20 (2) Providing an opportunity for the complainant, or the complainant's
21 representative, or both, and district representatives to present

1 information relevant to the complaint and, when appropriate,
2 including an opportunity for the parties to the dispute to meet to
3 discuss the complaint or to question each other or each other's
4 witnesses.

5 (3) The district's decision shall be in writing and sent to the complainant
6 within sixty (60) days from receipt of the complaint and shall contain
7 the findings and disposition of the complaint, including corrective
8 actions if any, the rationale for such disposition, notice of the
9 complainant's right to appeal the district decision to the Department,
10 and the procedures to be followed for initiating an appeal to the
11 Department.

12 (4) When appropriate procedures have been established, attempting to
13 resolve complaints through mediation prior to the initiation of a
14 formal compliance investigation.

15 l) Pursuant to Title 5, California Code of Regulations, Section 4632, upon
16 notification by the Superintendent that a district decision has been
17 appealed to the state level pursuant to section 4652, the district shall
18 forward the following to the Superintendent:

- 19 (a) The original complaint;
- 20 (b) A copy of the district decision;
- 21 (c) A summary of the nature and extent of the investigation

Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures (K-12)

1 conducted by the district, if not covered in the district decision;

2 (d) A report of any action taken to resolve the complaint;

3 (e) A copy of the district's complaint procedures; and

4 (f) Such other relevant information as the Superintendent may
5 require.

6 J) Pursuant to Title 5, California Code of Regulations, Section 4650, 4660,
7 4661 and 4662 cooperating with the Superintendent in mediation
8 procedures or in investigations when he or she directly intervenes in any
9 complaint procedures.

10 K) Pursuant to Title 5, California Code of Regulations, Section 4652, 4660,
11 4661 and 4662 cooperating with the Superintendent in mediation
12 procedures or in investigations when a complainant appeals a district
13 decision.

14 L) Pursuant to Title 5, California Code of Regulations, Section 4663,
15 providing to investigator(s) all documentation regarding the allegations of a
16 complaint; providing the time of administrators, staff, related
17 committees/groups, and any other involved persons, in interviews with the
18 investigator(s); and presenting information to the investigator(s).

19 M) Pursuant to Title 5, California Code of Regulations, Section 4665, when
20 appropriate or necessary, requesting reconsideration of an investigation
21 report.

1 N) Pursuant to Title 5, California Code of Regulations, Section 4670,
2 appearing and presenting evidence in a court of competent jurisdiction
3 when the Superintendent files an action seeking an order compelling
4 compliance with provisions of the chapter.

5 O) Pursuant to Title 5, California Code of Regulations, Section 4622,
6 appearing and defending civil actions brought by persons alleging
7 violations of the Chapter.

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

9 None of the Government Code Section 17556⁴³ statutory exceptions to a finding

⁴³ Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

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

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

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

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

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

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or

1 of costs mandated by the state apply to this test claim. Note, that to the extent school
2 districts may have previously performed functions similar to those mandated by the
3 referenced code sections, such efforts did not establish a preexisting duty that would
4 relieve the state of its constitutional requirement to later reimburse school districts when
5 these activities became mandated.⁴⁴

6 **SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM**

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

10 **PART IV. ADDITIONAL CLAIM REQUIREMENTS**

11 The following elements of this claim are provided pursuant to Section 1183, Title
12 2, California Code of Regulations:

13 Exhibit 1: Declaration of Ellie Topolovac

includes additional revenue that was specifically intended to fund the costs of the state
mandate in an amount sufficient to fund the cost of the state mandate.

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

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

⁴⁴ Government Code section 17565, added by Chapter 879, Statutes of 1986:

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

1 Superintendent, Solana Beach School District

2
3 Exhibit 2: Copies of Statutes Cited

4
5 Chapter 1102, Statutes of 2002
6 Chapter 300, Statutes of 2002
7 Chapter 708, Statutes of 2001
8 Chapter 591, Statutes of 1999
9 Chapter 587, Statutes of 1999
10 Chapter 914, Statutes of 1998
11 Chapter 146, Statutes of 1994
12 Chapter 1123, Statutes of 1993
13 Chapter 913, Statutes of 1992
14 Chapter 906, Statutes of 1992
15 Chapter 417, Statutes of 1992
16 Chapter 1372, Statutes of 1990
17 Chapter 1514, Statutes of 1988
18 Chapter 1117, Statutes of 1982
19 Chapter 972, Statutes of 1977

20
21 Exhibit 3: Copies of Code Sections Cited

22
23 Education Code

24 Education Code Section 200
25 Education Code Section 220
26 Education Code Section 231.5
27 Education Code Section 250
28 Education Code Section 251
29 Education Code Section 253
30 Education Code Section 260
31 Education Code Section 261
32 Education Code Section 262.3
33 Education Code Section 262.4

34
35 Government Code

36
37 Government Code Section 11135
38 Government Code Section 11136
39 Government Code Section 11137
40 Government Code Section 11138
41 Government Code Section 11139

1	Exhibit 4:	Copies of Title 5, California Code of Regulations, Sections Cited
2		
3		Section 4600
4		Section 4610
5		Section 4611
6		Section 4620
7		Section 4621
8		Section 4622
9		Section 4630
10		Section 4631
11		Section 4632
12		Section 4640
13		Section 4650
14		Section 4651
15		Section 4652
16		Section 4660
17		Section 4661
18		Section 4662
19		Section 4663
20		Section 4664
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PART V. CERTIFICATION

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

Executed on ~~August~~ ^{July} 22, 2003, at Solana Beach, California by:



Ellie Topolovac
Superintendent

Voice: 858-794-3914
Fax: 858-755-0814

PART VI. APPOINTMENT OF REPRESENTATIVE

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



Ellie Topolovac
Superintendent

July 22, 2003
Date

**EXHIBIT 1
DECLARATION**

Declaration of Ellie Topolovac
Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures

1 In my capacity as Superintendent, I am responsible for the processing of
2 complaint procedures for the district. I am familiar with the provisions and requirements
3 of the Statutes, Education Code and Government Code Sections and Title 5
4 Regulations enumerated above.

5 These Education and Government Code sections require the Solana Beach
6 Unified School District to implement the following activities:

- 7 A) Pursuant to the Education Code and Government Code Sections cited and
8 Title 5, California Code of Regulations, Section 4621, to establish and
9 implement policies and procedures, and to periodically update those
10 policies and procedures to comply with the prohibition of discrimination and
11 to follow the Uniform Complaint Procedures required therein.

12 Activities Required by Statutes

- 13 B) Pursuant to Education Code Section 231.5, subdivisions (b) and (c),
14 having a written policy on sexual harassment which shall include
15 information on where to obtain the specific rules and procedures for
16 reporting charges of sexual harassment and for pursuing available
17 remedies
- 18 C) Pursuant to Education Code Section 231.5, subdivision (d), displaying a
19 copy of the educational institution's written policy on sexual harassment in
20 a prominent location in the main administrative building or other area of the
21 campus or schoolsite.

- 1 D) Pursuant to Education Code Section 231.5, subdivision (e), providing a
2 copy of the educational institution's written policy on sexual harassment,
3 as it pertains to students, as part of any orientation program conducted for
4 new students at the beginning of each quarter, semester, or summer
5 session, as applicable.
- 6 E) Pursuant to Education Code Section 231.5, subdivision (f), providing a
7 copy of the educational institution's written policy on sexual harassment for
8 each faculty member, all members of the administrative staff, and all
9 members of the support staff at the beginning of the first quarter or
10 semester of the school year, or at the time that there is a new employee
11 hired.
- 12 F) Pursuant to Education Code Section 231.5, subdivision (g), including a
13 copy of the district's written policy on sexual harassment in any
14 publication of the district that sets forth the comprehensive rules,
15 regulations, procedures, and standards of conduct for the district.
- 16 G) Pursuant to Education Code Section 250, prior to receipt of any state
17 financial assistance or state student financial aid, providing assurance to
18 the agency administering the funds, in the manner required by the funding
19 agency, that each program or activity conducted by the district will be
20 conducted in compliance with the provisions of the chapter and all other
21 applicable provisions of state law prohibiting discrimination.

Declaration of Ellie Topolovac
Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures

- 1 H) Pursuant to Education Code Section 251, submitting timely, complete, and
2 accurate compliance reports to the State Department of Education, as that
3 entity may require and making those reports available for public inspection
4 during regular business hours.
- 5 I) Pursuant to Education Code Section 253, subdivision (a), complying with
6 the sex discrimination provisions of this chapter and regulations adopted
7 pursuant to this chapter as included in the annual Coordinated Compliance
8 Review Manual provided to school districts by the Superintendent of Public
9 Instruction.
- 10 J) Pursuant to Education Code Section 253, subdivision (b), to cooperate
11 with the superintendent if selected in his or her annual review for
12 compliance with sex discrimination laws and regulations as specified in
13 subdivision (a).
- 14 K) Pursuant to Education Code Section 262.3, subdivision (b), advising
15 persons who have filed a complaint, pursuant to the chapter, that civil law
16 remedies, including, but not limited to, injunctions, restraining orders, or
17 other remedies or orders may also be available to complainants. The
18 district shall make this information available by publication in appropriate
19 informational materials.
- 20 L) Pursuant to Education Code Section 262.4 and Government Code Section
21 11139, appearing and defending in civil actions brought by persons

1 seeking to enforce the chapter.

2 Activities Required by Regulations

3 B) Pursuant to Title 5, California Code of Regulations, Section 4611, referring
4 the following complaints to the following agencies:

5 (1) Allegations of child abuse shall be referred to the applicable County
6 Department of Social Services (DSS), Protective Services Division
7 or appropriate law enforcement agency.

8 (2) Health and safety complaints regarding a Child Development
9 Program shall be referred to Department of Social Services for
10 licensed facilities, and to the appropriate Child Development
11 regional administrator for licensing-exempt facilities.

12 (3) Discrimination issues involving Title IX of the Educational
13 Amendments of 1972 shall be referred to the U.S. Office of Civil
14 Rights (OCR). Title IX complainants will only be referred to the OCR
15 if there is no state discrimination law or regulation at issue. The
16 complainant shall be notified by certified mail if his or her complaint
17 is transferred to OCR by the Superintendent.

18 (4) Complaints of discrimination involving Child Nutrition Programs
19 administered by the Department from program participants or
20 applicants shall be referred to either Administrator, U.S. Department
21 of Agriculture, Food and Nutrition Service or U.S. Secretary of

Declaration of Ellie Topolovac
Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures

1 Agriculture. Discrimination complaints received by a local agency or
2 the Department shall be immediately directed to U.S. Department of
3 Agriculture, Food and Nutrition Service, Western Regional Office.

4 (5) Employment discrimination complaints shall be sent to the State
5 Department of Fair Employment and Housing (DFEH). The
6 complainant shall be notified by certified mail of any DFEH
7 transferral.

8 (6) Allegations of fraud shall be referred to the responsible Department
9 Division Director and the Department's Legal Office.

10 C) Pursuant to Title 5, California Code of Regulations, Section 4620, insuring
11 district compliance with applicable state and federal laws and regulations;
12 investigating complaints alleging failure to comply; and seeking to resolve
13 those complaints in accordance with the procedures set out in the
14 Chapter.

15 D) Pursuant to Title 5, California Code of Regulations, Section 4621,
16 subdivision (a), ensuring that complainants are protected from retaliation
17 and that the identity of the complainant alleging discrimination remain
18 confidential as appropriate; submitting their policies and procedures (and
19 subsequent amendments thereto) to the local governing board for adoption
20 within one year from the effective date of this chapter, and upon adoption,
21 forwarding a copy to the Superintendent.

Declaration of Ellie Topolovac
Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures

- 1 E) Pursuant to Title 5, California Code of Regulations, Section 4621,
2 subdivision (b), training the district's person(s), employee(s) and agency
3 position(s) or unit(s) responsible for receiving complaints, investigating
4 complaints, and ensuring local educational agency compliance about the
5 laws/programs that he/she is assigned to investigate.
- 6 F) Pursuant to Title 5, California Code of Regulations, Section 4622, notifying
7 annually in writing, as applicable, students, employees, parents or
8 guardians of their students, the district advisory committee, school
9 advisory committees, and other interested parties of the district's complaint
10 procedures, including the opportunity to appeal to the Department and the
11 provisions of this Chapter, including the identity (identities) of the person(s)
12 responsible for processing complaints. The notice shall also advise the
13 recipient of the notice of any civil law remedies that may be available, and
14 of the appeal and review procedures contained in sections 4650, 4652,
15 and 4671 of the Chapter.
- 16 G) Pursuant to Title 5, California Code of Regulations, Section 4622, when 15
17 percent or more of the pupils enrolled in a school that provides instruction
18 in kindergarten or any of grades 1 through 12 speak a single primary
19 language other than English, the notice required by the section shall also
20 be written in such primary language, and may be responded to either in
21 English or in the primary language.

1 H) Pursuant to Title 5, California Code of Regulations, Section 4631, upon
2 receipt of a complaint,

3 (1) Within 60 days from receipt of a complaint, completing an
4 investigation of the complaint in accordance with the local
5 procedures developed pursuant to section 4621 and preparing a
6 written district decision.

7 (2) Providing an opportunity for the complainant, or the complainant's
8 representative, or both, and district representatives to present
9 information relevant to the complaint, and when appropriate
10 including an opportunity for the parties to the dispute to meet to
11 discuss the complaint or to question each other or each other's
12 witnesses.

13 (3) The district's decision shall be in writing and sent to the complainant
14 within sixty (60) days from receipt of the complaint and shall contain
15 the findings and disposition of the complaint, including corrective
16 actions if any, the rationale for such disposition, notice of the
17 complainant's right to appeal the district decision to the Department,
18 and the procedures to be followed for initiating an appeal to the
19 Department.

20 (4) When appropriate procedures have been established, attempting to
21 resolve complaints through mediation prior to the initiation of a

1 formal compliance investigation.

2 I) Pursuant to Title 5, California Code of Regulations, Section 4632, upon
3 notification by the Superintendent that a district decision has been
4 appealed to the state level pursuant to section 4652, the district shall
5 forward the following to the Superintendent:

6 (a) The original complaint;

7 (b) A copy of the district decision;

8 (c) A summary of the nature and extent of the investigation
9 conducted by the district, if not covered in the district decision;

10 (d) A report of any action taken to resolve the complaint;

11 (e) A copy of the district's complaint procedures; and

12 (f) Such other relevant information as the Superintendent may
13 require.

14 J) Pursuant to Title 5, California Code of Regulations, Section 4650, 4660,
15 4661 and 4662 cooperating with the Superintendent in mediation
16 procedures or in investigations when he or she directly intervenes in any
17 complaint procedures.

18 K) Pursuant to Title 5, California Code of Regulations, Section 4652, 4660,
19 4661 and 4662 cooperating with the Superintendent in mediation
20 procedures or in investigations when a complainant appeals a district
21 decision.

Declaration of Ellie Topolovac
Test Claim of Solana Beach School District
Chapter 1102/2002 Uniform Complaint Procedures

- 1 L) Pursuant to Title 5, California Code of Regulations, Section 4663,
2 providing to investigator(s) all documentation regarding the allegations of a
3 complaint; providing the time of administrators, staff, related
4 committees/groups, and any other involved persons, in interviews with the
5 investigator(s); and presenting information to the investigator(s).
- 6 M) Pursuant to Title 5, California Code of Regulations, Section 4665, when
7 appropriate or necessary, requesting reconsideration of an investigation
8 report.
- 9 N) Pursuant to Title 5, California Code of Regulations, Section 4670,
10 appearing and presenting evidence in a court of competent jurisdiction
11 when the Superintendent files an action seeking an order compelling
12 compliance with provisions of the chapter.
- 13 O) Pursuant to Title 5, California Code of Regulations, Section 4622,
14 appearing and defending civil actions brought by persons alleging
15 violations of the Chapter.

16 It is estimated that the Solana Beach Unified School District, to the extent
17 complaints may have been filed, incurred more than \$1,000 in staffing and other costs in
18 excess of any funding provided to school districts and the state for the period from July
19 1, 2002 through June 30, 2003 to implement these new duties mandated by the state for
20 which the school district has not been reimbursed by any federal, state, or local
21 government agency, and for which it cannot otherwise obtain reimbursement.

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 972

An act to add Article 9.5 (commencing with Section 11135) to Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, relating to discrimination.

[Approved by Governor September 21, 1977. Filed with Secretary of State September 21, 1977.]

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

SECTION 1. Article 9.5 (commencing with Section 11135) is added to Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 9.5. Discrimination

11135. No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

11136. Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of

Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

11137. If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

11138. Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.

11139. The prohibitions and sanctions imposed by this article shall be in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in such manner so as to frustrate its purpose.

This article shall not be interpreted in such a manner so as to adversely affect lawful programs which benefit the disabled, the aged, minorities and women.

11139.5. The Secretary of the Health and Welfare Agency, with the advice and concurrence of the Fair Employment Practices Commission, shall establish standards for determining which persons are protected by this article and guidelines for determining what practices are discriminatory. The secretary, with the cooperation of the Fair Employment Practices Commission, shall assist state agencies in coordinating their programs and activities and shall consult with such agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of the provisions of the article.

CHAPTER 1117

An act to add Chapter 2 (commencing with Section 200) to Part 1 of Division 1 of Title 1 of the Education Code, relating to discrimination.

[Approved by Governor September 16, 1982. Filed with Secretary of State September 17, 1982.]

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

SECTION 1. Chapter 2 (commencing with Section 200) is added to Part 1 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 2. PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX

Article 1. Declaration of Purpose

200. It is the policy of the State of California to afford all persons, regardless of their sex, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

Article 2. Definitions

210. For purposes of this chapter, "educational institution" means a public or private preschool, elementary, or secondary school or institution; a public or private institution of vocational, professional, or postsecondary education; the governing board of a school district; the governing board of a community college district; the Regents of the University of California; the Trustees of the California State University, or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

211. For purposes of this chapter, "governing board" means the governing board of a school district or the governing board of a community college district.

212. For purposes of this chapter, "sex" means the biological condition or quality of being a male or female human being.

213. For purposes of this chapter, "state financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any students admitted to the educational institution.

State financial assistance shall include, but not be limited to, all of the following:

- (a) Grants of state property, or any interest therein.
- (b) Provision of the services of state personnel.
- (c) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

214. For purposes of this chapter, "state student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

Article 3. Prohibition of Sex Discrimination

220. No person shall be subjected to discrimination on the basis of sex in any program or activity conducted by an educational institution which receives or benefits from state financial assistance or enrolls students who receive state student financial aid.

221. This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

222. This article shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine.

223. This article shall not apply to the membership practices of any of the following:

(a) A social fraternity or social sorority which is exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose active membership consists primarily of students in attendance at an institution of higher education.

(b) The Young Men's Christian Association, Young Women's Christian Association, girl scouts, boy scouts, camp fire girls, or voluntary youth service organizations which are exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose membership has traditionally been limited to persons of one sex, and principally to persons of less than 19 years of age.

224. This article shall not apply to any of the following:

(a) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(b) Any program or activity of any secondary educational institution specifically for any of the following purposes:

(1) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(2) The selection of students to attend any of those conferences.

225. This article shall not preclude father-son or mother-daughter activities at an educational institution, provided that if such activities

are offered for students of one sex, opportunities for reasonably comparable activities are offered for students of the other sex.

226. This article shall not apply to any scholarship or other financial assistance awarded by a postsecondary educational institution to any individual upon the basis of a combination of factors related to the individual's personal appearance, poise, and talent as an award in any pageant in which participation is limited exclusively to individuals of one sex, provided that the pageant complies with other nondiscrimination provisions of state and federal law.

227. In regard to admissions to educational institutions, this article shall apply only to institutions of vocational, professional, or postgraduate education, and to public postsecondary education institutions.

228. In regard to admissions to educational institutions, this article shall not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

229. Nothing contained in this article shall be construed to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in, or receiving the benefits of, any state supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, district, or other area. However, this section shall not be construed to prevent the consideration in any hearing or proceeding under this article of statistical evidence which tends to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any state-supported program or activity by the members of one sex.

230. For purposes of this chapter, discrimination on the basis of sex shall include, but not be limited to, the following practices:

(a) On the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity.

(b) On the basis of sex, provision of different amounts or types of student financial aid, limitation of eligibility for student financial aid, or the application of different criteria to applicants for student financial aid or for participation in the provision of student financial aid by others. Nothing in this subdivision shall be construed to prohibit an educational institution from administering, or assisting in the administration of, scholarships, fellowships, or other forms of student financial aid, established pursuant to domestic or foreign wills, bequests, trusts, or similar legal instruments or by acts of a foreign government, which require that awards be made to members of a particular sex; provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of student financial aid does not discriminate on the basis of

sex.

(c) On the basis of sex, exclusion from participation in or denial of equivalent opportunity in athletic programs. For purposes of this subdivision, "equivalent" means equal or equal in effect.

(d) On the basis of sex, discrimination among persons, including, but not limited to, students and nonstudents, or academic and nonacademic personnel, in employment and the conditions thereof, except as it relates to a bona fide occupational qualification.

(e) On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions.

231. Nothing herein shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes, so long as comparable facilities are provided.

232. The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue rules, regulations, or orders to implement the provisions of this chapter.

The Regents of the University of California may issue rules, regulations, or orders to implement the provisions of this chapter.

Article 4. Instructional Materials

240. Governing boards of school districts shall adopt instructional materials in accordance with the provisions of Section 60040.

Article 5. Compliance

250. Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination on the basis of sex. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

251. A school district or a community college district shall submit timely, complete, and accurate compliance reports to the State Department of Education or to the chancellor's office, as those entities may require.

All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

Article 6. Enforcement

260. The governing board of a school district shall have the responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

261. The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

262. (a) The governing board of a community college district shall have the primary responsibility for ensuring that district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for all of the following:

(1) Reviewing original complaints of alleged unlawful discrimination filed pursuant to Section 59328 of Title 5 of the California Administrative Code.

(2) Reviewing reports of the nature and extent of the investigation of each complaint conducted by the district.

(3) Reviewing reports of any actions taken by the district to resolve each complaint.

(4) Monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code.

263. The California Postsecondary Education Commission shall report to the Legislature and Governor on the representation and utilization of ethnic minorities and women among academic, administrative, and other employees at the community colleges, the California State University, and the University of California, pursuant to Sections 66903.1 and 66903.3.

264. No provision of this chapter shall be applicable to the University of California unless the Regents of the University of California, by resolution, make the provision applicable.

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1514

An act to amend Sections 260 and 262 of, and to add Sections 262.1, 262.2, 262.3, and 265 to, the Education Code, relating to education.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 260 of the Education Code is amended to read:

260. The governing board of a school district shall have the primary responsibility for ensuring that school district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

SEC. 2. Section 262 of the Education Code is amended to read:

262. (a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code.

SEC. 3. Section 262.1 is added to the Education Code, to read:

262.1. The Chancellor of the California State University and the president of each California State University campus shall have the primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 4. Section 262.2 is added to the Education Code, to read:

262.2. The President of the University of California and the chancellor of each University of California campus shall have primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 5. Section 262.3 is added to the Education Code, to read:

262.3. A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University, or the chancellor of a campus of the University of California, pursuant to

this article, to the State Department of Education, the Chancellor of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable.

SEC. 6. Section 265 is added to the Education Code, to read:

265. Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to the complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 7. It is the intent of the Legislature that Section 264 of the Education Code, relative to the applicability of Chapter 2 (commencing with Section 200) of Part 1 of the Education Code to the University of California, apply to the sections of the Education Code amended and added by this act.

CHAPTER 1372

An act to amend Sections 40, 41, 52, 92, 262.3, 1043, 1240, 1245, 1246, 1250, 1252, 1253, 1260, 1262, 1271, 1294, 1297, 1298, 1330, 1340, 1400, 1500, 1510, 1602, 1606, 1700, 1721, 1831, 1946, 4002, 4003, 7000, 8006, 8008, 8070, 8080, 8081, 8084, 8092, 8207, 8225, 8285.5, 8320, 8322, 8328, 8329, 8362, 8394, 8510, 8534, 8760, 8761, 8762, 8763, 8764, 8765, 8771, 10407, 10504, 10900, 10901, 10907, 10910, 10912, 10913, 10914, 11001, 12020, 12220, 12302, 12400, 12401, 12402, 12405, 14000, 15100, 15106, 15140, 15141, 15142, 15147, 15252, 15254, 15502, 15520, 15527, 15528, 15541, 15551, 15570, 15574, 15701, 15718, 15735, 15745, 15752, 15794, 16042, 16045, 16080, 16100, 16105, 16165, 16195, 16197, 16200, 16214, 17302, 17313, 17900, 17901, 17902, 17903, 18100, 18101, 18102, 18103, 18110, 18111, 18120, 18121, 18122, 18131, 18132, 18134, 18137, 18138, 18139, 18170, 18171, 18172, 19901, 22200, 22504, 24806, 24923, 24924, 32033, 32300, 32371, 32372, 33031, 33113, 33117, 33117.5, 35501, 39214.5, 39308, 39383, 39830, 41303, 41332, 44849, 44850, 44854, 51875.7, 52152, 52154, 52302.3, 52342, 52512, 62001, 66010, 66011, 66017, 66021, 66700, 68011, 68012, 68016, 68022, 68023, 68040, 68041, 68051, 68070, 68071, 68072, 68073, 68100, 69510, 69511.5, 69537, 69640, 69641, 69641.5, 69642, 69643, 69648, 69648.5, 69649, 69653, 69655, 71004, 71020, 71040, 71046, 71050, 71090, 71092, 71093, 72000, 72023.5, 72027, 72031, 72102, 72122, 72241, 72247, 72423, 72500, 72506, 72530, 74000, 74001, 74104, 74105, 74106, 74107, 74109, 74110, 74132, 74134, 74135, 74136, 74139, 74140, 74153, 74154, 74155, 74158, 74159, 74202, 74270, 74290, 76000, 76001, 76020, 76403, 76407, 78031, 78032, 78211.5, 78213, 78216, 78217, 78230, 78249, 78300, 78401, 78900, 78907, 79020, 79021, 79154, 79155, 81033, 81130, 81130.5, 81133, 81160, 81177, 81179, 81805, 81807, 81820, 81822, 81836, 81837, 81901, 81908, 81947, 82321, 82537, 82542, 84030, 84040.6, 84207, 84320, 84328, 84362, 84381, 84382, 84383, 84384, 84660, 84890, and 85230 of, to amend and repeal Section 32033 of, to add Sections 8323, 71025, 71028, 72013, 72014, 72015, 72243, 72249, 72253.3, 72253.5, 72253.7, 78034, 84001, 84700.3, 85266.5, 87448, and 88020.5 to, to add Chapter 1.5 (commencing with Section 78100) to Part 48 of, to repeal Sections 91, 265, 1255, 7001, 7002, 8085, 8329.5, 8511, 8513, 8514, 8515, 8516, 12210, 12404, 14020, 14021, 15000, 32200, 44971, 66101, 66102, 66200, 66700.5, 66902.5, 67007, 68010, 68013, 68019, 68020, 68021, 68090, 69644, 69645, 69646, 69647, 69648.7, 69657, 71005, 71027.5, 71033, 71034, 71038, 71039, 71041, 71042, 71047, 71048, 71095, 71096, 71097, 72001, 72002, 72020, 72021, 72023.7, 72024, 72025, 72028, 72029, 72030, 72032, 72033, 72035, 72120, 72125, 72126, 72132, 72200, 72202, 72203, 72204, 72208, 72231, 72237, 72241.5, 72244, 72247.1, 72248, 72255, 72256, 72408, 72409, 72412, 72413, 72419, 72419.5, 72420, 72421, 72422, 72531, 72532, 74010, 74011, 74271, 74282, 74283, 74291, 74292, 74293, 74294, 74295, 76001.5, 76002, 76006, 76021, 76142, 76160, 76400, 76405, 76408, 76409, 76470, 78001, 78002, 78003, 78004, 78005, 78006, 78007, 78010, 78011, 78012, 78220, 78221, 78222, 78240, 78241, 78242, 78243, 78244, 78245, 78246, 78247, 78248, 78250, 78270, 78272, 78301, 78302, 78303, 78304, 78305, 78402, 78403, 78405, 78407, 78409, 78412, 78440, 78440.5, 78441,

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78442, 78902, 78903, 78904, 78905, 78906, 79022, 79023, 79024, 79025, 79026, 79027, 79027.5, 79028, 79029, 79031, 79032, 79121, 79122, 79123, 79124, 79153, 81000, 81005, 81006, 81008, 81009, 81033.5, 81035, 81036, 81038, 81039, 81131, 81131.5, 81131.6, 81132, 81134, 81135, 81136, 81137, 81140, 81164, 81165, 81176, 81801, 81802, 81803, 81804, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 81900, 81903, 81906, 81910, 81911, 81912, 81913, 81914, 81915, 81916, 81917, 81918, 81919, 81920, 81921, 81922, 81923, 81924, 81931, 81948, 81953, 81954, 81957, 81958, 81959, 81967, 82305, 82305.5, 82321.1, 82360, 82362, 82363, 82364, 82365, 82530, 82531, 82532, 82533, 82535, 82536, 82538, 82539, 82540, 82541, 82543, 84004, 84005, 84031, 84035, 84040.3, 84040.7, 84041, 84043, 84044, 84045, 84046, 84200, 84201, 84206, 84300, 84322, 84324, 84325, 84327, 84329, 84330, 84331, 84332, 84360, 84363, 84380, 84384.1, 84385, 84386, 84387, 84661, 84662, 84735, 84850.5, 84891, 84892, 84893, 84894, 84895, 85210, and 85430 of, to repeal Article 2 (commencing with Section 8020) of Chapter 1 of Part 6 of, Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of, Article 3 (commencing with Section 71060) of Chapter 1 of Part 44 of, Article 3 (commencing with Section 72280) of, and Article 5 (commencing with Section 72320) of Chapter 3 of, Article 1 (commencing with Section 72600) of, Article 4 (commencing with Section 72640) of, and Article 5 (commencing with Section 72650) of, Chapter 6 of Part 45 of, Article 8 (commencing with Section 76130) of Chapter 1 of, Chapter 2 (commencing with Section 76300) of, Article 2 (commencing with Section 76420) of, and Article 4 (commencing with Section 76450) of Chapter 3 of Part 47 of, Article 2.5 (commencing with Section 78040) of, and Article 3 (commencing with Section 78050) of Chapter 1 of, Article 1 (commencing with Section 78200.5) of, and Article 6 (commencing with Section 78280) of Chapter 2 of, Article 2 (commencing with Section 78430) of, and Article 5 (commencing with Section 78460) of Chapter 3 of, Article 2 (commencing with Section 78920) of, and Article 3 (commencing with Section 78930) of Chapter 7 of, Article 1 (commencing with Section 79000) of, and Article 2 (commencing with Section 79010) of Chapter 8 of Part 48 of, Article 1 (commencing with Section 82500) of Chapter 8 of Part 49 of, Article 3 (commencing with Section 84050) of Chapter 1 of, Article 6 (commencing with Section 84370) of, and Article 8 (commencing with Section 84390) of Chapter 3 of, Article 5 (commencing with Section 84801) of Chapter 5 of, Article 1 (commencing with Section 85200) of Chapter 8 of, Article 1 (commencing with Section 85400) of Chapter 9 of, and Article 3 (commencing with Section 85420) of Chapter 9 of Part 50, to repeal Chapter 5.5 (commencing with Section 84900) of, Chapter 6 (commencing with Section 85000) of, and, Chapter 7 (commencing with Section 85100) of Part 50, to repeal and add Section 84040 of, and to repeal and add Chapter 4 (commencing with Section 84500) of Part 50 of, the Education Code, to amend Section 16417 of the Government Code, and to add Section 20660 to the Public Contract Code, relating to community colleges.

172130

[Approved by Governor September 26, 1990. Filed with
Secretary of State September 28, 1990.]

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

SECTION 1. (a) The Legislature hereby finds and declares that numerous provisions of the Education Code, including those provisions listed in subdivision (b), authorizing community colleges to conduct various activities are unnecessary in light of Section 14 of Article IX of the California Constitution. Section 14 of Article IX of the California Constitution authorizes community college districts to initiate and carry out any activity 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 community college districts are established.

(b) The Legislature finds and declares that the purpose of this act is to repeal or make inapplicable to the community colleges numerous Education Code provisions which are no longer necessary in light of the authority of Section 14 of Article IX of the Constitution. In repealing or making inapplicable these provisions, the Legislature finds and declares that under the general authority of Section 14 of Article IX, community college districts shall continue to have the authority provided in the provisions that are repealed. The Legislature specifically declares this finding with regard to, but not limited to, the following Education Code sections which are repealed or amended by this act:

Sections 8080, 8081, 8084, 8085, 8091, 8322, 8329, 8760, 8761, 8762, 8763, 8764, 10504, 12400, 12401, 12402, 12404, 12405, 18110, 18111, 18120, 18131, 18134, 32371, 32372, 72241.5, 72244, 72320, 72321, 72412, 72419, 72419.5, 72420, 72421, 72422, 76400, 76470, 78001, 78010, 78011, 78050, 78051, 78208, 78230, 78240, 78270, 78280, 78281, 78286, 78302, 78303, 78409, 78440, 79022, 79028, 79032, 79121, 81009, 81839, 81931, 81953, 81954, 81957, 82305, 82305.5, 82500, 82501, 82535, 82541, 84035, 84050, 85201, 85260.5, 85266, 85267, 85410, 85420, and 85430, the second sentence of Section 32033, the second and third sentences of Section 76403, the first sentence of Section 78442, and the second and third sentences of Section 84041.

SEC. 3. Section 40 of the Education Code is amended to read:

40. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses be conducted, without regard to the sex of the student enrolled in such classes and courses.

(b) No school district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student, except a class subject to Section 51550.

(c) No school district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or

172160

aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for the seventh grade so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

SEC. 4. Section 41 of the Education Code is amended to read:

41. (a) The Legislature finds and declares that female students are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female students.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female students in school-sponsored athletic programs.

SEC. 5. Section 52 of the Education Code is amended to read:

52. The secondary schools of the state are designated as high schools, technical schools, and adult schools.

SEC. 6. Section 91 of the Education Code is repealed.

SEC. 7. Section 92 of the Education Code is amended to read:

92. "County" or "counties" as used in Sections 2300, 12300 to 12307, inclusive, 41000 to 41964, inclusive, 42100 to 42128, inclusive, 46000 to 46392, inclusive, 84000 to 84850.5, inclusive, and 85000 to 85430, inclusive, whichever are in effect, includes a city and county.

SEC. 9. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University,

or the chancellor of a campus of the University of California, pursuant to this article, to the State Department of Education, the Board of Governors of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 10. Section 265 of the Education Code is repealed.

SEC. 11. Section 1043 of the Education Code is amended to read:

1043. Upon the adoption of a resolution by the board of supervisors of the county consenting to the transfer of the functions specified in this section, the functions specified in this section shall be transferred from the county board of supervisors to the county board of education. The functions, including, but not limited to, the receipt of petition and reports and other papers, are those specified in Sections 35001, 35002, 35676, 35698, 35699, 35703, 35704, 35705, 35722, 35723, 35724, 74100, 74104, 74131, 74132, 74134, 74151, 74153, 74156, 74250, 74251, and 74295.

Upon the adoption of the resolution, any reference, with respect to that county, in those sections to the board of supervisors shall be deemed to be a reference to the county board of education of that county and any reference to the clerk of the county board of supervisors shall be deemed to be a reference to the secretary of the county board of education of that county.

SEC. 12. Section 1240 of the Education Code, as amended by Chapter 1462 of the Statutes of 1988, is amended to read:

1240. The superintendent of schools of each county shall:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe their operation and to learn of their problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

section, all subsequent changes to those regulations shall be made in accordance with Section 70901.5 of the Education Code.

(b) It is the intent of the Legislature that there be no lapse in the requirements, rights, responsibilities, conditions, or prescriptions contained in the statutes. Should the board of governors fail to adopt and put into effect regulations in accordance with subdivision (a), the listed statutes shall remain operative until the effective date of the corresponding board of governors regulations.

(c) After the text of Sections 78460, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84524.5, 84526, 84527, 84530, 84570, 84571, 84801, and 84895 of the Education Code have been initially adopted as regulations, any changes to these regulations, other than purely technical changes approved by the Department of Finance, shall not become effective until the implementation of Section 84750 of the Education Code in accordance with the provisions of subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988.

(d) The Legislature hereby finds and declares that all statutes which it has directed the Board of Governors of the California Community Colleges to adopt as regulations meet the standards of necessity, authority, clarity, consistency, reference, and nonduplication as provided in Section 70901.5 of the Education Code.

SEC. 709. Sections 13, 14, 18, 21, 27, 31, 50, 119, 120, 260, and 433 of this act shall become effective January 1, 1992.

SEC. 710. If the provisions of this bill amending Section 22200 of the Education Code and the provisions of AB 2642 amending Section 22200 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 2642 amending Section 22200 shall prevail over the provisions of this bill amending that section.

SEC. 711. If the provisions of this bill amending Section 69511.5 of the Education Code and the provisions of AB 3397 amending Section 69511.5 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 3397 amending Section 69511.5 of the Education Code shall prevail over the provisions of this bill amending that section.

SEC. 712. If the provisions of this bill amending Section 78213 of the Education Code and the provisions of AB 3707 amending Section 78213 of the Education Code are both chaptered on or before January 1, 1991, the provisions of AB 3707 amending Section 78213 of the Education Code shall prevail over the provisions of this bill amending that section.

SEC. 713. The Legislature recognizes that the review of the necessity of amending or repealing appropriate sections of the Education Code, as embodied in this act, reflects the best efforts of the board of governors to implement Section 57 of Chapter 973 of the Statutes of 1988 within the time constraints afforded. The Legislature also recognizes that additional review will permit greater input of interested parties, securing of appropriate expertise in those technical areas which were not addressed in this act, and further refinement of the governance structure identified in Chapter 973.

Accordingly, the Board of Governors of the California Community Colleges shall continue its review of the Education Code related to the administration and operation of the California Community Colleges and shall recommend to the Legislature the amendment or repeal of those provisions affected by Chapter 973 of the Statutes of 1988 which have not been accomplished in this act.

SEC. 714. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 417

An act to amend Sections 262.3 and 92640 of, and to repeal Section 264 of, the Education Code, relating to postsecondary education.

[Approved by Governor August 1, 1992. Filed with
Secretary of State August 3, 1992.]

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

SECTION 1. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, or the president of a campus of the California State University, pursuant to this article, to the State Department of Education, the Board of Governors of the California Community Colleges, or the Chancellor of the California State University, as applicable.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 2. Section 264 of the Education Code is repealed.

SEC. 3. Section 92640 of the Education Code is amended to read:

92640. (a) The Regents of the University of California shall develop policies and procedures to ensure that each campus of the university, in administering any test or examination, permits any student who is eligible to undergo the test or examination to do so, without penalty, at a time when that activity would not violate the student's religious creed. This requirement shall not apply in the event that administering the test or examination at an alternate time would impose an undue hardship that could not reasonably have been avoided. In any court proceeding in which the existence of an undue hardship that could not reasonably have been avoided is an issue, the burden of proof shall be upon the institution.

(b) The regents shall report to the Legislature, no later than July 1, 1993, regarding the actions taken to implement this section.

CHAPTER 906

An act to amend Section 48980 of, and to add Section 212.6 to, the Education Code, relating to sexual harassment.

[Approved by Governor September 24, 1992. Filed with Secretary of State September 25, 1992.]

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

SECTION 1. Section 212.6 is added to the Education Code, to read:

212.6. (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or school site. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets

136430

forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 2. Section 48980 of the Education Code is amended to read:

48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, 51240, and 51550, Article 3 (commencing with Section 56030) of Chapter 1 of Part 30, and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(d) School districts that elect to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(e) Until June 30, 1995, the notification also shall advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204.

(f) The notification also shall include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 913

An act to amend Section 125.6 of the Business and Professions Code, to amend Sections 51, 51.5, 51.8, 52, 53, 54, 54:1, 54.2, 54.3, and 54.8 of the Civil Code, to amend Section 224 of the Code of Civil Procedure, to amend Sections 44100, 44101, 44337, and 44338 of the Education Code, to amend Sections 754 and 754.5 of the Evidence Code, to amend Sections 4450, 4500, 11135, 12920, 12921, 12926, 12931, 12940, 12944, 12993, 19230, 19231, 19232, 19233, 19234, 19235, 19237, and 19702 of, to add Section 12940.3 to, and to repeal Section 12994 of, the Government Code, to amend Section 19952 of the Health and Safety Code, to amend Section 1735 of the Labor Code, to amend Section 365.5 of the Penal Code, to amend Sections 2881 and 99155.5 of, and to add Section 2881.2 to, the Public Utilities Code, to amend Section 2557 of the Streets and Highways Code, and to amend Section 336 of the Vehicle Code, relating to disabled persons.

[Approved by Governor September 24, 1992. Filed with Secretary of State September 25, 1992.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to strengthen California law in areas where it is weaker than the Americans with Disabilities Act of 1990 (Public Law 101-336) and to retain California law when it provides more protection for individuals with disabilities than the Americans with Disabilities Act of 1990.

SEC. 2. Section 125.6 of the Business and Professions Code is amended to read:

125.6. Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the

138360

standards than the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, then those public transit facilities and operations shall meet the higher standards.

SEC. 18. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of such an impairment, (3) being regarded as having such an impairment.

SEC. 19. Section 12920 of the Government Code is amended to read:

12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for such reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advance, and substantially and adversely affects the interest of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, marital status, national origin, , ancestry, familial status, or disability in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies which will eliminate such discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

SEC. 20. Section 12921 of the Government Code is amended to read:

in which case Sections 25, 25.1, and 25.3 of this bill shall not become operative.

(c) Section 25.3 of this bill incorporates amendments to Section 12993 of the Government Code proposed by this bill, AB 311, and AB 1178. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1993, (2) all three bills amend Section 12993 of the Government Code, and (3) this bill is enacted after AB 311 and AB 1178, in which case Sections 25, 25.1, and 25.2 of this bill shall not become operative.

BILL NUMBER: AB 1476 CHAPTERED 10/11/93

CHAPTER 1123
 FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
 APPROVED BY GOVERNOR OCTOBER 10, 1993
 PASSED THE ASSEMBLY SEPTEMBER 10, 1993
 PASSED THE SENATE SEPTEMBER 8, 1993
 AMENDED IN SENATE SEPTEMBER 3, 1993
 AMENDED IN SENATE AUGUST 24, 1993
 AMENDED IN SENATE AUGUST 16, 1993
 AMENDED IN SENATE JULY 8, 1993
 AMENDED IN SENATE JULY 2, 1993

INTRODUCED BY Assembly Members Speier, Alpert, Lee, Martinez,
 Moore, Napolitano, and Solis

(Coauthors: Senators Hughes, Morgan, and Watson)

MARCH 4, 1993

An act to add Sections 252 and 253 to the Education Code,
 relating to education, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1476, Speier. School districts: compliance reviews: sex discrimination.

(1) Existing law requires an educational institution to provide assurance to the agency administering state financial assistance or state pupil financial aid, that each program or activity conducted by the educational institution is in compliance with provisions of state law prohibiting discrimination on the basis of sex, before receiving that financial assistance.

This bill would require the Superintendent of Public Instruction, within existing resources, to review and revise the policies and practices of programs within the State Department of Education that provide services to school districts in order to promote improved gender equity. The bill would also require the superintendent to make available specified data compiled by gender and ethnicity. The bill also would require the superintendent to request the United States Department of Education to amend a specified grant received pursuant to specified federal laws so that the money may be used for gender equity monitoring and assistance activities.

The bill would also specify that compliance with specified sex discrimination provisions shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the superintendent. The bill would require the superintendent, when sufficient funds are appropriated, to annually review 20 school districts for compliance with sex discrimination laws and regulations. The requirement that school districts consider these subjects in response to the review manual would result in the imposition of a state-mandated local program.

(2) The bill would appropriate \$80,000 to the superintendent to carry out the provisions of the bill.

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

of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 252 is added to the Education Code to read:

252. (a) The Superintendent of Public Instruction shall, to the extent possible within existing resources, review and revise, where necessary, the policies and practices of programs administered by the department that provide services to school districts in order to promote improved gender equity.

(b) The superintendent shall make available, upon request, wherever possible, the following data, compiled by gender and ethnicity:

(1) Assessment scores for all grades tested.

(2) The number of pupils enrolled in mathematics and science courses, as well as courses in other fields of study in which ethnic minority populations or members of either gender have been traditionally underrepresented among participants.

(3) The number of high school graduates.

(4) The number of high school graduates who complete the minimum requirements for admission to the University of California.

(5) The number of pupils who leave school before graduation.

(6) The number of pupils participating in interscholastic athletics.

(c) The superintendent shall request the United States Department of Education to amend the Title IV-C grant for race, sex, and national origin desegregation received pursuant to Section 2000c-2 of Title 42 of the United States Code, and any regulations adopted pursuant thereto, so that funds received under those federal laws that are currently designated for technical assistance activities also may be used for gender equity monitoring and assistance activities.

SEC. 2. Section 253 is added to the Education Code, to read:

253. (a) Compliance with the sex discrimination provisions of this chapter and regulations adopted pursuant to this chapter shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction. Any review of that compliance shall also include a review of the school district's records of complaints of sexual harassment brought by pupils and employees of the school district.

(b) The superintendent shall annually review 20 school districts for compliance with sex discrimination laws and regulations as specified in subdivision (a). The superintendent shall select from those districts subject to review, in a given year, a sampling of districts from each of the following categories:

(1) Those districts within which the greatest number of sex discrimination complaints have been filed since its previous coordinated compliance review.

(2) Those districts with the largest enrollments.

(3) All other districts, selected on a random basis.

(c) The superintendent and the department shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes.

SEC. 3. (a) The sum of eighty thousand dollars (\$80,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the purposes of this act.

(b) It is the intent of the Legislature that funding for sex discrimination compliance activities required pursuant to subdivision (b) of Section 253 of the Education Code be provided annually in the Budget Act.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 146
FILED WITH SECRETARY OF STATE JULY 11, 1994
APPROVED BY GOVERNOR JULY 9, 1994
PASSED THE SENATE JUNE 23, 1994
PASSED THE ASSEMBLY MAY 12, 1994
AMENDED IN ASSEMBLY APRIL 14, 1994

INTRODUCED BY Committee on Judiciary as presented by Assembly Member Weggeland on behalf of the committee (Archie-Hudson, Caldera, Connolly, Epple, Terry Friedman, Goldsmith, Horcher, Isenberg, Morrow, Snyder, Speier, and Statham)

FEBRUARY 25, 1994

An act to amend Sections 166, 729, 3502, 3521.5, 4980.45, 6157.5, 6403, 8025.1, and 10145 of, and to amend and renumber Section 6086.13 of, the Business and Professions Code, to amend Sections 1785.11, 1785.13, 1950.5, 2982, 2984.3, 2986.2, and 3482.6 of, and to repeal Section 4722.5 of, the Civil Code, to amend Sections 405.21, 472b, and 695.220 of, to amend and renumber Section 383 of, to amend and renumber the heading of Article 3 (commencing with Section 405.30), Article 4 (commencing with Section 405.50), and Article 5 (commencing with Section 405.60) of Chapter 2 of Title 4.5 of Part 2 of, and to repeal Title 1 (commencing with Section 1823) of Part 3.5 of, the Code of Civil Procedure, to amend Sections 1981, 41305, 42238, 44277, 48911, 48918, 56034, 56155.5, 56366.1, 56775, and 60240 of the Education Code, to amend Sections 2552, 2601, and 6005 of the Elections Code, to amend Section 2110 of, and to add Section 4071.5 to, the Family Code, to amend Sections 857, 8051.2, 8598, and 12157 of the Fish and Game Code, to amend Sections 232, 235, 4104, 77417, and 77442 of, to amend and renumber Sections 239, 240, 241, 242, 243, 77501, 77502, 77503, 77504, and 77505 of, and to repeal Article 2 (commencing with Section 56732) of Chapter 7.5 of Division 20 of, the Food and Agricultural Code, to amend Sections 6159, 9020, 10207, 11135, 12811, 12945.2, 13960, 14669.8, 16367.5, 20013.7, 20013.75, 56375, 68059, and 95004 of, to amend and renumber Sections 6516.5 and 15819.32 of, to amend and renumber the heading of Chapter 11 (commencing with Section 15399.50) of Part 6.7 of Division 3 of Title 2 of, to repeal, amend, and renumber the heading of Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of, and to repeal Sections 12955.9, 26751, 41612, 53115.1, 54925.1, and 54952.2 of, the Government Code, to amend Sections 658.3, 1126, and 1171.5 of the Harbors and Navigation Code, to amend Sections 429.16, 1259.5, 1266, 1357, 1418.8, 1562.5, 1569.694, 10284, 10325, 11366.8, 25159.18, 25187, 25200.1.5, 25201.5, 25355.7, 26569.29, 33334.20, 33607.7, 33676, 42400.4, and 50406 of, to amend and renumber Sections 429.13, 429.14, 429.15, 1250.1, 1367.5, 17922.1, 25201.10, 25359.3, 33492.50, 33492.51, 33492.53, and 33492.69 of, to add the heading of Article 4 (commencing with Section 33492.70) to Chapter 4.5 of Part 1 of Division 24 of, to repeal Sections 1596.803, 33492.55, 33681.6, and 33682.1 of, to repeal Article 7.5 (commencing with Section 1389.1) of Chapter 2.2 of Division 2 of, to repeal Article 1 (commencing with Section 33492) of Chapter 4.5 of Part 1 of Division 24 of, and to repeal the heading of Article 2

with respect to communications between the member and the Legislative Counsel except as otherwise provided by the rules of the Legislature. All materials arising out of this relationship, including, but not limited to, proposed bills and amendments, analyses, opinions, and memoranda prepared by the Legislative Counsel, are not public records, except as otherwise provided by the rules of the Legislature or when released by the member for whom the material was prepared. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Member of the Legislature who is not available to execute a release.

(b) (1) The Legislative Counsel shall maintain the attorney-client relationship with the Governor with respect to communications between the Governor and the Legislative Counsel.

All materials arising out of this relationship, including, but not limited to, legal services concerning any bill in the Governor's hands for rejection, approval, or other action, legal services concerning any legal opinion provided to the Governor, and legal services concerning any matter as the circumstances permit and the Governor requests, prepared by the Legislative Counsel, are not public records, except when released by the Governor. When he or she determines that the public interest so requires, the Legislative Counsel may release any material arising out of the attorney-client relationship with a former Governor who is not available to execute a release.

(2) Whenever the Legislative Counsel issues an opinion to the Governor analyzing the constitutionality, operation, or effect of a bill or other legislative measure that is then pending before the Legislature, or of any amendment made or proposed to be made to that bill or measure, the Legislative Counsel shall deliver two copies of the opinion to the first-named author of the bill or measure as promptly as feasible after delivery of the original opinion, and shall also deliver a copy to any other author of the bill or measure who requests a copy.

SEC. 66. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any of the following with respect to an individual: (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual, (2) a record of an impairment as described in paragraph (1), or (3) being regarded as having an impairment as described in paragraph (1).

SEC. 67. Section 12811 of the Government Code is amended to read:

Sec. 7. Section 11110 of the Penal Code shall be funded from moneys appropriated by the Legislature in the Budget Act of 1994 or from existing resources of the Department of Justice other than fees collected pursuant to subdivision (e) of Section 11105 of the Penal Code.

SEC. 240. Any section of any act enacted by the Legislature during the 1994 calendar year that takes effect on or before January 1, 1995, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

SCHOOLS AND SCHOOL DISTRICTS—DISCRIMINATION—
RELATED PROVISIONS

CHAPTER 914

A.B. No. 499

AN ACT to amend Sections 200, 211, 212, 212.5, 213, 214, 220, 223, 224, 250, 251, 253, 262.3, and 72012 of, to amend the headings of Chapter 2 (commencing with Section 200) of, and Article 3 (commencing with Section 220) of, Chapter 2 of Part 1 of, to amend and renumber Sections 40, 41, 45, 210, 212.6, 222, 226, 227, 228, 232, 262, 262.1, 262.2, 263, 33032.5, 44806, 52905, 52906, 52907, 52908, 58508, and 72015 of, to amend and renumber the headings of Article 4 (commencing with Section 240) of, Article 5 (commencing with Section 250) of, and Article 6 (commencing with Section 260) of, Chapter 2 of Part 1 of, to add Sections 210, 262.4, and 264 to, to add the headings of Article 4 (commencing with Section 221.5) of, Article 5 (commencing with Section 233) of, Article 6 (commencing with Section 235) of, and Article 11 (commencing with Section 280) of, Chapter 2 of Part 1 of, and to add Chapter 4.5 (commencing with Section 66250) to Part 40 of, and to repeal the headings of Article 4 (commencing with Section 40) of, and Article 4.5 (commencing with Section 45) of, Chapter 1 of Part 1 of, and Article 8 (commencing with Section 52905) of Chapter 12 of Part 28 of, the Education Code, relating to education.

[Approved by Governor September 28, 1998.]

[Filed with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 499, Kuehl. Education: diversity in education: Sex Equity in Education Act.

Under existing law, numerous provisions of the Education Code relate to the prohibition of discrimination in the provision of educational services by elementary, secondary, and postsecondary institutions.

Under existing law, the governing board of a school district has primary responsibility for ensuring that school district programs and activities are free from discrimination based on

Additions or changes indicated by underline; deletions by asterisks * * * 4889

ethnic group identification, religion, age, sex, color, or physical or mental disability. Existing law contains comparable provisions for the community colleges, the California State University system, and the University of California system. Existing law provides that a party to a written complaint of prohibited discrimination may appeal the action to specified bodies. Existing law also requires that persons who have filed a complaint of prohibited discrimination be advised by the educational institution that civil law remedies may also be available to the complainant.

This bill would revise and recast numerous provisions of the Education Code relating to the prohibition of discrimination. The bill would organize these provisions into 2 legislative schemes, one of which would be applicable to elementary and secondary schools, and one of which would be applicable to postsecondary educational institutions, as defined.

The bill would specify that the provisions on discrimination may be enforced through a civil action.

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

SECTION 1. The heading of Article 4 (commencing with Section 40) of Chapter 1 of Part 1 of the Education Code is repealed.

SEC. 2. Section 40 of the Education Code is amended and renumbered to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) No school district shall prohibit any pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Section 51550.

(c) No school district shall require pupils of one sex to enroll in a particular class or course, unless the same class or course is also required of pupils of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a pupil, offer vocational or school program guidance to pupils of one sex that is different from that offered to pupils of the opposite sex or, in counseling pupils, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade * * * 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

SEC. 3. Section 41 of the Education Code is amended and renumbered to read:

221.7. (a) The Legislature finds and declares that female pupils are not accorded opportunities for participation in school-sponsored athletic programs equal to those accorded male pupils. It is the intent of the Legislature that opportunities for participation in athletics be provided equally to male and female pupils.

(b) Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of a school district governing board or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and participation include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(c) Nothing in this section shall be construed to require a school district to require competition between male and female pupils in school-sponsored athletic programs.

SEC. 4. The heading of Article 4.5 (commencing with Section 45) of Chapter 1 of Part 1 of the Education Code is repealed.

SEC. 5. Section 45 of the Education Code is amended and renumbered to read:

4890

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

201. (a) All pupils have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.

(g) It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1701, et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

SEC. 6. The heading of Chapter 2 (commencing with Section 200) of Part 1 of the Education Code is amended to read:

Chapter 2. * * * Educational Equity

SEC. 7. Section 200 of the Education Code is amended to read:

200. (a) It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 8. Section 210 is added to the Education Code, to read:

210. The definitions in this article shall govern the use of the terms defined for purposes of this chapter.

SEC. 9. Section 210 of the Education Code is amended and renumbered to read:

210.1. * * * "Educational institution" means a public or private preschool, elementary, or secondary school or institution; * * * the governing board of a school district; * * * or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.

SEC. 10. Section 211 of the Education Code is amended to read:

211. * * * "Governing board" means the governing board of a school * * * district.

SEC. 11. Section 212 of the Education Code is amended to read:

212. * * * "Sex" means the biological condition or quality of being a male or female human being.

Additions or changes indicated by underline; deletions by asterisks * * * 4891

SEC. 12. Section 212.5 of the Education Code is amended to read:

212.5. * * * "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

SEC. 13. Section 212.6 of the Education Code is amended and renumbered to read:

231.5. (a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

SEC. 14. Section 213 of the Education Code is amended to read:

213. * * * (a) "State financial assistance" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance to any educational institution for its own benefit or for the benefit of any pupils admitted to the educational institution.

(b) State financial assistance shall include, but not be limited to, all of the following:

(1) Grants of state property, or any interest therein.

(2) Provision of the services of state personnel.

(3) Funds provided by contract, tax rebate, appropriation, allocation, or formula.

SEC. 15. Section 214 of the Education Code is amended to read:

4892

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

214. * * * "State student financial aid" means any funds or other form of financial aid appropriated or authorized pursuant to state law, or pursuant to federal law administered by any state agency, for the purpose of providing assistance directly to any student admitted to an educational institution. State student financial aid shall include, but not be limited to, scholarships, loans, grants, or wages.

SEC. 16. The heading of Article 3 (commencing with Section 220) of Chapter 2 of Part 1 of the Education Code is amended to read:

Article 3. Prohibition of * * * Discrimination

SEC. 17. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 18. The heading of Article 4 (commencing with Section 221.5) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 4. Sex Equity in Education Act

SEC. 19. Section 222 of the Education Code is amended and renumbered to read:

66272. This article shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine.

SEC. 20. Section 223 of the Education Code is amended to read:

223. This chapter shall not apply to the membership practices of the * * * Young Men's Christian Association, Young Women's Christian Association, girl scouts, boy scouts, Camp Fire, or voluntary youth service organizations which are exempt from taxation under subdivision (a) of Section 501 of the federal Internal Revenue Code of 1954, whose membership has traditionally been limited to persons of one sex, and principally to persons of less than 19 years of age.

* * *

SEC. 21. Section 224 of the Education Code is amended to read:

224. The sex discrimination provisions of this article shall not apply to any of the following, provided that these conferences comply with other nondiscrimination provisions of state and federal law:

(a) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(b) Any program or activity of any secondary educational institution specifically for any of the following purposes:

(1) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference.

(2) The selection of students to attend any of those conferences.

SEC. 22. Section 226 of the Education Code is amended and renumbered to read:

66276. This article shall not apply to any scholarship or other financial assistance awarded by a postsecondary educational institution to any individual upon the basis of a combination of factors related to the individual's personal appearance, poise, and talent as an award in any pageant in which participation is limited exclusively to individuals of one sex, provided that the pageant complies with other nondiscrimination provisions of state and federal law.

SEC. 23. Section 227 of the Education Code is amended and renumbered to read:

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

4893

66277. In regard to admissions to educational institutions, this article shall apply only to institutions of vocational, professional, or postgraduate education, and to public postsecondary education institutions.

SEC. 24. Section 228 of the Education Code is amended and renumbered to read:

66278. In regard to admissions to educational institutions, this article shall not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

SEC. 25. Section 232 of the Education Code, as amended by Section 5 of Chapter 938 of the Statutes of 1995, is amended and renumbered to read:

221.1. The State Board of Education * * * shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, commonly referred to as the rulemaking provisions of the Administrative Procedure Act, to implement this chapter.

* * *

SEC. 26. The heading of Article 5 (commencing with Section 233) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 5. Hate Violence Prevention Act

SEC. 27. The heading of Article 6 (commencing with Section 235) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 6. Alternative Schools, Charter Schools, and School Choice

SEC. 28. The heading of Article 4 (commencing with Section 240) of Chapter 2 of Part 1 of the Education Code, is amended and renumbered to read:

Article 7. Instructional Materials

SEC. 29. The heading of Article 5 (commencing with Section 250) of Chapter 2 of Part 1 of the Education Code is amended and renumbered to read:

Article 8. Compliance

SEC. 30. Section 250 of the Education Code is amended to read:

250. Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination * * *. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

SEC. 31. Section 251 of the Education Code is amended to read:

251. (a) A school district shall submit timely, complete, and accurate compliance reports to the State Department of Education * * * as that entity may require.

(b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

SEC. 32. Section 253 of the Education Code is amended to read:

253. (a) Compliance with the sex discrimination provisions of this chapter and regulations adopted pursuant to this chapter shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction. Any review of that compliance shall also include a review of the school district's records of complaints of sexual harassment brought by pupils and employees of the school district.

4894

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

(b) The superintendent shall annually review 20 school districts for compliance with sex discrimination laws and regulations as specified in subdivision (a). The superintendent shall select from those districts subject to review, in a given year, a sampling of districts from each of the following categories:

(1) Those districts within which the greatest number of sex discrimination complaints have been filed since its previous coordinated compliance review.

(2) Those districts with the largest enrollments.

(3) All other districts, selected on a random basis.

(c) The superintendent and the department shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes.

SEC. 33. The heading of Article 6 (commencing with Section 260) of Chapter 2 of Part 1 of the Education Code is amended and renumbered to read:

Article 9. Enforcement

SEC. 34. Section 262 of the Education Code is amended and renumbered to read:

66292. (a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for monitoring the compliance of each district with any and all regulations adopted pursuant to Section 11138 of the Government Code.

SEC. 35. Section 262.1 of the Education Code is amended and renumbered to read:

66292.1. The Chancellor of the California State University and the president of each California State University campus shall have the primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 36. Section 262.2 of the Education Code is amended and renumbered to read:

66292.2. The President of the University of California and the chancellor of each University of California campus shall have primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 37. Section 262.3 of the Education Code is amended to read:

262.3. (a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district * * * pursuant to this article, to the State Department of Education * * *.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the administrative complaint process before civil law remedies may be pursued.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 60 days have elapsed from the filing of an appeal to the State Department of Education pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations. The moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

SEC. 38. Section 262.4 is added to the Education Code, to read:

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

4895

262.4. This chapter may be enforced through a civil action.

SEC. 39. Section 263 of the Education Code is amended and renumbered to read:

66293. The California Postsecondary Education Commission shall report to the Legislature and Governor on the representation and utilization of ethnic minorities and women among academic, administrative, and other employees at the community colleges, the California State University, and the University of California, pursuant to Sections 66903.1 and 66903.3.

SEC. 40. The heading of Article 11 (commencing with Section 280) is added to Chapter 2 of Part 1 of the Education Code, to read:

Article 11. The Bill Bradley Human Relations Pilot Project

SEC. 41. Section 33032.5 of the Education Code is amended and renumbered to read:

233. (a) At the request of the Superintendent of Public Instruction, the State Board of Education shall do all of the following as long as the board's actions do not result in a state mandate or an increase in costs to a state or local program:

(1) Adopt policies directed toward creating a school environment in kindergarten and grades 1 to 12, inclusive, that is free from discriminatory attitudes and practices and acts of hate violence.

(2) Revise, as needed, and in accordance with the State Board of Education's adopted Schedule for Curriculum Framework Development and Adoption of Instructional Materials developed pursuant to Section 60200, the state curriculum frameworks and guidelines and the moral and civic education curricula to include human relations education, with the aim of fostering an appreciation of people of different ethnicities.

(3) Establish guidelines for use in teacher and administrator in-service training programs to promote an appreciation of diversity and to discourage the development of discriminatory attitudes and practices that prevent pupils from achieving their full potential.

(4) Establish guidelines for use in teacher and administrator in-service training programs designed to enable teachers and administrators to prevent and respond to acts of hate violence occurring on their school campuses.

(5) Establish guidelines designed to raise the awareness and sensitivity of teachers, administrators, and school employees to potentially prejudicial and discriminatory behavior and to encourage the participation of these groups in these programs.

(6) Develop guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(7) Revise any appropriate guidelines previously adopted by the board to include procedures for preventing and responding to acts of hate violence.

(b) The State Department of Education, in accordance with policies established by the State Board of Education for purposes of this subdivision, shall do all of the following:

(1) Prepare guidelines for the design and implementation of local programs and instructional curricula that promote understanding, awareness, and appreciation of the contributions of people with diverse backgrounds and of harmonious relations in a diverse society. The guidelines shall include methods of evaluating the programs and curricula and suggested procedures to ensure coordination of the programs and curricula with appropriate local public and private agencies.

(2) Provide grants, from funds appropriated for that purpose, to school districts and county offices of education to develop programs and curricula consistent with the guidelines developed in paragraph (1).

(3) To the extent possible, provide advice and direct services, consistent with the guidelines developed in paragraph (1), to school districts and county offices of education that implement the programs and curricula developed in paragraph (2).

(c) The State Board of Education shall carry out this section only if private funds, in an amount sufficient to pay for related State Department of Education staff activities on behalf of the board, are made available.

SEC. 50. Section 72012 of the Education Code is amended to read:

72012. Every community college shall comply with * * * Sections 221.5, 221.7, and 66016, relating to sex discrimination.

SEC. 51. Section 72015 of the Education Code is amended and renumbered to read:

66271.7. (a) It is the policy of the state that community college classes and courses, including nonacademic and elective classes and courses, shall be conducted without regard to the sex of the student enrolled in these classes and courses.

(b) No community college district shall prohibit any student from enrolling in any class or course on the basis of the sex of the student.

(c) No community college district shall require students of one sex to enroll in a particular class or course, unless the same class or course is also required of students of the opposite sex.

(d) No school counselor, teacher, instructor, administrator, or aide shall, on the basis of the sex of a student, offer vocational or school program guidance to students of one sex which is different from that offered to students of the opposite sex or, in counseling students, differentiate career, vocational or higher education opportunities on the basis of the sex of the student counseled. Any school personnel acting in a career counseling or course selection capacity to any pupil shall affirmatively explore with the pupil the possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex.

(e) Participation in a particular physical education activity or sport, if required of students of one sex, shall be available to students of each sex.

(f) The Legislature finds and declares that female students are not accorded opportunities for participation in community college athletic programs equal to those accorded male students. It is the intent of the Legislature that opportunities for participation in community college athletics be provided equally to male and female students and on an equitable basis to all students.

(g) Insofar as practicable, in apportioning public funds, community college district governing boards shall apportion amounts available for athletics to ensure that equitable amounts will be allocated for all students, except that allowances may be made for differences in the costs of various athletic programs. Notwithstanding any other provisions of law, no public funds shall be used in connection with any athletic program conducted under the auspices of the governing board of a community college district, or any student organization within the district, which does not provide equal opportunity to both sexes for participation and for use of facilities. Facilities and opportunities for participation shall include, but are not limited to, equipment and supplies, scheduling of games and practice time, compensation for coaches, travel arrangements, per diem, locker rooms, and medical services.

(h) It is the further intent of the Legislature that females be given the same opportunity to participate in athletics and compete with other females in individual and team sports as is available to males who compete with other males in individual and team sports. Nothing in this section shall be construed to require a community college to require competition between male and female students in school-sponsored athletic programs.

EDUCATION—CALIFORNIA STUDENT SAFETY
AND VIOLENCE PREVENTION ACT

CHAPTER 587

A.B. No. 537

AN ACT to amend Sections 200, 220, 66251, and 66270 of, to add Section 241 to, and to amend and renumber Sections 221 and 66271 of, the Education Code, relating to discrimination.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 537, Kuehl. Discrimination.

(1) Existing law provides that it is the policy of the State of California to afford all persons in public schools and postsecondary institutions, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state.

Existing law makes it a crime for a person, whether or not acting under color of law, to willfully injure, intimidate, interfere with, oppress, or threaten any other person, by force or threat of force, in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

This bill would also provide that it is the policy of the state to afford all persons in public school and postsecondary institutions equal rights and opportunities in the educational institutions of the state, regardless of any basis referred to in the aforementioned paragraph.

(2) Existing law prohibits a person from being subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by any educational institution or postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

This bill would also prohibit a person from being subjected to discrimination on the basis of any basis referred to in paragraph (1) in any program or activity conducted by any educational institution or postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

(3) This bill would state that it does not require the inclusion of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or a postsecondary educational institution and would prohibit this bill from being deemed to be violated by the omission of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or a postsecondary educational institution.

To the extent that this bill would impose new duties on school districts and community college districts, it would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

3370

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. This bill shall be known, and may be cited, as the California Student Safety and Violence Prevention Act of 2000.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) Under the California Constitution, all students of public schools have the inalienable right to attend campuses that are safe, secure, and peaceful. Violence is the number one cause of death for young people in California and has become a public health problem of epidemic proportion. One of the Legislature's highest priorities must be to prevent our children from the plague of violence.

(2) The fastest growing, violent crime in California is hate crime, and it is incumbent upon us to ensure that all students attending public school in California are protected from potentially violent discrimination. Educators see how violence affects youth every day; they know first hand that youth cannot learn if they are concerned about their safety. This legislation is designed to protect the institution of learning as well as our students.

(3) Not only do we need to address the issue of school violence but also we must strive to reverse the increase in teen suicide. The number of teens who attempt suicide, as well as the number who actually kill themselves, has risen substantially in recent years. Teen suicides in the United States have doubled in number since 1960 and every year over a quarter of a million adolescents in the United States attempt suicide. Sadly, approximately 4,000 of these attempts every year are completed. Suicide is the third leading cause of death for youths 15 through 24 years of age. To combat this problem we must seriously examine these grim statistics and take immediate action to ensure all students are offered equal protection from discrimination under California law.

SEC. 3. Section 200 of the Education Code is amended to read:

200. * * * It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, * * * mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 4. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, * * * mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 5. Section 221 of the Education Code is renumbered to read:

220.5. This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

SEC. 6. Section 241 is added to the Education Code, to read:

241. Nothing in the California Student Safety and Violence Prevention Act of 2000 requires the inclusion of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or postsecondary educational institution; the California Student Safety and Violence Prevention Act of 2000 shall not be deemed to be violated by the omission of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or postsecondary educational institution.

SEC. 7. Section 66251 of the Education Code is amended to read:

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

3371

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, * * * mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

SEC. 8. Section 66270 of the Education Code is amended to read:

66270. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

SEC. 9. Section 66271 of the Education Code is renumbered to read:

66270.5. This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

BILL NUMBER: AB 1670 CHAPTERED 10/10/99

CHAPTER 591
 FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
 APPROVED BY GOVERNOR OCTOBER 2, 1999
 PASSED THE ASSEMBLY SEPTEMBER 9, 1999
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 AMENDED IN SENATE AUGUST 26, 1999
 AMENDED IN SENATE AUGUST 25, 1999
 AMENDED IN ASSEMBLY JUNE 1, 1999
 AMENDED IN ASSEMBLY MAY 6, 1999

INTRODUCED BY Committee on Judiciary (Kuehl (Chair), Aroner, Bock, Corbett, Jackson, Knox, Longville, Shelley, Steinberg, and Wiggins)

MARCH 15, 1999

An act to amend Section 51.5 of the Civil Code, and to amend Sections 11139, 12921, 12926, 12927, 12930, 12940, 12945, 12948, 12955, 12965, 12970, 12989.2, and 12989.3 of, and to add Section 12955 to, the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1670, Committee on Judiciary. California Civil Rights Amendments of 1999.

Existing law prohibits business establishments from discriminating against, boycotting or blacklisting, or refusing to buy from, sell to, or trade with any person because of the race, creed, religion, color, national origin, sex, or disability of any person or the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

This bill would additionally prohibit these forms of discrimination (1) because of a perception that any of those persons have one or more of the above characteristics or (2) because the person is associated with a person who has, or is perceived to have, any of those characteristics.

Existing law prohibits denial of benefits under, or discrimination against any person in, any program or activity funded or financially assisted by the state on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability. Existing law specifies a hearing procedure for determining violations and requires curtailing state funding for any contractor, grantee, or local agency found to be in violation.

This bill would make these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

Existing provisions of the California Fair Employment and Housing Act declare as a civil right the opportunity to seek, obtain, and hold employment without discrimination on specified bases.

This bill would declare as a civil right the opportunity to seek, obtain, and hold housing without discrimination on specified bases or any arbitrary basis prohibited by the Unruh Civil Rights Act. The bill would also revise the definition of discrimination for the purposes of these provisions to include harassment in connection with housing accommodations.

Existing provisions of the California Fair Employment and Housing

Employment and Housing Act, are declaratory of existing law.

This bill would incorporate the changes in Section 12926 of the Government Code proposed by Senate Bill 1185, if that bill is enacted and this bill is enacted last.

This bill would incorporate the changes in Section 12955 of the Government Code proposed by Senate Bill 1098, Senate Bill 1148, or both, if either or both of those bills are enacted and this bill is enacted last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the California Civil Rights Amendments of 1999.

SEC. 2. Section 51.5 of the Civil Code is amended to read:

51.5. No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or disability of the person or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

As used in this section, "person" includes any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company.

This section shall not be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor shall this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

SEC. 3. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief.

SEC. 4. Section 12921 of the Government Code is amended to read:

12921. (a) The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, marital status, national origin, ancestry, familial status, disability, or any other basis prohibited by Section 51 of the Civil Code is hereby

responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title.

(2) Other relief as the court deems appropriate, including monetary damages to persons aggrieved.

(3) A civil penalty in an amount not exceeding fifty thousand dollars (\$50,000), for a first violation, and in an amount not exceeding one hundred thousand dollars (\$100,000), for any subsequent violation.

(g) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the state, reasonable attorney's fees and costs, including expert witness fees, against any party other than the state.

(h) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under this section that involves an alleged discriminatory housing practice with respect to which that person is an aggrieved person or a conciliation agreement to which that person is a party. The court may grant appropriate relief to any intervening party as is authorized to be granted to a plaintiff in a civil action under Section 12989.2.

SEC. 16. The amendments made by this act to Section 51.5 of the Civil Code and to Sections 12926, 12927, and 12955 of the Government Code do not constitute a change in, but are declaratory of existing law.

SEC. 17. Section 5.1 of this bill incorporates amendments to Section 12926 of the Government Code proposed by both this bill and SB 1185. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12926 of the Government Code, and (3) this bill is enacted after AB 1185, in which case Section 5 of this bill shall not become operative.

SEC. 18. (a) Sections 11.1 and 11.2 of this bill incorporate amendments to Section 12955 of the Government Code proposed by both this bill and SB 1098. Sections 11.1 and 11.2 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12955 of the Government Code, (3) SB 1148 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1098, in which case Sections 11, 11.3, 11.4, and 11.5, of this bill shall not become operative.

(b) Section 11.3 of this bill incorporates amendments to Section 12955 of the Government Code proposed by both this bill and SB 1148. Section 11.3 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 12955 of the Government Code, (3) AB 1670 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1148, in which case Sections 11, 11.1, 11.2, 11.4, and 11.5 of this bill shall not become operative.

(c) Sections 11.4 and 11.5 of this bill incorporate amendments to Section 12955 of the Government Code proposed by this bill, SB 1098, and SB 1148. Sections 11.4 and 11.5 only become operative if (1) all three bills are enacted and become effective on or before January 1, 2000, (2) all three bill amend Section 12955 of the Government Code, and (3) this bill is enacted after SB 1148 and AB 1670, in which case Sections 11, 11.1, 11.2, and 11.3, and of this bill shall not become operative.

2001-2002 REGULAR SESSION

Ch. 708

DISABLED PERSONS—DISCRIMINATION—PARKING PLACARDS

CHAPTER 708

A.B. No. 677

AN ACT to amend Sections 11135 and 11139 of the Government Code, and to amend Sections 22511.55 and 22511.59 of the Vehicle Code, relating to discrimination.

[Filed with Secretary of State October 11, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 677, Steinberg. Persons with disabilities.

(1) Existing law provides that no person in the state shall be unlawfully denied the benefits of, or unlawfully subjected to discrimination under, any program or activity that is funded directly by the state or receives any financial assistance from the state, on the basis of ethnic

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4375

group identification, religion, age, sex, color, or disability, and defines the term "disability" for these purposes.

This bill instead would provide that no person in the state shall, on any of those bases, be unlawfully denied full and equal access to the benefits of, or unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. It would also revise the definition of "disability" for these purposes.

Existing law also specifies a hearing procedure for determining violations of the above provisions, requires curtailing state funding for any contractor, grantee, or local agency found to be in violation, and makes these provisions and regulations adopted thereunder enforceable by a civil action for equitable relief.

This bill would provide that any civil action for equitable relief shall be independent of any other rights and remedies.

(2) Existing law authorizes a disabled person, any temporarily disabled person, and any disabled veteran, including those temporarily traveling in the state, to apply to the Department of Motor Vehicles for the issuance of a distinguishing placard for specified parking purposes. The placard is required to be the size and color determined by the department and to have a fixed expiration date of June 30 every 2 years. The fee for an original application, a renewal application, or the issuance of a new or substitute placard is fixed at \$6.

This bill would provide that the placard shall also be in the shape determined by the department, and would require that a portion of the placard be printed in a contrasting color that shall be changed every 2 years. It would also repeal the fees, except for a temporary placard for a person who is temporarily disabled.

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

SECTION 1. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any * * * mental or physical disability as defined in Section 12926.

SEC. 2. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

SEC. 3. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a)(1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to

encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size, shape, and color determined by the department and shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the "wheelchair symbol." The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2)(A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. * * * A portion of the placard shall be printed in a contrasting color that shall be changed every two years. The size and color of this contrasting portion of the placard shall be large and distinctive enough to be readily identifiable by a law enforcement officer in a passing vehicle.

(B) As used in this section, "year" means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placard holders identified as deceased.

(3) * * * Except as provided in paragraph (4), no person is eligible for more than one placard at any time.

(4) Organizations and agencies involved in the transportation of disabled persons or disabled veterans may apply for a placard for each vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b)(1) Prior to issuing any disabled person or disabled veteran an original distinguishing placard, the department shall require the submission of a certificate, in accordance with paragraph (2), signed by the physician or surgeon substantiating the disability, unless the applicant's disability is readily observable and uncontested. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist. The physician or person certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician or other person who signs a certificate submitted under this subdivision shall retain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(3) The department shall maintain in its records all information on an applicant's certification of permanent disability and shall make that information available to eligible law enforcement or parking control agencies upon a request pursuant to Section 22511.58.

(c) * * * Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

* * *

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom the placard was issued.

SEC. 4. Section 22511.59 of the Vehicle Code is amended to read:

22511.59. (a) Upon receipt of the applications and documents required by subdivisions (b), (c), or (d), the department shall issue a temporary distinguishing placard bearing the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the "wheelchair symbol." During the period for which it is valid, the temporary distinguishing placard may be used for the parking purposes described in Section 22511.5 in the same manner as a distinguishing placard issued pursuant to Section 22511.55.

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

4377

(b)(1) Any person who is temporarily disabled for a period of not more than six months may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the submission of a certificate signed by a physician or surgeon, as described in subdivision (b) of Section 22511.55, substantiating the temporary disability and stating the date upon which the disability is expected to terminate.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 180 days from the date of issuance or upon the expected termination date of the disability, as stated on the certificate required by paragraph (2), whichever is less.

(5) The fee for a temporary placard issued pursuant to this subdivision shall be six dollars (~~\$6~~).

(c)(1) Any disabled person or disabled veteran who is not a resident of this state and plans to travel within the state may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require certification of the disability, as described in subdivision (b) of Section 22511.55.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(d)(1) Any disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special identification license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard for the purpose of travel described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit either the number identifying the distinguishing placard issued pursuant to Section 22511.55 or the number on the special identification license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

* * *

LOCAL AGENCIES—PUBLIC MEETING NOTICES
AND AGENDAS—DISCRIMINATION

CHAPTER 300

A.B. No. 3035

AN ACT to amend Sections 11125, 11125.1, 11135, 54954.1, 54954.2, and 54957.5 of, and to add Sections 11123.1 and 54953.2 to, the Government Code, relating to access to government programs.

[Filed with Secretary of State August 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3035, Committee on Judiciary. Access to government programs.

(1) The Bagley-Keene Open Meeting Act generally requires that all meetings of a state body be open and public. Writings that are public records and are distributed to members of the state body prior to or during a public meeting, pertaining to any item to be considered during the public meeting, are required to be made available for public inspection, and any person may attend any public meeting of a state body. The act also requires that notice of public meetings and those held in closed session of a state body be given to any person who requests that notice in writing and that the agenda for those meetings be made available upon request without delay.

This bill would require that the notices and agendas of these public meetings and closed sessions and the public records distributed at these public meetings and closed sessions be made available in appropriate alternative formats upon request by any person with a disability consistent with the federal Americans with Disabilities Act of 1990. The bill would also require that the notice include information on the availability of disability-related aids or services to enable the person to participate in a public meeting consistent with the federal Americans with Disabilities Act of 1990.

(2) Existing law provides that no person in this state shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

This bill would extend the prohibited basis of discrimination under this provision to include race and national origin consistent with the federal Americans with Disabilities Act of 1990.

(3) The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public. All persons may attend these meetings except as otherwise provided by the act. The act also requires that the agenda be posted and include a general description of items to be discussed in closed session. All the documents constituting the agenda packet of a public meeting, including any other writings distributed to all or a majority of all of the members of a legislative body of a local agency by any person in connection with a matter to be discussed at the public meeting, are required to be made available to any person upon request.

This bill would require that these agendas, agenda packets, and other writings distributed to members of a legislative body be made available in appropriate alternative formats to persons with a disability and that the agendas include information on the availability of disability-related aids or services to enable the person to participate in the public meeting consistent with the federal Americans with Disabilities Act of 1990.

(4) This bill would incorporate changes in Section 11125.1 of the Government Code proposed by AB 1752 that would become operative if both bills are enacted and this bill is enacted last.

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

948

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

2001-2002 REGULAR SESSION

SECTION 1. Section 11123.1 is added to the Government Code, to read:

11123.1. All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 2. Section 11125 of the Government Code is amended to read:

11125. (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

SEC. 3. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

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

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be: (1) made available for public inspection at that meeting, (2) distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125, and (3) made available on the Internet.

(d) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(e) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 3.5. Section 11125.1 of the Government Code is amended to read:

11125.1. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7 of this code, or Section 489.1 or 583 of the Public Utilities Code.

(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are distributed to members of the state body by board staff or individual members prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125 * * * .

(3) Made available on the Internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named tax or fee payer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the Internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and

2001-2002 REGULAR SESSION

regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.

SEC. 4. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

SEC. 5. Section 54953.2 is added to the Government Code, to read:

54953.2. All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

SEC. 6. Section 54954.1 of the Government Code is amended to read:

54954.1. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

SEC. 7. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or

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

951

Ch. 300, § 7

accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

SEC. 8. Section 54957.5 of the Government Code is amended to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section * * * 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 11125. 1 of the Government Code proposed by both this bill and AB 1752. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill

2001-2002 REGULAR SESSION

Ch. 301

amends Section 11125.1 of the Government Code, and (3) this bill is enacted after AB 1752, in which case Section 3 of this bill shall not become operative.

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953

DISABLED PERSONS—BLIND AND VISUALLY IMPAIRED AND DEAF
AND HARD OF HEARING—EMPLOYMENT-RELATED SERVICES

CHAPTER 1102

S.B. No. 105

AN ACT to amend Section 11135 of the Government Code, to amend Sections 19050 and 19050.5 of
to add Section 19054 to, and to add Chapter 3 (commencing with Section 19095) to Part 1 of
Division 10 of, the Welfare and Institutions Code, relating to human services.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 105, Burton. Services: blind: visually impaired: deaf: hard of hearing.

Existing law provides for the Department of Rehabilitation, which administers various
programs and services for disabled persons, including the blind and visually impaired.

This bill would establish the Division of Services for the Blind and Visually Impaired and
the Deaf and Hard of Hearing, would establish the responsibilities of the division, would
require the director of the division to report to the Legislature and the Governor on programs
administered by the division, would require the director to appoint a Blind Advisory
Committee and a Deaf Advisory Committee to advise the director on certain issues, and
would make related and conforming changes.

This bill would incorporate additional changes in Section 11135 of the Government Code,
proposed by AB 3035, to be operative only if AB 3035 and this bill are both chaptered and
become effective January 1, 2003, and this bill is chaptered last.

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Approximately 70 percent of employable blind and visually impaired individuals are
unemployed.

(2) Due to the lack of employment, most of these individuals receive public assistance
payments, as well as Medi-Cal and other public benefits, thereby costing the state millions of
dollars in benefit payments and lost income tax revenue.

(3) It is the primary function of the Department of Rehabilitation to prepare and place
persons with disabilities, including the blind and visually impaired, in meaningful jobs.

(4) The department needs to implement policy and procedural changes in order to improve
its ability to increase the numbers of blind and visually impaired consumers placed in
competitive employment.

(5) The blind and visually impaired have a long history of success with separate specialized
training that takes into account their unique needs and the need to have experienced, trained
staff, and contracting organizations.

(6) The establishment of a Division of Services for the Blind and Visually Impaired and the
Deaf and Hard of Hearing in the Department of Rehabilitation will, through the focus of state
and federal resources and without diverting resources that would otherwise be used to assist

5470

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

those with other disabilities, dramatically improve employment-related services provided to persons who are blind or visually impaired or deaf or hard of hearing.

(7) The purpose of the establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the department is to streamline, and make more efficient and effective, the department's delivery of services to Californians who are blind or visually impaired, and that this streamlined organization of those services into a single division within the department will result in no greater than minor, absorbable costs, if any.

(b) It is, therefore, the intent of the Legislature to establish a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing to improve the lives of blind and visually impaired and deaf and hard of hearing persons.

SEC. 2. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 2.5. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

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

5471

Ch. 1102, § 2.5

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 3. Section 19050 of the Welfare and Institutions Code is amended to read:

19050. There is in the department a program manager for the blind and * * * visually impaired and a program manager for the deaf and * * * hard of hearing. The program managers shall, as determined by the director, * * * report to the deputy director of the division established pursuant to Section 19095, and shall assist in the development and coordination of policy with respect to programs for * * * persons who are blind and * * * visually impaired and persons who are deaf and hard of hearing.

SEC. 4. Section 19050.5 of the Welfare and Institutions Code is amended to read:

19050.5. The program manager for the blind and * * * visually impaired programs and the program manager for the deaf and * * * hard-of-hearing programs shall have demonstrated experience and sensitivity in working with these disabilities.

SEC. 5. Section 19054 is added to the Welfare and Institutions Code, to read:

19054. The director shall appoint a Deaf Advisory Committee to advise the director on means to increase employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services to persons who are deaf or hard of hearing. A majority of the committee members shall be deaf or hard of hearing, and other members shall have experience relating to services to the deaf or hard of hearing. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the department to persons who are deaf or hard of hearing.

SEC. 6. Chapter 3 (commencing with Section 19095) is added to Part 1 of Division 10 of the Welfare and Institutions Code, to read:

Chapter 3. Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing

19095. (a)(1) There is hereby established in the Department of Rehabilitation a Division of Specialized Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing.

(2) For purposes of this chapter "division" means the division established pursuant to paragraph (1).

(b) The purposes of the division shall be as follows:

(1) To assist persons who are blind and visually impaired and deaf and hard of hearing in gaining competitive employment.

(2) To enlarge economic opportunities for persons who are blind or visually impaired and deaf and hard of hearing.

(3) To enhance the independence and self-sufficiency of blind and visually impaired and deaf and hard-of-hearing persons.

19095.5. (a) The division shall be under the direction of a deputy director, who shall be appointed by the Governor.

(b) The deputy director shall have extensive background in, or knowledge of, services to the blind and visually impaired and the deaf and hard of hearing.

5472

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

2001-2002 REGULAR SESSION

(c) The deputy director shall report directly to the directorate of the Department of Rehabilitation and shall be a member of the department's executive management, taking part in all departmental planning and decisionmaking.

19096. (a) Commencing July 1, 2003, the division shall be charged with the administration of the following programs and services:

(1) All staff within the division, including rehabilitation counselors, rehabilitation counselors for the blind, staff of the orientation center, and staff of the business enterprises program.

(2) Orientation centers for the blind, provided for pursuant to Article 1 (commencing with Section 19500) of Chapter 6 of Part 2.

(3) The Business Enterprise Program for the Blind, provided pursuant to Article 5 (commencing with Section 19625) of Chapter 6 of Part 2.

(4) Contracts for services with organizations serving the blind and visually impaired and the deaf and hard of hearing.

(5) Programs for the blind under Subchapter 7 (commencing with Section 796) of Chapter 16 of Title 29 of the United States Code.

(b) The division shall also provide additional rehabilitation services to its blind and visually impaired and deaf and hard-of-hearing clients, to the extent that funds are available.

(c) The program managers shall report to the deputy director of the division established pursuant to this chapter.

(d) The division shall be responsible for administrative functions, including, but not limited to, the following:

(1) Develop, implement, and oversee policies related to blind and visually impaired and deaf and hard-of-hearing consumers, including timely provision of assistive technology services.

(2) Develop and implement mandatory orientation training programs for new rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(3) Develop and implement ongoing mandatory training for rehabilitation supervisors of blind-designated units.

(4) Establish minimum professional competencies for rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers, and provide continuing in-service education to rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(5) Provide support and assistance to field staff on issues related to the cases of blind and visually impaired and deaf and hard-of-hearing consumers.

(6) Provide technical assistance to the department related to the assistive technology needs of blind and visually impaired and deaf and hard-of-hearing employees and consumers.

(7) Establish and maintain within the department's Internet Web site, a communications system for staff serving blind and visually impaired and deaf and hard-of-hearing consumers for the purpose of sharing resource information, effective practices, and problem solving.

(e) Any program administered in whole or in part by the State Department of Education relative to the transition from school to work for blind and visually impaired and deaf and hard-of-hearing secondary education students shall be conducted in partnership with the division.

19097. (a) Subject to the control of the director, all employees of the department providing services to persons who are blind and visually impaired administered by the division pursuant to this chapter shall be under the exclusive direction and supervision of the deputy director of the division.

(b) The division shall establish criteria and train counselors and supervisors working with persons who are blind and visually impaired and deaf and hard of hearing to ensure they have the specialized knowledge and skills to meet the needs of these persons.

19097.5. The department shall report annually in the fourth quarter of each calendar year to the Blind Advisory Committee on the amount of state and federal funds allocated to direct services governed by this chapter.

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

5473

19098. The Director of Rehabilitation shall, on or before July 1, 2005, and every other year thereafter, report to the Legislature and the Governor on the programs administered by the division. The report shall include statistics on competitive employment placements of persons who are blind or visually impaired.

19098.5. The Director of Rehabilitation shall establish the Blind Advisory Committee to advise the Director of Rehabilitation on means to increase competitive employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services for persons who are blind and visually impaired. A majority of the members shall be blind or visually impaired. Members of the committee who are not blind or visually impaired shall have experience in services to the blind. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the division to persons who are blind and visually impaired.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 11135 of the Government Code proposed by both this bill and AB 3035. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 11135 of the Government Code, and (3) this bill is enacted after AB 3035, in which case Section 2 of this bill shall not become operative.

5474

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

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 200. State policy; purpose

It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

§ 220. Extent of prohibition

No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

§ 231.5. Educational institutions; written policy on sexual harassment

(a) It is the policy of the State of California, pursuant to Section 200, that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. The purpose of this section is to provide notification of the prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies.

(b) Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational institution in this state include this policy in its regular policy statement rather than distribute an additional written document.

(c) The educational institution's written policy on sexual harassment shall include information on where to obtain the specific rules and procedures for reporting charges of sexual harassment and for pursuing available remedies.

(d) A copy of the educational institution's written policy on sexual harassment shall be displayed in a prominent location in the main administrative building or other area of the campus or schoolsite. "Prominent location" means that location, or those locations, in the main administrative building or other area where notices regarding the institution's rules, regulations, procedures, and standards of conduct are posted.

(e) A copy of the educational institution's written policy on sexual harassment, as it pertains to students, shall be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester, or summer session, as applicable.

(f) A copy of the educational institution's written policy on sexual harassment shall be provided for each faculty member, all members of the administrative staff, and all members of the support staff at the beginning of the first quarter or semester of the school year, or at the time that there is a new employee hired.

(g) A copy of the educational institution's written policy on sexual harassment shall appear in any publication of the institution that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the institution.

§ 250. Assurance of compliance; prerequisite to state financial assistance or student financial aid

Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution.

§ 251. Reports

- (a) A school district shall submit timely, complete, and accurate compliance reports to the State Department of Education as that entity may require.
- (b) All reports submitted pursuant to this section shall be made available by the educational institution for public inspection during regular business hours.

§ 253. Compliance review manual inclusion of sex discrimination information; review of selected districts for compliance

(a) Compliance with the sex discrimination provisions of this chapter and regulations adopted pursuant to this chapter shall be included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction. Any review of that compliance shall also include a review of the school district's records of complaints of sexual harassment brought by pupils and employees of the school district.

(b) The superintendent shall annually review 20 school districts for compliance with sex discrimination laws and regulations as specified in subdivision (a). The superintendent shall select from those districts subject to review, in a given year, a sampling of districts from each of the following categories:

(1) Those districts within which the greatest number of sex discrimination complaints have been filed since its previous coordinated compliance review.

(2) Those districts with the largest enrollments.

(3) All other districts, selected on a random basis.

(c) The superintendent and the department shall only be required to implement the provisions enumerated in this section in fiscal years in which sufficient funds have been appropriated for those purposes.

§ 260. Primary responsibility for ensuring that school district programs are free from discrimination; monitoring compliance with rules and regulations

The governing board of a school district shall have the primary responsibility for ensuring that school district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

§ 261. Implementation pursuant to existing regulations and procedures

The provisions of this chapter shall be implemented pursuant to existing regulations and procedures promulgated pursuant to Section 11138 of the Government Code, governing the filing and handling of written complaints of prohibited discrimination.

§ 262.3. Appeals; civil law remedies; notice

(a) A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district pursuant to this article, to the State Department of Education.

(b) Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other remedies or orders may also be available to complainants. The educational institution shall make this information available by publication in appropriate informational materials.

(c) Nothing in this chapter shall be construed to require an exhaustion of the administrative complaint process before civil law remedies may be pursued.

(d) Notwithstanding any other provision of law, a person who alleges that he or she is a victim of discrimination may not seek civil remedies pursuant to this section until at least 60 days have elapsed from the filing of an appeal to the State Department of Education pursuant to Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations. The moratorium imposed by this subdivision does not apply to injunctive relief and is applicable only if the local educational agency has appropriately, and in a timely manner, apprised the complainant of his or her right to file a complaint.

§ 262.4. Civil action

This chapter may be enforced through a civil action.

§ 11135. Programs or activities funded by state; discrimination on basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability; federal act; definition; legislative findings and declarations regarding electronic or information technology

(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, "disability" means any mental or physical disability as defined in Section 12926.

(d)(1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

(Amended by Stats.1992, c. 913 (A.B.1077), § 18; Stats.1994, c. 146 (A.B.3601), § 66; Stats.2001, c. 708 (A.B.677), § 1; Stats.2002, c. 300 (A.B.3035), § 4; Stats.2002, c. 1102 (S.B.105), § 2.5.)

**§ 11136. Notice to contractor, grantee or local agency by state agency;
probable cause to believe violation of statute or regulation;
hearing**

Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

(Added by Stats.1977, c. 972, p. 2942, § 1.)

§ 11137. Action to curtail state funding upon determination of violation

If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

(Added by Stats.1977, c. 972, p. 2943, § 1.)

§ 11138. Rules and regulations

Each state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state and that enters into contracts for the performance of services to be provided to the public in an aggregate amount in excess of one hundred thousand dollars (\$100,000) per year shall, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of this part, adopt such rules and regulations as are necessary to carry out the purpose and provisions of this article.
(Added by Stats.1977, c. 972, p. 2943, § 1.)

§ 11139. Prohibitions and sanctions; construction and enforcement of article

The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

(Amended by Stats.1999, c. 591 (A.B.1670), § 3; Stats.2001, c. 708 (A.B.677), § 2.)

EXHIBIT 4
COPIES OF REGULATIONS CITED

(2) The plan has been approved by the school advisory council established under Section 4423;

(3) In the case of a school district in which there are one or more schools described in subsection (b) and there are also one or more other participating schools, the local educational agency makes EIA funds available for children in such schools described in subsection (b) in amounts which, per educationally disadvantaged child served, equal or exceed the amount of such funds made available per educationally disadvantaged child served in such other schools;

(4) EIA funds may be provided to such schools in amounts which, per child served who is not educationally disadvantaged, equal the amount of funds provided under this section which, per educationally disadvantaged child served, are made available for children in such schools; and

(5) The average per-pupil expenditure in schools described in subsection (b) (excluding amounts expended under this section) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year.

(d) The Superintendent of Public Instruction may approve the plan of any local educational agency for a schoolwide program if that plan meets the requirements of subsection (c).

(e) For any school with an approved plan under this section, the local school district shall be relieved of requirements with respect to:

- (1) Maintaining separate accounting records for each funding source,
- (2) Identifying particular students as being eligible to participate, and
- (3) Demonstrating that services provided from those funding sources are supplementary to the base program. The local district shall, however, demonstrate that the services provided in such schools are substantially greater than services furnished to schools without funding and shall meet all other school plan requirements contained in law and regulations.

NOTE: Authority cited: Sections 54004-54005, Education Code. Reference: 20 U.S.C. 2753.

Article 2. School Security

§ 4502. Improvement of School Security.

School districts may request that the Superintendent of Public Instruction approve a specific portion of the EIA funds they receive be designated for expenditure for noninstructional costs to improve school security. Such noninstructional expenditures may be used to meet costs arising from incidents of vandalism, necessary security costs, insurance costs, and/or other costs directly related to school security. In such application, school districts will specify the amounts of such funds and the purpose of such expenditures. No school district shall request an amount for such purposes which exceeds the portion of \$2,000,000 that the student population (K-12) of such district represents of the student population (K-12) of the state.

NOTE: Authority cited: Section 54007, Education Code. Reference: Section 54007, Education Code.

§ 4503. Alternative Program Options for Special Needs.

(a) EIA funds may be used to carry out any or all of the three alternative special program options permitted by this section subject to the provisions of subsection (b).

(b) Program options permitted by subsections (c), (d), and (e) of this section may only be exercised if:

(1) The school parent advisory council has approved and the district parent advisory council has reviewed the implementation of such option.

(2) The school proposing to exercise such option is a school which is participating in the state compensatory education program.

(3) Not more than 25 percent of a district's EIA allocation is expended to carry out the program options authorized by this section and the schoolwide program options authorized by Sections 4500 and 4501.

(4) A schoolwide needs assessment has been conducted to determine the necessity of providing such option(s).

(c) Students who have been eligible and have participated in compensatory education programs in accordance with the objective criterion es-

tablished by the district pursuant to Sections 4414 and 4415 may continue to participate in such services, even though such student no longer meets the objective criterion, if such student met the objective criterion in either of the two preceding fiscal years.

(d) In schools with more than 50 percent of their students from low income families (determined in accordance with Section 4412), students who do not meet the objective criterion established by the district pursuant to Sections 4414 and 4415, but who test below the 90th percentile (as established through the use of the appropriate test instruments pursuant to Section 4414) may be eligible to receive excess cost services in order that they may be assisted in reaching their full potential.

(e) If adequately documented in a schoolwide needs assessment, a participating SCE school may use EIA funds to conduct a schoolwide project which is explicitly designed to provide assistance to the educationally disadvantaged students attending such schools.

NOTE: Authority cited: Section 54005, Education Code. Reference: Section 54004.1, Education Code.

Subchapter 8. Bilingual Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

- 1. Repealer of Chapter 8 (Sections 4300-4305) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 75, No. 21.

Subchapter 9. Bilingual-Bicultural Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

- 1. Repealer of Chapter 9 (Articles 1-4; Sections 4310-4322, not consecutive) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 77, No. 13.

Chapter 5.1. Uniform Complaint Procedures

Subchapter 1. Complaint Procedures

Article 1. Definitions

§ 4600. General Definitions.

As used in this Chapter, the term:

(a) "Appeal" means a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.

(b) "Complainant" means any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination in programs and activities funded directly by the state or receiving any financial assistance from the state.

(c) "Complaint" means a written and signed statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination. If the complainant is unable to put the complaint in writing, due to conditions such as illiteracy or other handicaps, the public agency shall assist the complainant in the filing of the complaint.

(d) "Complaint Investigation" means an administrative process used by the Department or local agency for the purpose of gathering data regarding the complaint.

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Complaints of discrimination involving Child Nutrition Programs administered by the Department from program participants or applicants shall be referred to either Administrator, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302 or Secretary of Agriculture, Washington, D.C. 20250. Discrimination complaints received by a local agency or the Department shall be immediately directed to U.S. Department of Agriculture, Food and Nutrition Service, Western Regional Office.

(e) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(f) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-27-92 order transmitted to OAL 10-15-92 and filed 10-28-92 (Register 92, No. 44).

4. Change without regulatory effect amending subsection (c), adopting new subsection (d) and relettering subsections filed 12-16-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 51).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 – 76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 – 76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superin-

endent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

[The next page is 52.3.]

circumstances necessitating Department intervention as described at Section 4650 exist.

(2) The complainant(s) shall be sent a letter to notify him, her, or them of 1) the transferred complaint, 2) the State request for local educational agency resolution, and 3) to advise of Department appeal procedures.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 6. Direct State Intervention

§ 4650. Basis of Direct State Intervention.

(a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exists:

(i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;

(ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims.

(iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;

(iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;

(v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;

(vi) The local agency refuses to respond to the Superintendent's request for information regarding a complaint;

(vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.

(viii) For complaints relating to special education the following shall also be conditions for direct state intervention:

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals;

(B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;

(C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.

(D) The Complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP).

(E) The complaint involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

(b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that direct filing to the State is being made.

NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4651. Direct State Intervention Time Line.

When the Superintendent receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct State intervention and shall immediately notify the complainant by mail of his or her determination. If the complaint is not accepted, it shall be referred for local investigation pursuant to section 4631, or referred to another agency pursuant to Section 4611.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4652. Appealing Local Agency Decisions.

(a) Any complainant(s) may appeal a Local Educational Agency Decision to the Superintendent by filing a written appeal with the Superintendent within (15) days of receiving the Local Educational Agency Decision. Extensions for filing appeals may be granted, in writing, for good cause.

(b) The complainant shall specify the reason(s) for appealing the local educational agency decision.

(c) The appeal shall include:

- (1) a copy of the locally filed complaint; and
- (2) a copy of the Local Educational Agency Decision.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 7. State Resolution Procedures

§ 4660. Department Resolution Procedures.

(a) When direct State intervention is warranted pursuant to any provision of section 4650, or when an appeal has been filed of a local agency decision pursuant to Section 4652, the following procedures shall be used to resolve the issues of the complaint:

(1) The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and

(2) The Department shall conduct an on-site investigation if either the district or the complainant waives the mediation process or the mediation fails to resolve the issues.

(b) If the complaint involves several issues, nothing shall prohibit the parties from agreeing to mediate some of the issues while submitting the remainder for Department investigation. Mediation shall be conducted within the 60 day time line specified in Section 4662(d), and

(c) Mediation shall not exceed thirty (30) days unless the local or public agency and the complainant agree to an extension.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4661. Mediation Procedures; State Mediation Agreements; Notice.

(a) Initial process.

(1) Agency and Complainant(s) Notification. Each party in the dispute shall be contacted by the Department and offered the mediation process as a possible means of resolving the complaint. Should the parties agree to enter into mediation, written confirmation shall be sent indicating the time and place of the mediation conference, and the allegations to be addressed.

(2) Upon local agency and complainant acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.

(3) The Superintendent shall appoint a trained mediator or mediation team to assist the parties in reaching a voluntary agreement.

(b) Mediation Results – State Mediation Agreement.

(1) The mediation results will be documented in a state mediation agreement and signed by the involved parties to the dispute using the following forms as appropriate. (Stipulation to Initiate Mediation, Form CS-19; Signed Mediation Agreement Letter to District, Form CS-24; and Mediation Process Agreement, Form CS-25).

(2) The mediator or mediation team shall confirm that the agreement is consistent with all applicable state and federal laws and regulations.

(3) A copy of the written state mediation agreement shall be sent to each party.

(4) The compliance status of a local agency will revert to noncompliance if the local agency does not perform the provisions of the mediation agreement within the time specified in the mediation agreement.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4662. On–Site Investigation Process; Appointment, Notification, Time Line; Extending Investigation Time Lines.

(a) If either party waives mediation or the mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

(b) Appointment.

If an on–site investigation is necessary, an investigator(s) shall be appointed by the Superintendent.

(c) Agency and Complainant(s) Notification

At least two weeks prior to the date of an investigation, each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s). The notice shall explain the investigation process.

(d) Time line.

An investigation shall be completed within sixty (60) days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to mediate and agree to extend the time lines. The Superintendent or his or her designee may grant extensions for the investigation only if exceptional circumstances exist with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation regarding the allegations. The investigator(s) shall interview the complainant(s), agency administrators, staff, related committees/groups, and any other involved persons, as appropriate, to determine the facts in the case. An opportunity shall be provided for the complainant(s), or the complainant's(s') representative, or both, and the agency involved to present information.

(b) Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4664. Department Investigation Report.

An investigation report shall be submitted to the Superintendent for review and approval. The investigation report shall include the following information:

(1) A transmittal Letter that includes information about how the agency or the complainants may appeal the decision to the Office of the State Superintendent;

(2) General procedures of the investigation;

(3) Citations of applicable law and regulations;

(4) Department findings of facts;

(5) Department conclusions;

(6) Department required actions, if applicable;

(7) Department recommended actions, if applicable; and

(8) Time line for corrective actions, if applicable.

(c) Report Time line.

An investigation report shall be mailed to the parties within sixty (60) days from the date of receipt of the request for direct state intervention or an appeal, unless the parties have participated in mediation and agreed to an extension of the mediation time lines or the Superintendent has granted an extension pursuant to Section 4662(d).

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

§ 4665. Discretionary Reconsideration or Appeal of SDE Investigation Report.

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within fifteen (15) days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

(b) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws rather than the Superintendent. Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.

(c) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.1 and 76.780–76.783 and 106.8.

HISTORY

1. New section filed 8–26–91; operative 9–25–91 (Register 92, No. 3).

Article 8. Enforcement—State Procedures to Effect Compliance

§ 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use any means authorized by law to effect compliance, including:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Superintendent has determined that compliance cannot be secured by voluntary means.

(c) If the Superintendent determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in sections 8257(d) or 8400 et seq. of the Education Code and the regulations promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with section 17906), shall be followed.

(d) If the Superintendent determines that a school district or county office has failed to comply with any provision of sections 49550 through 49554 of the Education Code, the Superintendent shall certify such non-compliance to the Attorney General for investigation pursuant to section 49556 of the Education Code.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4671. Federal Review Rights.

If the Superintendent elects to withhold funds from a local agency that refuses or fails to comply in a program governed by 34 CFR Part 76, the Superintendent shall notify the local agency of the decision to withhold funding and of the local agency's rights of appeal pursuant to 34 CFR section 76.401.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Chapter 5.2. Improvement of Elementary and Secondary Education

NOTE: Authority cited: Section 52039, Education Code. Reference: Sections 52013 and 52039(b)(2), Education Code.

HISTORY

1. Expired by own terms 12-31-78 (Register 80, No. 25). For prior history, see Register 77, No. 47.

Chapter 5.3. Nondiscrimination and Educational Equity

Subchapter 1. Nondiscrimination in Elementary and Secondary Educational Programs Receiving State or Federal Financial Assistance

Article 1. General Provisions

§ 4900. Purpose.

(a) The purpose of this Chapter is to ensure compliance with federal and state nondiscrimination laws in any program or activity conducted by an educational institution. Therefore, no person in the State of California shall be subjected to discrimination, or any other form of illegal bias, including harassment. No person shall be excluded from participation in or denied the benefits of any local agency's program or activity on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability in any program or activity conducted by an "educational institution" or any other "local agency," defined in Article 2 (commencing with Section 4910) of this Chapter, which is funded directly by, or that receives or benefits from any state financial assistance.

(b) All educational programs and activities under the jurisdiction of the State Board of Education receiving or benefiting from state or federal

financial assistance shall be available to all qualified persons without regard to sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability

(c) It is the intent of the State Board of Education that the Superintendent of Public Instruction assist school districts and county offices of education to recognize and eliminate unlawful discrimination that may exist within their programs or activities and to meet the requirements of this Chapter. The Superintendent shall meet this responsibility through technical assistance and ensuring compliance pursuant to Chapter 5.1 (commencing with section 4600) of this Title relating to standard complaint procedures.

NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 200, 201, 220, 221.1 and 230, Education Code; Sections 11135-11139.5, Government Code; Section 1681, Title 20, U.S. Code; Section 2000d, Title 42, U.S. Code; and Section 106.1, Title 34, Code of Federal Regulations.

HISTORY

1. New chapter 5.3 (sections 4900-4962, nonconsecutive) filed 12-16-92; operative 1-15-93 (Register 92, No. 51).
2. Amendment of chapter 5.3 heading, subchapter 1 heading, section and NOTE filed 6-13-2001; operative 7-13-2001 (Register 2001, No. 24).

§ 4901. Academic Requirements.

Nothing in this Chapter shall be interpreted to prohibit bona fide academic requirements for participation in a specific educational institution's program, course or activity.

NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 35160.5 and 49067, Education Code; Sections 11135-11139.5, Government Code; Section 1681, Title 20, U.S. Code; Section 2000d, Title 42, U.S. Code; and Section 106, Title 34, Code of Federal Regulations.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).
2. Amendment of section and NOTE filed 6-13-2001; operative 7-13-2001 (Register 2001, No. 24).

§ 4902. State and Local Agency Responsibilities and Obligations.

Except as otherwise stated in this Chapter, the Superintendent of Public Instruction is responsible for providing leadership to local agencies to ensure that the requirements of the following nondiscrimination laws and their related regulations are met in educational programs that receive or benefit from state or federal financial assistance and are under the jurisdiction of the State Board of Education:

- (a) Education Code sections 200 through 253.
- (b) Government Code sections 11135 through 11139.
- (c) The Civil Rights Act of 1964 at Title 42, U.S. Code Sections 2000a et seq.
- (d) Title IX of the Education Amendments of 1972 at Section 1681, Title 20, U.S. Code.
- (e) Section 504 of the Rehabilitation Act of 1973 at Section 794(a), Title 29, U.S. Code.
- (f) Federal Equal Access at Section 4071 et seq., Title 20, U.S. Code.
- (g) Americans with Disabilities Act of 1990 at Sections 12131 et seq., Title 42, U.S. Code.
- (h) Individuals with Disabilities Education Act (Section 1400 et seq., Title 20, U.S. Code).
- (i) Equal Educational Opportunities Act (Section 1701 et seq., Title 20, U.S. Code).

(j) Any and all other federal and state laws and regulations involving assurances that local agencies will not discriminate on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability.

NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138, Government Code. Reference: Sections 200, 201 and 33111, Education Code; Sections 11135-11139.5, Government Code; Section 1681, Title 20, U.S. Code; and Section 2000d, Title 42, U.S. Code.

HISTORY

1. New section filed 12-16-92; operative 1-15-93 (Register 92, No. 51).
2. Amendment of section heading, section and NOTE filed 6-13-2001; operative 7-13-2001 (Register 2001, No. 24).



JACK O'CONNELL
State Superintendent of Public Instruction

CALIFORNIA
DEPARTMENT
OF
EDUCATION

1430 N Street

Sacramento, CA

98514

RECEIVED

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**COMMISSION ON
STATE MANDATES**

November 5, 2003

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

Via Facsimile and U.S. Mail

Dear Ms. Higashi:

This letter is to inform you that the California Department of Education (CDE) has performed an initial review of the test claim entitled Uniform Complaint Procedures (K-12), 03-TC-02, filed by Solana Beach School District.

The claimant asserts on page 2 of the claim that, "Prior to January 1, 1975, there was no statute or regulation which mandated any uniform complaint resolution procedures." Claimant begins to support its claim by setting forth the language of Education Code sections 200 and 220 as added by Chapter 1117, Statutes of 1982, section 1. These code sections generally outline the state's policy that no person shall be subjected to discrimination on the basis of sex under any educational activity or program (see page 3 of the test claim). However, our initial review reveals that similar language existed under federal law as early as 1972 pursuant to 20 USC 1681(a), which states "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..."

Claimant continues to support its claim by setting forth code sections that require educational institutions to perform certain tasks designed to protect against discrimination. For Example, on page 4 of the test claim, claimant asserts that prior to the Statutes of 1982, which added Education Code section 250, there was no requirement that "prior to receipt of any state financial assistance or state student financial aid, an educational institution is required to provide assurance to the agency administering the funds...that each program or activity conducted by the educational institution will be conducted in compliance with...all other applicable provisions of state law prohibiting discrimination on the basis of sex." However, federal regulations adopted in 1980 (34 CFR 106 et seq.), also designed to eliminate discrimination on the basis of sex, required local education agencies to provide similar assurances. Specifically, 34 CFR 106.4(a) states:

“(a) General. Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with section 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.”

Claimant also asserts on page 22 of the test claim that the “Uniform Complaint Procedures” set forth in Title 5, California Code of Regulations, sections 4600-4671, resulted in mandated costs reimbursable by the state. However, a number of the regulations cited by claimant contain provisions already required pursuant to federal regulations. For example, many of the requirements of 5 CCR sections 4620, 4621, and 4622 (see test claim pages 24-26) are provided for, or anticipated by, 34 CFR 106.8 (adopted in 1980), which reads as follows:

“(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.”

The regulations governing test claim filing are set forth in Title 2, California Code of Regulations, section 1181 et seq. Section 1183, subdivision (d)(2) of the regulations requires the claimant to include a “copy of relevant portions of...federal statutes...that may impact the alleged mandate...” The fact that a large portion of the money provided to educational institutions by the state initially flows from the federal government, requires an analysis of federal statutes in order to make a determination of whether a state mandate actually exists. CDE asserts that claimant has failed to include the relevant federal law in its test claim, and therefore, CDE questions the completeness of the test claim. Accordingly, we request that the Commission direct the claimant to accurately provide the information required by the regulations.

As required by the Commission’s regulations, we are including a “Proof of Service” indicating that the parties included on the mailing list, which accompanied your August 5, 2003 letter, have been provided with copies of this letter via United States Mail.

Paula Higashi
November 5, 2003
Page 3

If you have any questions regarding this letter please contact me at (916) 319-0860.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd M. Smith", with a large, stylized flourish extending to the right.

Todd M. Smith
Deputy General Counsel

TS:ac

Enclosure

Proof of Service

Test Claim Name: Uniform Complaint Procedures (K-12)
Test Claim Number: CSM-03-TC-02

I, the undersigned declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 N Street, 5th Floor, Sacramento, CA 95814.

On November 5, 2003, I served the attached recommendation of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof enclosed in a sealed envelop with postage thereon fully prepaid in the United States Mail at Sacramento, California, to claimants and interested parties, addressed as follows:

Mr. Keith B. Petersen SixTen & Associates 5252 Balboa Avenue, Suite 807 San Diego, CA 92117 Tele: (858) 514-8605 Fax: (858) 514-8645	Ms. Ellie Topolovac Solana Beach School District 309 North Rios Avenue Solana Beach, CA 92075-1298 Tele: (858) 794-3914 Fax: (858) 755-0814
Mr. Paul Minney Spector, Middleton, Young & Minney, LLP 7 Park Center Drive Sacramento, CA 95825 Tele: (916) 646-1400 Fax: (916) 646-1300	Ms. Harmeet Barkschat Mandate Resource Services 5325 Elkhorn Blvd., #307 Sacramento, CA 95842 Tele: (916) 727-1350 Fax: (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 987 Sun City, CA 92586 Tele: (909) 672-9964 Fax: (909) 672-9963	Mr. Steve Smith Mandated Cost Systems, Inc. 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670 Tele: (916) 669-0888 Fax (916) 669-0889
Dr. Carol Berg Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814 Tele: (916) 446-7517 Fax: (916) 446-2011	Mr. Arthur Palkowitz San Diego Unified School District 4100 Normal Street, Room 3159 San Diego, CA 92103-8363 Tele: (619) 725-7565 Fax: (619) 725-7569

<p>Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816 Tele: (916) 454-7310 Fax: (916) 454-7312</p>	<p>Ms. Beth Hunter Centration, Inc. 8316 Red Oak Street, Suite 101 Rancho Cucamonga, CA 91730 Tele: (866) 481-2642 Fax: (866) 481-5383</p>
<p>Mr. Michael Havey State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816 Tele: (916) 445-8757 Fax: (916) 323-4807</p>	<p>Mr. Keith Gmeinder Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814 Tele: (916) 445-8913 Fax: (916) 327-0225</p>
<p>Mr. Gerald Shelton California Department of Education (E-08) Fiscal and Administrative Services Division 1430 N Street, Suite 2213 Sacramento, CA 95814 Tele: (916) 445-0554 Fax: (916) 327-8306</p>	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 5, 2003 at Sacramento, California.



Anna Coleman

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

December 5, 2003

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

DEC 08 2003

COMMISSION ON
STATE MANDATES

Re: Test Claim 03-TC-02
Solana Beach School District
Uniform Complaint Procedure (K-12)

Dear Ms. Higashi:

I have received the comments of Todd M. Smith, Deputy General Counsel of the California Department of Education ("CDE") dated November 5, 2003, to which I now respond on behalf of the test claimant.

1. The Comments of the CDE are Incompetent and Should be Excluded

Test claimant objects to the Comments of the CDE, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d), requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The CDE comments do not comply with this essential requirement.

2. When the State Shifts the Costs of Government to Local Agencies, Those Costs are Reimbursable

CDE argues that the test claim programs and duties are mandated by the federal government and, therefore, not reimbursable. It goes on to argue:

“The fact that a large portion of the money provided to educational institutions by the state initially flows from the federal government, requires an analysis of federal statutes in order to make a determination of whether a state mandate actually exists.” (CDE Comments, page 2)

The answer to this argument is found in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, where the court said:

“When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention...

“This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. (Citation) Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government...If the state freely chose 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.

“The...Act (before the court)...leaves primary responsibility for implementation to the state. (Citation) 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 service are state mandated and subject to subvention.

“...the state (can) not avoid its subvention responsibility by pleading ‘federal mandate’ because the federal statute does not require the state to impose the costs of such (programs) upon local agencies...” (Opinion, at pages 1593-1594)

CDE has not attempted to offer any evidence to show that the federal statutes it relies upon impose any duties directly upon school districts. In fact, CDE admits that “a large

portion of the money provided to educational institutions by the state initially flows from the federal government.” It is the new programs or higher levels of service that the state then imposes upon school districts that create a reimbursable mandate requiring subvention.

3. The Code of Federal Regulations Cited by CDE Apply Only to Discrimination on the Basis of Sex

CDE cites Title 34, Code of Federal Regulations, Section 106, et seq. in support of its argument that “some” of the new programs or higher levels of service alleged in the test claim are federally mandated. It makes the same argument to selected sections of Title 5, California Code of Regulations. CDE fails to note that Title 34, Section 106, applies only to discrimination on the basis of sex.

“The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat.1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance...”
(Title 34, Code of Federal Regulations, Section 106.1)¹

As its sole example² to its argument, CDE refers to Education Code Section 250 which it quotes as follows:

“...prior to receipt of any state financial assistance or state student financial aid, an educational institution is required to provide assurance to the agency administering the funds...that each program or activity conducted by the educational institution will be conducted in compliance with...all other applicable provisions of state law prohibiting discrimination on the basis of sex.” (CDE Comments, page 1, text omission in the original, emphasis added)

¹ A copy of Title 34, Volume 1, Code of Federal Regulations (Revised as of July 1, 2003), Chapter 1, Part 106, containing sections 106.1 through 106.9, is attached hereto as Exhibit “A” and is incorporated herein by reference.

² CDE also makes arguments as to Sections 200 and 220, but these sections are not alleged to contain any new programs or higher levels of service. See: Test Claim, Part III, Costs Mandated By The State, commencing at page 39

The emphasized portion of the CDE quotation was deleted in 1998. Section 250³ no longer limits itself to discrimination on the basis of sex and has been expanded to include all forms of discrimination.

The error of CDE's position is further illustrated by that portion of the text which was omitted in its "quote", i.e., "...will be conducted in compliance with...all other applicable provisions of state law prohibiting discrimination on the basis of sex." The full relevant text reads:

"...will be conducted in compliance with *the provisions of this chapter and* all other applicable provisions of state law prohibiting discrimination..."
(Portion omitted by CDE emphasized)

Not only has the scope of Section 250 been expanded to include all forms of discrimination, the portion of the text of the statute omitted by CDE makes it clear that compliance is required with all provisions of the chapter. The chapter referred to is Chapter 2, of Part 1, of Division 1 of Title 1 of the Education Code.

Chapter 2 commences with Education Code Section 200, which, as added in 1982, included "all persons, regardless of their sex, equal rights, and opportunities".⁴ The section was amended in 1998 and 1999⁵ to now also include all persons "regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes

³ Education Code Section 250, added by Chapter 1117, Statutes of 1982, Section 1, as amended by Chapter 914, Statutes of 1998, Section 30:

"Prior to receipt of any state financial assistance or state student financial aid, an educational institution shall provide assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the educational institution will be conducted in compliance with the provisions of this chapter and all other applicable provisions of state law prohibiting discrimination ~~on the basis of sex~~. A single assurance, not more than one page in length and signed by an appropriate responsible official of the educational institution, may be provided for all the programs and activities conducted by an educational institution."

⁴ See: Test Claim, at page 3, lines 4-8 and footnote 1

⁵ See: Test Claim, at page 11, line 13 through page 12, line 1 and footnote 15; and page 15, lines 2-4 and footnote 21.

set forth in subdivision (a) of Section 422.6 of the Penal Code.⁶ The inclusion of Penal Code Section 422.6, by reference, added disability, gender and sexual orientation to the acts constituting discrimination.

So, when alleging a new program or higher level of service relative to Education Code Section 250, test claimant alleges:

“Pursuant to Education Code Section 250, prior to receipt of any state financial assistance or state student financial aid, providing assurance to the agency administering the funds, in the manner required by the funding agency, that each program or activity conducted by the district will be conducted in compliance with the provisions of the chapter and all other applicable provisions of state law prohibiting discrimination.” (Test Claim, page 41, lines 11-16)

⁶ Penal Code Section 422.6, added by Chapter 1277, Statutes 1987, Section 4, amended by Chapter 850, Statutes 1998, Section 1.

“(a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.”

The new program or higher level of service alleged refers specifically to the provisions of the chapter and all other applicable provisions of state law prohibiting discrimination. CDE's claim of "federal mandate" because of a federal regulation prohibiting discrimination based solely upon sex, just does not apply.

4. Test Claimant Has Complied with Title 2 Requirements, CDE Has Not

Citing Title 2, California Code of Regulations, Section 1183, subdivision (d)(2), CDE complains that test claimant has not included a "copy of relevant portions of...federal statutes...that may impact the alleged mandate..." (CDE Comments, page 3) First of all, the correct citation is subdivision (e)(2). Secondly, there is a reason for the omission, it was intentional because test claimant does not believe there are any federal statutes that may impact the alleged mandate. (See: discussion of *Hayes v. Commission on State Mandates* in part 2, supra)

This is an interesting objection on behalf of CDE. Title 2, California Code of Regulations Section 1183.02, subdivision (c)(2), requires that any affected agency, when reviewing and responding to a test claim, to include a copy of "relevant portions of ...federal statutes...that may impact the alleged mandate..." CDE has not done so.

5. CDE Has No Comments to a Majority of the Test Claim

The test claim cites 10 Education Code sections, 5 Government Code Sections and 20 Sections of Title 5, California Code of Regulations as the basis for alleging new programs and higher levels of service. The comments of the CDE respond to but 3 Education Code Sections and 3 Title 5 sections. On the basis of the doctrine of "admission by omission", test claimant must assume that CDE has no objection to those portions of the test claim omitted from its comments.

CERTIFICATION

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

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Uniform Complaint Procedure (K-12) 03-TC-02
CLAIMANT: Solana Beach School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of December 5, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
FAX: (916) 445-0278

AND per mailing list attached

- | | |
|---|--|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____ (Describe)</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |
|---|--|

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 12/5/03, at San Diego, California.



Diane Bramwell

EXHIBIT A
TITLE 34, CODE OF FEDERAL REGULATIONS
PART 106

[Code of Federal Regulations]
[Title 34, Volume 1]
[Revised as of July 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 34CFR106]

[Page 391-396]

TITLE 34--EDUCATION

CHAPTER I--OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 106--NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE--Table of Contents

Subpart A--Introduction

Sec. 106.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93-568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93-568, 88 Stat. 1855, and sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93-380)

Sec. 106.2 Definitions.

As used in this part, the term:

(a) Title IX means title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) Department means the Department of Education.

(c) Secretary means the Secretary of Education.

(d) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department.

(e) Reviewing Authority means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

[[Page 392]]

(f) Administrative law judge means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) Federal financial assistance means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or

repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) Program or activity and program means all of the operations of--

(1) (i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h) (1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

(i) Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(j) Applicant means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(k) Educational institution means a local educational agency (LEA) as defined by section 1001(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), a preschool, a private elementary or

secondary school, or an applicant or recipient of the type

[[Page 393]]

defined by paragraph (l), (m), (n), or (o) of this section.

(1) Institution of graduate higher education means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(m) Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(n) Institution of professional education means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary.

(o) Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(p) Administratively separate unit means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(q) Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(r) Student means a person who has gained admission.

(s) Transition plan means a plan subject to the approval of the Secretary pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Sec. 106.3 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of such discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) Self-evaluation. Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students,

[[Page 394]]

treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Assistant Secretary upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 106.4 Assurance required.

(a) General. Every application for Federal financial assistance shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Assistant Secretary, that the education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Assistant Secretary if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with Sec. 106.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Assistant Secretary of such assurance.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) Form. The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 45 FR 86298, Dec. 30, 1980; 65 FR 68056, Nov. 13, 2000]

Sec. 106.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of **subpart** B of this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 106.6 Effect of other requirements.

(a) Effect of other Federal provisions. The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 292d and 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act

[[Page 395]]

(29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Authority: Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) Effect of State or local law or other requirements. The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) Effect of rules or regulations of private organizations. The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives Federal financial assistance.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Sec. 106.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 106.8 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Sec. 106.9 Dissemination of policy.

(a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Assistant Secretary finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless **Subpart C** does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to Sec. 106.8, or to the Assistant Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a) (1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers;

[[Page 396]]

(ii) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) Publications. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Authority: Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[45 FR 30955, May 9, 1980, as amended at 65 FR 68056, Nov. 13, 2000]

Commission on State Mandates

Original List Date: 8/5/2003

Mailing Information: Other

Last Updated:

List Print Date: 10/03/2003

Mailing List

Claim Number: 03-TC-02

Issue: Uniform Complaints Procedures (K-12)

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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January 8, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: No. CSM. 03-TC-02
Uniform Complaint Procedures (K-12)

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

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8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11	Supplement to the:)	No. CSM. 03-TC -02
12)	
13	Test Claim Filed July 28, 2003	)	<u>Uniform Complaint Procedures (K-12)</u>
14)	
15		)	History Index for
16		)	Title 5, California Code of Regulations
17	by Solana Beach School District)	
18)	
19		)	Section 4600
20		)	Section 4610
21		)	Section 4611
22		)	Section 4620
23		)	Section 4621
24		)	Section 4622
25		)	Section 4630
26		)	Section 4631
27		)	Section 4632
28		)	Section 4640
29		)	Section 4650
30		)	Section 4651
31		)	Section 4652
32		)	Section 4660
33		)	Section 4661
34		)	Section 4662
35		)	Section 4663
36		)	Section 4664
37		)	Section 4665
38		)	Section 4670
39)	
40)	

1 SUPPLEMENTAL INFORMATION

2 This supplement to the test claim provides an index and copy of each change to
3 the Title 5, CCR, sections included in the test claim. The Registers cited are attached
4 as Exhibit A. Amended language is underlined (new language) or stricken out (deleted
5 language).

6 HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

- 7 **Register 92-03** § 4600: New section added.
8 § 4610: New section added.
9 § 4611: New section added.
10 § 4620: New section added.
11 § 4621: New section added.
12 § 4622: New section added.
13 § 4630: New section added.
14 § 4631: New section added.
15 § 4632: New section added.
16 § 4640: New section added.
17 § 4650: New section added.
18 § 4651: New section added.
19 § 4652: New section added.
20 § 4660: New section added.
21 § 4661: New section added.
22 § 4662: New section added.

- 1 § 4663: New section added.
- 2 § 4664: New section added.
- 3 § 4665: New section added.
- 4 § 4670: New section added.
- 5 § 4671: New section added.
- 6 **Register 92-18** § 4611: Amendment of subsection (a) and NOTE as an
7 emergency.
- 8 **Register 92-44** § 4611: Certificate of Compliance transmitted to OAL and filed
9 10-28-92.
- 10 **Register 93-51** § 4611: Change without regulatory effect amending subsection
11 (c), adopting new subsection (d) and relettering
12 subsections, pursuant to Title 1, Section 100, California
13 Code of Regulations.
- 14 **Subsequent Registers:** There may be changes to the regulations after the date the
15 test claim was filed; which are not included.

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CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 8th day of January 2008, at Sacramento, California



FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

Title 5, CCR, 92-03

§ 4600
§ 4610
§ 4611
§ 4620
§ 4621
§ 4622
§ 4630
§ 4632
§ 4640
§ 4650

§ 4651
§ 4652
§ 4660
§ 4661
§ 4662
§ 4663
§ 4664
§ 4665
§ 4670

(2) The plan has been approved by the school advisory council established under Section 4423;

(3) In the case of a school district in which there are one or more schools described in subsection (b) and there are also one or more other participating schools, the local educational agency makes EIA funds available for children in such schools described in subsection (b) in amounts which, per educationally disadvantaged child served, equal or exceed the amount of such funds made available per educationally disadvantaged child served in such other schools;

(4) EIA funds may be provided to such schools in amounts which, per child served who is not educationally disadvantaged, equal the amount of funds provided under this section which, per educationally disadvantaged child served, are made available for children in such schools; and

(5) The average per-pupil expenditure in schools described in subsection (b) (excluding amounts expended under this section) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year.

(d) The Superintendent of Public Instruction may approve the plan of any local educational agency for a schoolwide program if that plan meets the requirements of subsection (c).

(e) For any school with an approved plan under this section, the local school district shall be relieved of requirements with respect to:

- (1) Maintaining separate accounting records for each funding source,
- (2) Identifying particular students as being eligible to participate, and
- (3) Demonstrating that services provided from those funding sources are supplementary to the base program. The local district shall, however, demonstrate that the services provided in such schools are substantially greater than services furnished to schools without funding and shall meet all other school plan requirements contained in law and regulations.

NOTE: Authority cited: Sections 54004-54005, Education Code. Reference: 20 U.S.C. 2753.

Article 2. School Security

§ 4502. Improvement of School Security.

School districts may request that the Superintendent of Public Instruction approve a specific portion of the EIA funds they receive be designated for expenditure for noninstructional costs to improve school security. Such noninstructional expenditures may be used to meet costs arising from incidents of vandalism, necessary security costs, insurance costs, and/or other costs directly related to school security. In such application, school districts will specify the amounts of such funds and the purpose of such expenditures. No school district shall request an amount for such purposes which exceeds the portion of \$2,000,000 that the student population (K-12) of such district represents of the student population (K-12) of the state.

NOTE: Authority cited: Section 54007, Education Code. Reference: Section 54007, Education Code.

§ 4503. Alternative Program Options for Special Needs.

(a) EIA funds may be used to carry out any or all of the three alternative special program options permitted by this section subject to the provisions of subsection (b).

(b) Program options permitted by subsections (c), (d), and (e) of this section may only be exercised if:

(1) The school parent advisory council has approved and the district parent advisory council has reviewed the implementation of such option.

(2) The school proposing to exercise such option is a school which is participating in the state compensatory education program.

(3) Not more than 25 percent of a district's EIA allocation is expended to carry out the program options authorized by this section and the schoolwide program options authorized by Sections 4500 and 4501.

(4) A schoolwide needs assessment has been conducted to determine the necessity of providing such option(s).

(c) Students who have been eligible and have participated in compensatory education programs in accordance with the objective criterion est-

ablished by the district pursuant to Sections 4414 and 4415 may continue to participate in such services, even though such student no longer meets the objective criterion, if such student met the objective criterion in either of the two preceding fiscal years.

(d) In schools with more than 50 percent of their students from low income families (determined in accordance with Section 4412), students who do not meet the objective criterion established by the district pursuant to Sections 4414 and 4415, but who test below the 90th percentile (as established through the use of the appropriate test instruments pursuant to Section 4414) may be eligible to receive excess cost services in order that they may be assisted in reaching their full potential.

(e) If adequately documented in a schoolwide needs assessment, a participating SCE school may use EIA funds to conduct a schoolwide project which is explicitly designed to provide assistance to the educationally disadvantaged students attending such schools.

NOTE: Authority cited: Section 54005, Education Code. Reference: Section 54004.1, Education Code.

Subchapter 8. Bilingual Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

1. Repealer of Chapter 8 (Sections 4300-4305) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 75, No. 21.

Subchapter 9. Bilingual-Bicultural Education Programs

NOTE: Authority cited: Section 54020, Education Code. Reference: Section 54004.7, Education Code.

HISTORY

1. Repealer of Chapter 9 (Articles 1-4; Sections 4310-4322, not consecutive) filed 9-5-79; effective thirtieth day thereafter (Register 79, No. 36). For history of former chapter, see Registers 78, No. 20; 77, No. 39; and 77, No. 13.

Chapter 5.1. Uniform Complaint Procedures

Subchapter 1. Complaint Procedures

Article 1. Definitions

§ 4600. General Definitions.

As used in this Chapter, the term:

(a) "Appeal" means a request made in writing to a level higher than the original reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of the lower adjudicating body's decision.

(b) "Complainant" means any individual, including a person's duly authorized representative or an interested third party, public agency, or organization who files a written complaint alleging violation of federal or state laws or regulations, including allegations of unlawful discrimination in programs and activities funded directly by the state or receiving any financial assistance from the state.

(c) "Complaint" means a written and signed statement alleging a violation of a federal or state law or regulation, which may include an allegation of unlawful discrimination. If the complainant is unable to put the complaint in writing, due to conditions such as illiteracy or other handicaps, the public agency shall assist the complainant in the filing of the complaint.

(d) "Complaint Investigation" means an administrative process used by the Department or local agency for the purpose of gathering data regarding the complaint.

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency.

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Child Nutrition Programs or Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(e) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Section 33031, Education Code; Section 11138, Government Code; Sections 71020 and 71025, Education Code. Reference: Sections 11135, 11136, and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) re-

responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superintendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless circumstances necessitating Department intervention as described at Section 4650 exist.

(2) The complainant(s) shall be sent a letter to notify him, her, or them of 1) the transferred complaint, 2) the State request for local educational agency resolution, and 3) to advise of Department appeal procedures.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 6. Direct State Intervention

§ 4650. Basis of Direct State Intervention.

(a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exists:

(i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;

(ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims.

(iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;

(iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;

(v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;

(vi) The local agency refuses to respond to the Superintendent's request for information regarding a complaint;

(vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.

(viii) For complaints relating to special education the following shall also be conditions for direct state intervention:

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals;

(B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;

(C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.

(D) The Complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP).

(E) The complaint involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

(b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that direct filing to the State is being made.
NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4651. Direct State Intervention Time Line.

When the Superintendent receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct

State intervention and shall immediately notify the complainant by mail of his or her determination. If the complaint is not accepted, it shall be referred for local investigation pursuant to section 4631, or referred to another agency pursuant to Section 4611.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4652. Appealing Local Agency Decisions.

(a) Any complainant(s) may appeal a Local Educational Agency Decision to the Superintendent by filing a written appeal with the Superintendent within (15) days of receiving the Local Educational Agency Decision. Extensions for filing appeals may be granted, in writing, for good cause.

(b) The complainant shall specify the reason(s) for appealing the local educational agency decision.

(c) The appeal shall include:

(1) a copy of the locally filed complaint; and

(2) a copy of the Local Educational Agency Decision.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 7. State Resolution Procedures

§ 4660. Department Resolution Procedures.

(a) When direct State intervention is warranted pursuant to any provision of section 4650, or when an appeal has been filed of a local agency decision pursuant to Section 4652, the following procedures shall be used to resolve the issues of the complaint:

(1) The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and

(2) The Department shall conduct an on-site investigation if either the district or the complainant waives the mediation process or the mediation fails to resolve the issues.

(b) If the complaint involves several issues, nothing shall prohibit the parties from agreeing to mediate some of the issues while submitting the remainder for Department investigation. Mediation shall be conducted within the 60 day time line specified in Section 4662(d), and

(c) Mediation shall not exceed thirty (30) days unless the local or public agency and the complainant agree to an extension.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4661. Mediation Procedures; State Mediation Agreements; Notice.

(a) Initial process.

(1) Agency and Complainant(s) Notification. Each party in the dispute shall be contacted by the Department and offered the mediation process as a possible means of resolving the complaint. Should the parties agree to enter into mediation, written confirmation shall be sent indicating the time and place of the mediation conference, and the allegations to be addressed.

(2) Upon local agency and complainant acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.

(3) The Superintendent shall appoint a trained mediator or mediation team to assist the parties in reaching a voluntary agreement.

(b) Mediation Results - State Mediation Agreement.

(1) The mediation results will be documented in a state mediation agreement and signed by the involved parties to the dispute using the fol-

lowing forms as appropriate. (Stipulation to Initiate Mediation, Form CS-19; Signed Mediation Agreement Letter to District, Form CS-24; and Mediation Process Agreement, Form CS-25).

(2) The mediator or mediation team shall confirm that the agreement is consistent with all applicable state and federal laws and regulations.

(3) A copy of the written state mediation agreement shall be sent to each party.

(4) The compliance status of a local agency will revert to noncompliance if the local agency does not perform the provisions of the mediation agreement within the time specified in the mediation agreement.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4662. On-Site Investigation Process; Appointment, Notification, Time Line; Extending Investigation Time Lines.

(a) If either party waives mediation or the mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

(b) Appointment.

If an on-site investigation is necessary, an investigator(s) shall be appointed by the Superintendent.

(c) Agency and Complainant(s) Notification

At least two weeks prior to the date of an investigation, each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s). The notice shall explain the investigation process.

(d) Time line.

An investigation shall be completed within sixty (60) days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to mediate and agree to extend the time lines. The Superintendent or his or her designee may grant extensions for the investigation only if exceptional circumstances exist with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation regarding the allegations. The investigator(s) shall interview the complainant(s), agency administrators, staff, related committees/groups, and any other involved persons, as appropriate, to determine the facts in the case. An opportunity shall be provided for the complainant(s), or the complainant's(s') representative, or both, and the agency involved to present information.

(b) Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4664. Department Investigation Report.

An investigation report shall be submitted to the Superintendent for review and approval. The investigation report shall include the following information:

(1) A transmittal Letter that includes information about how the agency or the complainants may appeal the decision to the Office of the State Superintendent;

(2) General procedures of the investigation;

(3) Citations of applicable law and regulations;

(4) Department findings of facts;

(5) Department conclusions;

(6) Department required actions, if applicable;

(7) Department recommended actions, if applicable; and

(8) Time line for corrective actions, if applicable.

(c) Report Time line.

An investigation report shall be mailed to the parties within sixty (60) days from the date of receipt of the request for direct state intervention or an appeal, unless the parties have participated in mediation and agreed to an extension of the mediation time lines or the Superintendent has granted an extension pursuant to Section 4662(d).

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4665. Discretionary Reconsideration or Appeal of SDE Investigation Report.

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within fifteen (15) days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

(b) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws rather than the Superintendent. Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.

(c) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.1 and 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 8. Enforcement—State Procedures to Effect Compliance

§ 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use any means authorized by law to effect compliance, including:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Superintendent has determined that compliance cannot be secured by voluntary means.

(c) If the Superintendent determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in sections 8257(d) or 8400 et seq. of the Education Code and the regulations

promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with section 17906), shall be followed.

(d) If the Superintendent determines that a school district or county office has failed to comply with any provision of sections 49550 through 49554 of the Education Code, the Superintendent shall certify such non-compliance to the Attorney General for investigation pursuant to section 49556 of the Education Code.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4671. Federal Review Rights.

If the Superintendent elects to withhold funds from a local agency that refuses or fails to comply in a program governed by 34 CFR Part 76, the Superintendent shall notify the local agency of the decision to withhold funding and of the local agency's rights of appeal pursuant to 34 CFR section 76.401.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Chapter 5.2. Improvement of Elementary and Secondary Education

NOTE: Authority cited: Section 52039, Education Code. Reference: Sections 52013 and 52039(b)(2), Education Code.

HISTORY

1. Expired by own terms 12-31-78 (Register 80, No. 25). For prior history, see Register 77, No. 47.

Chapter 6. Certified Personnel

Subchapter 1. General Provisions

Article 1. Code of Ethics of the Teaching Profession

HISTORY

1. Amendment and renumbering of Article 1 (Sections 5480-5485) to Article 7 (Sections 80130-80132) of Chapter 1 of Part VII, filed 12-16-77; effective thirtieth day thereafter (Register 77, No. 51). For prior history, see Register 77, No. 21; and Register 70, No. 17.

Article 2. Employment and Dismissal

§ 5500. Statement a Condition to Employment.

The governing board shall not employ a person in a position requiring certification qualifications unless the person first files with the governing board his statement in writing that he has not entered into a valid contract

[The next page is 53.]

Title 5, CCR, Register 92-18

§ 4611

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

- (i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;
- (ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);
- (iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;
- (iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;
- (v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;
- (vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and
- (vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Child Nutrition Programs or Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(e) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).
2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Of-

ofices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superintendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

circumstances necessitating Department intervention as described at Section 4650 exist.

(2) The complainant(s) shall be sent a letter to notify him, her, or them of 1) the transferred complaint, 2) the State request for local educational agency resolution, and 3) to advise of Department appeal procedures.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 6. Direct State Intervention

§ 4650. Basis of Direct State Intervention.

(a) The Superintendent shall directly intervene without waiting for local agency action if one or more of the following conditions exists:

(i) The complaint includes an allegation, and the Department verifies, that a local educational agency failed to comply with the complaint procedures required by this Chapter;

(ii) Discrimination is alleged by the complainant and the facts alleged indicate that the complainant will suffer an immediate loss of some benefit such as employment or education if the Department does not intervene. However, nothing in this section gives the Department jurisdiction over employment discrimination claims.

(iii) The complaint relates to agencies other than local educational agencies funded through the Child Development and Child Nutrition Programs;

(iv) The complainant requests anonymity and presents clear and convincing evidence and the Department verifies that he or she would be in danger of retaliation if a complaint were filed locally, or has been retaliated against because of past or present complaints;

(v) The complainant alleges that the local educational agency failed or refused to implement the final decision resulting from its local investigation or local Mediation Agreement;

(vi) The local agency refuses to respond to the Superintendent's request for information regarding a complaint;

(vii) The complainant alleges and the Department verifies, or the Department has information that no action has been taken by the local educational agency within 60 calendar days of the date the complaint was filed locally.

(viii) For complaints relating to special education the following shall also be conditions for direct state intervention:

(A) The complainant alleges that a public agency, other than a local educational agency, as specified in Government Code section 7570 et seq., fails or refuses to comply with an applicable law or regulation relating to the provision of free appropriate public education to handicapped individuals;

(B) The complainant alleges that the local educational agency or public agency fails or refuses to comply with the due process procedures established pursuant to federal and state law and regulation; or has failed or refused to implement a due process hearing order;

(C) The complainant alleges facts that indicate that the child or group of children may be in immediate physical danger or that the health, safety or welfare of a child or group of children is threatened.

(D) The Complainant alleges that a handicapped pupil is not receiving the special education or related services specified in his or her Individualized Educational Program (IEP).

(E) The complaint involves a violation of federal law governing special education, 20 U.S.C. section 1400 et seq., or its implementing regulations.

(b) The complaint shall identify upon which basis, as described in paragraph (a) of this section, that direct filing to the State is being made.

NOTE: Authority cited: Section 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4651. Direct State Intervention Time Line.

When the Superintendent receives a complaint requesting direct State intervention, the Superintendent shall determine whether the complaint meets one or more of the criterion specified in Section 4650 for direct State intervention and shall immediately notify the complainant by mail of his or her determination. If the complaint is not accepted, it shall be referred for local investigation pursuant to section 4631, or referred to another agency pursuant to Section 4611.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4652. Appealing Local Agency Decisions.

(a) Any complainant(s) may appeal a Local Educational Agency Decision to the Superintendent by filing a written appeal with the Superintendent within (15) days of receiving the Local Educational Agency Decision. Extensions for filing appeals may be granted, in writing, for good cause.

(b) The complainant shall specify the reason(s) for appealing the local educational agency decision.

(c) The appeal shall include:

(1) a copy of the locally filed complaint; and

(2) a copy of the Local Educational Agency Decision.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 7. State Resolution Procedures

§ 4660. Department Resolution Procedures.

(a) When direct State intervention is warranted pursuant to any provision of section 4650, or when an appeal has been filed of a local agency decision pursuant to Section 4652, the following procedures shall be used to resolve the issues of the complaint:

(1) The Department shall offer to mediate the dispute which may lead to a state mediation agreement; and

(2) The Department shall conduct an on-site investigation if either the district or the complainant waives the mediation process or the mediation fails to resolve the issues.

(b) If the complaint involves several issues, nothing shall prohibit the parties from agreeing to mediate some of the issues while submitting the remainder for Department investigation. Mediation shall be conducted within the 60 day time line specified in Section 4662(d), and

(c) Mediation shall not exceed thirty (30) days unless the local or public agency and the complainant agree to an extension.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4661. Mediation Procedures; State Mediation Agreements; Notice.

(a) Initial process.

(1) Agency and Complainant(s) Notification. Each party in the dispute shall be contacted by the Department and offered the mediation process as a possible means of resolving the complaint. Should the parties agree to enter into mediation, written confirmation shall be sent indicating the time and place of the mediation conference, and the allegations to be addressed.

(2) Upon local agency and complainant acceptance of the Department's offer to mediate, the allegations to be addressed shall be sent by certified mail to each party.

(3) The Superintendent shall appoint a trained mediator or mediation team to assist the parties in reaching a voluntary agreement.

(b) **Mediation Results – State Mediation Agreement.**

(1) The mediation results will be documented in a state mediation agreement and signed by the involved parties to the dispute using the following forms as appropriate. (Stipulation to Initiate Mediation, Form CS-19; Signed Mediation Agreement Letter to District, Form CS-24; and Mediation Process Agreement, Form CS-25).

(2) The mediator or mediation team shall confirm that the agreement is consistent with all applicable state and federal laws and regulations.

(3) A copy of the written state mediation agreement shall be sent to each party.

(4) The compliance status of a local agency will revert to noncompliance if the local agency does not perform the provisions of the mediation agreement within the time specified in the mediation agreement.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4662. On-Site Investigation Process; Appointment, Notification, Time Line; Extending Investigation Time Lines.

(a) If either party waives mediation or the mediation fails, in part or in whole, those remaining unresolved issues shall be addressed through the investigation process.

(b) **Appointment.**

If an on-site investigation is necessary, an investigator(s) shall be appointed by the Superintendent.

(c) **Agency and Complainant(s) Notification**

At least two weeks prior to the date of an investigation, each party in the dispute shall be sent written notification by the Department of the name(s) of the investigator(s) and the investigation date(s). The notice shall explain the investigation process.

(d) **Time line.**

An investigation shall be completed within sixty (60) days after receiving a request for direct intervention or an appeal request, unless the parties have agreed to mediate and agree to extend the time lines. The Superintendent or his or her designee may grant extensions for the investigation only if exceptional circumstances exist with respect to the particular complaint, and provided that the complainant is informed of the extension and the reasons therefore and provided that the facts supporting the extension are documented and maintained in the complaint file.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation regarding the allegations. The investigator(s) shall interview the complainant(s), agency administrators, staff, related committees/groups, and any other involved persons, as appropriate, to determine the facts in the case. An opportunity shall be provided for the complainant(s), or the complainant's(s') representative, or both, and the agency involved to present information.

(b) Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4664. Department Investigation Report.

An investigation report shall be submitted to the Superintendent for review and approval. The investigation report shall include the following information:

(1) A transmittal Letter that includes information about how the agency or the complainants may appeal the decision to the Office of the State Superintendent;

(2) General procedures of the investigation;

(3) Citations of applicable law and regulations;

(4) Department findings of facts;

(5) Department conclusions;

(6) Department required actions, if applicable;

(7) Department recommended actions, if applicable; and

(8) Time line for corrective actions, if applicable.

(c) **Report Time line.**

An investigation report shall be mailed to the parties within sixty (60) days from the date of receipt of the request for direct state intervention or an appeal, unless the parties have participated in mediation and agreed to an extension of the mediation time lines or the Superintendent has granted an extension pursuant to Section 4662(d).

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4665. Discretionary Reconsideration or Appeal of SDE Investigation Report.

(a) Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The Superintendent may, within fifteen (15) days of receipt of the request, respond in writing to the parties either modifying the conclusions or required corrective actions of the Department report or denying the request outright. During the pending of the Superintendent's reconsideration, the Department report remains in effect and enforceable.

(b) Appeals by private agencies regarding Child Care Food Programs shall be made to the State Office of Administrative Hearings in accordance with applicable laws rather than the Superintendent. Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in Division 19 of Title 5 of the Code of California Regulations.

(c) For those programs governed by Part 76 of Title 34 of the Code of Federal Regulations, the parties shall be notified of the right to appeal to the United States Secretary of Education.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.1 and 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 8. Enforcement—State Procedures to Effect Compliance

§ 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Superintendent shall notify the local agency of the action he or she will take to effect compliance. The Superintendent may use any means authorized by law to effect compliance, including:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Superintendent has determined that compliance cannot be secured by voluntary means.

(c) If the Superintendent determines that a Child Development Contractor's Agreement shall be terminated, the procedures set forth in sections 8257(d) or 8400 et seq. of the Education Code and the regulations promulgated pursuant thereto (Chapter 19 of Title 5, CCR, commencing with section 17906), shall be followed.

(d) If the Superintendent determines that a school district or county office has failed to comply with any provision of sections 49550 through 49554 of the Education Code, the Superintendent shall certify such non-compliance to the Attorney General for investigation pursuant to section 49556 of the Education Code.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4671. Federal Review Rights.

If the Superintendent elects to withhold funds from a local agency that refuses or fails to comply in a program governed by 34 CFR Part 76, the Superintendent shall notify the local agency of the decision to withhold funding and of the local agency's rights of appeal pursuant to 34 CFR section 76.401.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Chapter 5.2. Improvement of Elementary and Secondary Education

NOTE: Authority cited: Section 52039, Education Code. Reference: Sections 52013 and 52039(b)(2), Education Code.

HISTORY

1. Expired by own terms 12-31-78 (Register 80, No. 25). For prior history, see Register 77, No. 47.

Chapter 6. Certified Personnel

Subchapter 1. General Provisions

Article 1. Code of Ethics of the Teaching Profession

HISTORY

1. Amendment and renumbering of Article 1 (Sections 5480-5485) to Article 7 (Sections 80130-80132) of Chapter 1 of Part VIII, filed 12-16-77; effective thirtieth day thereafter (Register 77, No. 51). For prior history, see Register 77, No. 21; and Register 70, No. 17.

Article 2. Employment and Dismissal

§ 5500. Statement a Condition to Employment.

The governing board shall not employ a person in a position requiring certification qualifications unless the person first files with the governing board his statement in writing that he has not entered into a valid contract

[The next page is 53.]

Title 5, CCR, Register 92-44

§ 4611

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (l), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Child Nutrition Programs or Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(e) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-27-92 order transmitted to OAL 10-15-92 and filed 10-28-92 (Register 92, No. 44).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimina-

tion remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Superintendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Lines, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

Title 5, CCR, Register 93-51

§ 4611

(e) "Complaint Procedure" means an internal process used by the Department or local agency to process and resolve complaints.

(f) "Compliance Agreement" means an agreement between the Department and a local agency, following a finding of noncompliance by the Department, developed by the local agency and approved by Department to resolve the noncompliance.

(g) "Days" means calendar days unless designated otherwise.

(h) "Department" means the California Department of Education.

(i) "Direct State Intervention" means the steps taken by the Department to initially investigate complaints or effect compliance.

(j) "Local Agency" means a school district governing board or a local public or private agency which receives direct or indirect funding or any other financial assistance from the state to provide any school programs or activities or special education or related services. "Local educational agency" includes any public school district and county office of education.

(k) "Mediation" means a problem-solving activity whereby a third party assists the parties to a dispute in resolving the problem.

(l) "State Mediation Agreement" means a written, voluntary agreement, approved by the Department, which is developed by the local agency and complainant with assistance from the Department to resolve an allegation of noncompliance.

(m) "State Agency" means the State Departments of Mental Health or Health Services or any other state administrative unit that is or may be required to provide special education or related services to handicapped pupils pursuant to Government Code section 7570 et seq.

(n) "Superintendent" means the Superintendent of Public Instruction or his or her designee.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 210, 220, and 260, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 2. Purpose and Scope

§ 4610. Purpose and Scope.

(a) This Chapter applies to the filing, investigation and resolution of a complaint regarding an alleged violation by a local agency of federal or state law or regulations governing educational programs, including allegations of unlawful discrimination, in accordance with the provisions of Title 34, CFR, Sections 76.780-783 and 106.8; Title 22, CCR, Sections 98300-98382; and California Education Code Sections 49556 and 8257. The purpose of this Chapter is to establish a uniform system of complaint processing for specified programs or activities which receive state or federal funding.

(b) This Chapter applies to the following programs administered by the Department:

(i) Adult Basic Education established pursuant to Education Code sections 8500 through 8538 and 52500 through 52616.5;

(ii) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a);

(iii) Migrant Education established pursuant to Education Code sections 54440 through 54445;

(iv) Vocational Education established pursuant to Education Code sections 52300 through 52480;

(v) Child Care and Development programs established pursuant to Education Code sections 8200 through 8493;

(vi) Child Nutrition programs established pursuant to Education Code sections 49490 through 49560; and

(vii) Special Education programs established pursuant to Education Code sections 56000 through 56885 and 59000 through 59300.

(c) This Chapter also applies to the filing of complaints which allege unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or

activity conducted by a local agency, which is funded directly by, or that receives or benefits from any state financial assistance.

NOTE: Authority cited: Sections 232, 8261, 33031, 49531, 49551, 54445, 52355, 52451, and 56100(a) and (j), Education Code; Section 11138, Government Code. Reference: Sections 210, 220, 260, and 49556, Education Code; Sections 11135 and 11138, Government Code.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4611. Referring Complaint Issues to Other Appropriate State or Federal Agencies.

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this Chapter unless these procedures are made applicable by separate interagency agreements:

(a) Allegations of child abuse shall be referred to the applicable County Department of Social Services (DSS), Protective Services Division or appropriate law enforcement agency. However, nothing in this section relieves the Department from investigating complaints pursuant to section 4650(a)(viii)(C).

(b) Health and safety complaints regarding a Child Development Program shall be referred to Department of Social Services for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities.

(c) Discrimination issues involving Title IX of the Educational Amendments of 1972 shall be referred to the U.S. Office of Civil Rights (OCR). Title IX complainants will only be referred to the OCR if there is no state discrimination law or regulation at issue. Unless otherwise negotiated through a memorandum of understanding/agreement, a preliminary inquiry and/or investigation concerning these complaints will be conducted by OCR. The complainant shall be notified by certified mail if his or her complaint is transferred to OCR by the Superintendent.

(d) Complaints of discrimination involving Child Nutrition Programs administered by the Department from program participants or applicants shall be referred to either Administrator, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302 or Secretary of Agriculture, Washington, D.C. 20250. Discrimination complaints received by a local agency or the Department shall be immediately directed to U.S. Department of Agriculture, Food and Nutrition Service, Western Regional Office.

(e) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to Title 22, CCR, Section 98410. The complainant shall be notified by certified mail of any DFEH transferral.

(f) Allegations of fraud shall be referred to the responsible Department Division Director and the Department's Legal Office.

NOTE: Authority cited: Sections 33031, 71020 and 71025, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government Code; 34 CFR 76.780-76.783.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

2. Amendment of subsection (a) and NOTE filed 4-27-92 as an emergency; operative 4-27-92 (Register 92, No. 18). A Certificate of Compliance must be transmitted to OAL 8-25-92 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 4-27-92 order transmitted to OAL 10-15-92 and filed 10-28-92 (Register 92, No. 44).

4. Change without regulatory effect amending subsection (c), adopting new subsection (d) and relettering subsections filed 12-16-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 51).

Article 3. Local Agency Compliance

§ 4620. Local Educational Agency Responsibilities.

Each local education agency shall have the primary responsibility to insure compliance with applicable state and federal laws and regulations. Each local educational agency shall investigate complaints alleging failure to comply, and seek to resolve those complaints in accordance with the procedures set out in this Chapter.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4621. District Policies and Procedures.

(a) Each local educational agency shall adopt policies and procedures consistent with this Chapter for the investigation and resolution of complaints. Local policies shall ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remain confidential as appropriate. School Districts and County Offices of Education shall submit their policies and procedures to the local governing board for adoption within one year from the effective date of this chapter. Upon adoption, the district may forward a copy to the Superintendent.

(b) Each local educational agency shall include in its policies and procedures the person(s), employee(s) or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. The local educational agency's policies shall ensure that the person(s), employee(s), position(s) or unit(s) responsible for compliance and/or investigations shall be knowledgeable about the laws/programs that he/she is assigned to investigate.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Section 260, Education Code; Section 11135, Government Code; and 34 CFR 76.780 - 76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4622. Notice; Notice Recipients; Notice Requirements.

Each local educational agency shall annually notify in writing, as applicable, its students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties of their local educational agency complaint procedures, including the opportunity to appeal to the Department and the provisions of this Chapter. The notice shall include the identity (identities) of the person(s) responsible for processing complaints. The notice shall also advise the recipient of the notice of any civil law remedies that may be available, and of the appeal and review procedures contained in sections 4650, 4652, and 4671 of this Chapter. This notice shall be in English, and when necessary, in the primary language, pursuant to section 48985 of the Education Code, or mode of communication of the recipient of the notice.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135 and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

Article 4. Local Complaint Procedures

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

(a) For other than discrimination complaints, any individual, public agency or organization may file a written complaint with the administrator/superintendent of the local educational agency, alleging a matter which, if true, would constitute a violation by that local educational agency of federal or state law or regulation governing the programs listed in section 4610(b) of this Chapter.

(b) An investigation of alleged unlawful discrimination shall be initiated by filing a complaint not later than six months from the date the alleged discrimination occurred, or the date the complainant first obtained knowledge of the facts of the alleged discrimination unless the time for filing is extended by the Superintendent, upon written request by the complainant setting forth the reasons for the extension. Such extension by the Superintendent shall be made in writing. The period for filing may be extended by the Superintendent for good cause for a period not to exceed 90 days following the expiration of the time allowed. The Super-

tendent shall respond immediately upon receipt of requests for extensions.

(1) The complaint shall be filed by one who alleges that he or she has personally suffered unlawful discrimination, or by one who believes an individual or any specific class of individuals has been subjected to discrimination prohibited by this part.

(2) The complaint shall be filed with the local educational agency director/district superintendent or his or her designee, unless the complainant requests direct intervention by the Department pursuant to Article 6 of this Chapter.

(3) An investigation of a discrimination complaint shall be conducted in a manner that protects confidentiality of the parties and the facts.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4631. Responsibilities of the Local Agency.

(a) Within 60 days from receipt of the complaint, the local educational agency superintendent or his or her designee shall complete the investigation of the complaint in accordance with the local procedures developed pursuant to section 4621 and prepare a written Local Educational Agency Decision. This time period may be extended by written agreement of the complainant.

(b) The investigation shall provide an opportunity for the complainant, or the complainant's representative, or both, and local educational agency representatives to present information relevant to the complaint. The investigation may include an opportunity for the parties to the dispute to meet to discuss the complaint or to question each other or each other's witnesses.

(c) The Local Educational Agency Decision (the Decision), shall be in writing and sent to the complainant within sixty (60) days from receipt of the complaint by the local agency. The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the Department, and the procedures to be followed for initiating an appeal to the Department.

(d) Local Educational Agencies may establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation. Conducting local mediation shall not extend the local time lines for investigating and resolving complaints at the local level unless the complainant agrees, in writing, to the extension of the time line. In no event shall mediation be mandatory in resolving complaints.

NOTE: Authority cited: Sections 232 and 33031, Education Code; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

§ 4632. Forward to Superintendent.

Upon notification by the Superintendent that the Local Educational Agency Decision has been appealed to the state level pursuant to section 4652, the local educational agency shall forward the following to the Superintendent:

- (a) The original complaint;
- (b) A copy of the Local Educational Agency Decision;
- (c) A summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision;
- (d) A report of any action taken to resolve the complaint;
- (e) A copy of the local educational agency complaint procedures; and
- (f) Such other relevant information as the Superintendent may require.

NOTE: Authority cited: Section 232 and 33031; Section 11138, Government Code. Reference: Sections 11135, 11136, and 11138, Government Code; 34 CFR 76.780-76.783 and 106.8.

HISTORY

1. New section filed 8-26-91; operative 9-25-91 (Register 92, No. 3).

(1) If a complaint is erroneously first sent to the Superintendent without local educational agency investigation, the Superintendent shall immediately forward the complaint to the local educational agency for processing in accordance with Article 4 of this Chapter, unless

Article 5. State Complaint Procedures

§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local Agency; Time Line, Notice, Appeal Rights.

(a) Referral to the Local Educational Agency for Local Resolution.

[The next page is 52.3.]

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
 SACRAMENTO, CA 95814
 PHONE: (916) 323-3562
 FAX: (916) 445-0278
 E-mail: csminfo@csm.ca.gov



April 30, 2012

Ms. Amy Bisson Holloway
 California Department of Education
 Legal, Audits, & Compliance
 1430 N Street
 Sacramento, CA 95814

Mr. Nicolas Schweizer
 Department of Finance
 Education Systems Unit
 915 L Street, 7th Floor
 Sacramento, CA 95814

Mr. Daniel Shinoff
 Stutz, Artiano, Shinoff & Holtz
 2488 Historic Decatur Road, Suite 200
 San Diego, CA 92106

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

RE: Request for Additional Information

Uniform Complaints Procedures (K-12) (03-TC-02)

Solana Beach School District, Claimant

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4

Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117;

Statutes 1988, Chapters 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417;

Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123;

Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587;

Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and

Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622,

4630, 4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and

4670

Register 92, Number 3; Register 92, Number 14; and Register 93, Number 51.

Dear Ms. Holloway, Mr. Schweizer, and Mr. Shinoff:

Staff has reviewed the administrative record of this test claim and determined that the additional information is needed to complete an analysis of the claim. This test claim alleges reimbursable state-mandated costs associated with the uniform complaint procedures for allegations of violations of various education programs and for allegations of unlawful discrimination. California Code of Regulations, title 5, section 4610 (Register 92, No. 3), states that the test claim regulations pled apply to seven specific programs administered by California Department of Education.¹ As a result, staff requests the following information:

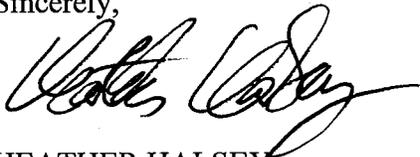
¹ California Code of Regulations, title 5, section 4610 (Register 92, No. 3), cites to: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 525000 – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, § §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300).

1. Is participation in any of the programs specified by title 5, section 4610, voluntary on the part of school districts or county offices of education?
 - a. If so, please identify which program or programs are voluntary and the reason that participation is voluntary?
2. Identify any money appropriated for purposes of the programs specified in title 5, section 4610, by Budget Act line item and fiscal year (beginning in the 2002-2003 fiscal year).
 - a. Is there any portion of the amount appropriated that can be, *or* must be, used for purposes of complying with California Code of Regulations, title 5, section 4600 et seq.? If so, please identify the source of authority or the source of the requirement.
 - b. If so, is this amount sufficient to cover the costs of compliance with California Code of Regulations, title 5, section 4600 et seq.? Please explain why or why not?
3. All of the programs specified in title 5, section 4610, and the prohibition against discrimination in educational programs predate September 25, 1991 (the operative date of title 5, section 4600 et seq.).
 - a. Did any complaint process for the purpose of alleging violations of the specified programs or for purposes of alleging unlawful discrimination exist prior to the adoption of California Code of Regulations, title 5, section 4600 et seq.?
 - b. If so, please specifically identify any statute, regulation, or executive order that provided for any complaint process or processes.

Pursuant to the Commission's regulations, all assertions or representations of fact must be supported by documentary evidence, and copies of any law cited and relied upon (with the exception of state mandates statutes and case law) must be included in the comments (Cal. Code Regs., tit. 2, § 1183.02).

Please submit this information as soon as possible, but **not later than May 16, 2012**. If you have any questions please contact Kenny Louie at (916) 323-2611.

Sincerely,



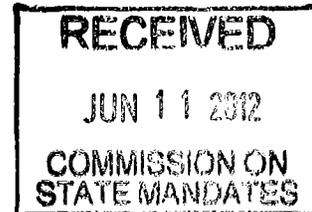
HEATHER HALSEY
Executive Director

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Arthur M. Palkowitz
apalkowitz@stutzartiano.com

June 7, 2012



Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 200
Sacramento, CA 95814

Re: Request for Additional Information

Uniform Complaints Procedures (K-12) (03-TC-02)

Solana Beach School District, Claimant

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4

Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117;

Statutes 1988, Chapters 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417;

Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123;

Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587;

Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and

Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622,

4630, 4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and

4670

Register 92, Number 3; Register 92, Number 14; and Register 93, Number 51

Dear Ms. Halsey:

Please be advised that Claimant provides the following response to the questions contained in the letter from the Commission on State Mandates dated April 30, 2012.

1. It is the Claimant's position that participation in any of the programs specified by Title 5, section 4610, are not voluntary on the part of the school districts or county offices of education.

2. It is the Claimant's position that it is unable to identify any money appropriated for the programs specified in title 5, section 4610, by Budget Act line item or that may be used for the purpose of complying with the California Code of Regulations, title 5, section 4600.

3.a. It the Claimant's position that the complaint process for the purposes of alleging violations of the unspecified programs or for the purposes of alleging unlawful discrimination did not exist prior to the adoption of the California Code of Regulations Title 5, Section 4600 et seq.

Heather Halsey, Executive Director
Commission on State Mandates

June 7, 2012
Page 2

Request for Additional Information
Uniform Complaints Procedures (K-12) (03-TC-02)
Solana Beach School District, Claimant

Please feel free to contact me should you have any questions.

Very truly yours,

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation



Arthur M. Palkowitz

AMP:p



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

RECEIVED

JUN 20 2012

**COMMISSION ON
STATE MANDATES**

June 15, 2012

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

Dear Ms. Halsey:

This letter is in response to your letter dated April 30, 2012, regarding the test claim entitled Uniform Complaint Procedures (K-12), 03-TC-02, filed by Solana Beach School District. The California Department of Education (CDE) has reviewed the questions and requests contained in your letter and provides the following responses.

Item 1

Is participation in any of the programs specified by title 5, section 4610, voluntary on the part of school districts or county offices of education?

- a. *If so, please identify which program or programs are voluntary and the reason that participation is voluntary?*

Response to Item 1

With the exception of Child Nutrition programs and Special Education programs which are required pursuant to Federal law, all other programs specified in title 5, section 4610 are voluntary. Support for this conclusion is as follows:

1. *Adult Education:* The CDE can find no statutory language that requires districts to participate in the Adult Education program. Additionally, the statutory language evidences that districts seek approval from the CDE to establish and maintain classes for adults and that the establishment of an Adult Education program is discretionary on the part of the district (Education Code sections 52501 and 52503).
2. *Consolidated Categorical Aid Programs as listed in Education Code section 64000(a):* There are 14 programs listed in part (a) of this section. Parts (b) and (c) of this section clearly evidence that participation is voluntary and that districts **elect to apply** for state and federal funds.
3. *Migrant Education:* The CDE can find no statutory language that requires districts to participate in the Migrant Education program. Additionally, the statutory language evidences that participation is voluntary due to the fact that districts **apply** for funding and there is no requirement that they do so. Education Code section 54443.1(h) states in part, "School districts

and other education agencies shall be **eligible to apply** for funding to serve migrant pupils **upon application** to their respective region,..." (Emphasis added.)

4. *Career Technical and Technical Education and Career Technical and Technical Training Programs*: The CDE can find no statutory language that requires districts to participate in this program, and the relevant statutory language found in Education Code sections 52300-52480 is discretionary. For example, Education Code section 52301(a)(1) states in part, "The county superintendent of schools of each county, with the consent of the state board, **may** establish and maintain, or with one or more counties **may** establish and maintain, a regional occupational center, or regional occupational program,..." (Emphasis added.)

5. *Child Care and Development Programs*: The CDE can find no statutory language that requires districts to participate in this program and the relevant statutory language found in Education Code sections 8200-8493 sets forth a voluntary contractual relationship between the CDE and the provider of services.

Item 2

Identify any money appropriated for purposes of the programs specified in title 5, section 4610, by Budget Act line item and fiscal year (beginning in the 2002-2003 fiscal year).

- a. *Is there any portion of the amount appropriated that can be, or must be, used for purposes of complying with California Code of Regulations, title 5, section 4600 et seq.? If so, please identify the source of authority or the source of the requirement.*
- b. *If so, is this amount sufficient to cover the costs of compliance with California Code of Regulations, title 5, section 4600 et seq.? Please explain why or why not?*

Response to Item 2

The CDE will defer to the Department of Finance to provide the Budget Act line items and appropriations for the programs at issue.

The CDE is not aware of any restriction on using appropriations made for the programs at issue for purposes of complying with California Code of Regulations, title 5, section 4600 et seq., or any requirement that a portion of the appropriations must be used to comply with California Code of Regulations, title 5, section 4600 et seq.

As the CDE has no knowledge as to whether funds appropriated must or can be used to meet the requirements of California Code of Regulations, title 5, section 4600 et seq., it has no basis with which to argue whether such funds are sufficient to meet the requirements of the regulations at issue.

Item 3

All of the programs specified in title 5, section 4610, and the prohibition against discrimination in educational programs predate September 25, 1991 (the operative date of title 5, section 4600 et seq.).

- a. *Did any complaint process for the purpose of alleging violations of the specified programs or for purposes of alleging unlawful discrimination exist prior to the adoption of California Code of Regulations, title 5, section 4600 et seq.?*
- b. *If so, please specifically identify any statute, regulation, or executive order that provided for any complaint process or processes.*

Response to Item 3

Under Federal law, many of the requirements of title 5, sections 4620, 4621, and 4622 are provided for, or anticipated by, 34 CFR Part 106 which is titled, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance." Section 106.8 (adopted in 1980) reads as follows:

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

The term "recipient" is defined at 34 CFR 106.2(i) which states:

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Additionally, under State law, complaints involving allegations of discrimination are addressed pursuant to Government Code sections 11135 and 11136 (enacted in 1977).

Government Code section 11135(a) states:

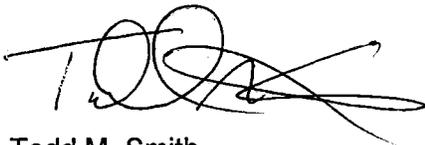
No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

Government Code section 11136 states:

Whenever a state agency that administers a program or activity that is funded directly by the state or receives any financial assistance from the state, has reasonable cause to believe that a contractor, grantee, or local agency has violated the provisions of Section 11135, or any regulation adopted to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation and shall, after considering all relevant evidence, determine whether there is probable cause to believe that a violation of the provisions of Section 11135, or any regulation adopted to implement such section, has occurred. In the event that it is determined that there is probable cause to believe that the provisions of Section 11135, or any regulation adopted to implement such section, have been violated, the head of the state agency shall cause to be instituted a hearing conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500) of this part to determine whether a violation has occurred.

If you have any questions regarding this letter, please contact me at (916) 319-0860.

Sincerely,

A handwritten signature in black ink, appearing to read 'TODD M. SMITH', with a stylized flourish extending to the right.

Todd M. Smith
Deputy General Counsel

TMS:hw

1 **PROOF OF SERVICE**

2 *Commission on State Mandates*

3 I, the undersigned, state that I am a citizen of the United States, over the age of 18
4 years, a resident of the State of California, and not a party to this action. All documents were
5 printed or copied on recycled paper. My business address is 1430 N Street, Suite 5319,
6 Sacramento, California 95814.

7 On June 15, 2012, I served the:

- 8 • **Letter Regarding Uniform Complaint Procedures (k-12) (03-TC-02)**

9 by electronic mail, addressed as follows:

10 Ms. Jill Kanemasu
11 jkanemasu@sco.ca.gov

Ms. Andra Donovan
adonovan@sandi.net

12 Mr. Mark Rewolinski
markrewolinski@maximus.com

Ms. Melissa Mendonca
mmendonca@sco.ca.gov

13 Ms. Juliana F. Gmur
14 julianagmur@msn.com

Amy Bisson Holloway
ahollowa@cde.ca.gov

15 Mr. Dennis Speciale
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Mr. Christien Brunette
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16 Mr. Patrick Day
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19 Mr. Mike Brown
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Mr. Andy Nichols
andy@nichols-consulting.com

Ms. Kris Kuzmich
Kris.Kuzmich@sen.ca.gov

23 I declare under penalty of perjury that the foregoing is true and correct. Executed this
24 15th day of June 2012, at Sacramento, California.

25 
26 _____
27 Lorie Adame
28

ITEM _
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 200, 220, 231.5, 250, 251, 253, 260, 261, 262.3, and 262.4
Government Code Sections 11135, 11136, 11137, 11138, and 11139

Statutes 1977, Chapter 972; Statutes 1982, Chapter 1117;
Statutes 1988, Chapters 1514; Statutes 1990, Chapter 1372; Statutes 1992, Chapter 417;
Statutes 1992, Chapter 906; Statutes 1992, Chapter 913; Statutes 1993, Chapter 1123;
Statutes 1994, Chapter 146; Statutes 1998, Chapter 914; Statutes 1999, Chapter 587;
Statutes 1999, Chapter 591; Statutes 2001, Chapter 708; Statutes 2002, Chapter 300; and
Statutes 2002, Chapter 1102

California Code of Regulations, Title 5, Sections 4600, 4610, 4611, 4620, 4621, 4622, 4630,
4631, 4632, 4640, 4650, 4651, 4652, 4660, 4661, 4662, 4663, 4664, 4665, and 4670

Register 92, Number 3; Register 92; Number 18; and Register 93, Number 51

Uniform Complaint Procedures (K-12)

03-TC-02

Solana Beach School District, Claimant

EXECUTIVE SUMMARY

Overview

This test claim addresses activities associated with the procedures for filing, investigating, and resolving complaints arising in a school district.¹ These procedures are used to process two types of complaints: (1) complaints that allege violations of federal or state law governing specific educational programs;² and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws.

This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints. The claimant alleges reimbursable costs associated with specific provisions of Education Code section 200 et seq., Government Code section 11139, and the title 5 regulations, which prohibit unlawful

¹ All references to "school districts" mean K-12 school districts and county offices of education, unless otherwise specified.

² The programs subject to the complaint procedures pled are: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 525000 – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300).

discrimination and establish the complaint process for violations of specified educational programs and allegations of unlawful discrimination by school districts.

Procedural History

The *Uniform Complaint Procedures (K-12)* (03-TC-02) test claim was filed during the 2003-2004 fiscal year. As a result, the reimbursement period for any reimbursable state-mandated new program or higher level of service found in this test claim begins on July 1, 2002.³

On November 5, 2003, the Department of Education (CDE) filed comments to the test claim. On December 5, 2003, the claimant filed comments in response to the CDE comments. On April 30, 2012, Commission staff issued a request for additional information from the claimant, the CDE, and the Department of Finance (Finance). On June 7, 2012, the claimant submitted a response to Commission staff's request for additional information. On June 15, 2012, the CDE submitted a response to Commission staff's request for additional information.

Positions of the Parties and Interested Parties

Claimant

The claimant contends that the test claim statutes and regulations impose reimbursable state-mandated costs for school districts and county offices of education to engage in state-mandated new programs or higher levels of service related to establishment and implementation of uniform complaint procedures. These activities include having a written policy on sexual harassment, displaying and distributing the district's policy on sexual harassment, and investigating complaints alleging noncompliance with specific educational programs or alleging unlawful discrimination. The claimant contends that the requirements alleged to be reimbursable are in excess of any federal mandate on school districts.

Department of Education (CDE)

The CDE argues that a number of the statutes and regulations pled by the claimant impose activities already required by federal law. As a result, the CDE questions whether the alleged activities are federally mandated, and therefore, not reimbursable under article XIII B, section 6 of the California Constitution. In addition, in response to the Commission staff's inquiry as to whether a complaint process existed prior to the adoption of the test claim regulations, the CDE argues that federal law already required or anticipated many of the requirements of the test claim regulations. However, the CDE does not identify a pre-existing complaint process established by the CDE.

Department of Finance (Finance)

Finance has not filed comments for this test claim.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or

³ Government Code section 17557(e).

executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.⁴

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Education Code sections 200, 220, 260, and 261; Government Code sections 11135, 11136, 11137, and 11138; and California Code of Regulations, title 5, sections 4600, 4610, 4630, 4640, 4651, and 4664	These code sections provide background information for other code sections and regulations pled, but are not alleged to contain any new programs or higher levels of service by the claimant.	<i>Deny:</i> (1) the claimant does not allege that the code sections or regulations impose reimbursable state-mandated new programs or higher levels of service; and (2) there is no evidence in the record of any costs associated with these code sections and regulations.
Education Code sections 231.5, 250, 251, 253, 262.3, and 262.4; and Government Code section 11139	These code sections address: (1) a district's written policy on sexual harassment; (2) providing an assurance of compliance with antidiscrimination laws; (3) the provision of notice regarding possible civil remedies; and (4) the enforcement of the prohibition of discrimination by civil action.	<i>Partially Approve:</i> The requirements to have a written policy on sexual harassment constitutes a federal mandate and is not reimbursable. Also, the requirement to provide an assurance of compliance with antidiscrimination laws constitutes a federal mandate for discrimination on the basis of race, national origin, disability, sex, and age, and therefore not reimbursable. However, providing an assurance of compliance with antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation is not mandated by federal law, and constitutes a state-mandated new program or

⁴ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

		<p>higher level of service. The plain language of the code sections providing for the enforcement of the prohibition of discrimination by civil action does not impose any activities on school districts. The requirement to provide notice of possible civil remedies constitutes a state-mandated new program or higher level of service for all complaints of discrimination.</p>
<p>California Code of Regulations, title 5, section 4611</p>	<p>This regulation requires school districts to refer complaints on six specific issues to other appropriate state or federal agencies.</p>	<p><i>Partially Approve:</i> The requirement to refer allegations of child abuse to outside entities is not new, and that the requirement to refer health and safety complaints regarding child development programs is triggered by an underlying discretionary decision on the part of a school district to engage in the program, and therefore not state-mandated. The requirements to refer discrimination issues involving Child Nutrition Programs, Title IX complaints if there are no state discrimination laws at issue, employment discrimination, and allegations of fraud, constitute state-mandated new programs or higher levels of service.</p>
<p>California Code of Regulations, title 5, sections 4620, 4621, 4622, 4631, and 4632</p>	<p>These regulations set forth the complaint procedures on a local agency level.</p>	<p><i>Partially Approve:</i> Pursuant to title 5 section 4611, complaints of employment discrimination are not subject to the uniform complaint procedures. In addition, some of the complaint procedures constitute federal mandates for complaints of discrimination on the basis of disability, age, and sex, and therefore, are not reimbursable.</p>

		<p>Additionally, in regard to the following educational programs the complaint procedures are triggered by a district voluntarily engaging in the program: consolidated categorical aid programs, migrant education, vocational education, child care and development. Thus, for those voluntary educational programs, the complaint procedures do not impose reimbursable state-mandated activities. For complaints regarding special education programs all of the complaint procedures, except for the adoption of policies and procedures, do not constitute new programs or higher levels of service. For complaints of discrimination on the basis of race, ethnic group identification, national origin, religion, sexual orientation (excluding sexual harassment on the basis of sexual orientation), and specific adult education and child nutrition programs some of the regulations impose state-mandated new programs or higher levels of service.</p>
<p>California Code of Regulations, title 5, sections 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670</p>	<p>These regulations set forth the complaint procedures on at the state level, upon appeal by a complainant or direct intervention by the Department of Education.</p>	<p><i>Deny:</i> The plain language of the regulations does not impose any activities on school districts.</p>

Analysis

1. Code Section and Regulations not Alleged to Constitute New Programs or Higher Levels of Service:

The claimant has pled the following code sections and regulations, but does not allege that they constitute new programs or higher levels of service: (1) Education Code sections 200, 220, 260, and 261; (2) Government Code sections 11135, 11136, 11137, and 11138; and (3) California Code of Regulations, title 5, sections 4600, 4610, 4630,

4640, 4651, and 4664. These code sections and regulations provide background information regarding the prohibition against unlawful discrimination and the types of complaints that are subject to the complaint process established by the regulations. Because the claimant does not allege that these code sections and regulations impose new programs or higher levels of service, there is no evidence in the record of any costs associated with these code sections and regulations. As a result, that there is no evidence in the record that the code sections and title 5 regulations impose reimbursable state-mandated new programs or higher levels of service.

2. Policies, Notices, and Assurances Regarding Unlawful Discrimination, and Notices Regarding Civil Remedies (Ed. Code, §§ 231.5, 250, 251, 253, 262.3, and 262.4; Gov. Code, § 11139):

These code sections address: (1) a district's written policy on sexual harassment; (2) a written assurance by districts regarding compliance with antidiscrimination laws; (3) the provision of notice regarding any possible civil remedies; and (4) the enforcement of the prohibition of discrimination by civil action.

Staff finds that activities associated with having a district policy on sexual harassment constitute federal mandates. Also, providing a written assurance regarding compliance with antidiscrimination laws constitutes a federal mandate for discrimination on the basis of race, national origin, disability, sex, and age. Additionally, the plain language of the code section authorizing enforcement of the prohibition of discrimination by civil action does not impose any activities on school districts. However, the requirement to provide an assurance regarding compliance with antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation constitutes a reimbursable state-mandated new program or higher level of service. In addition, the requirement to provide notice regarding possible civil remedies constitutes a reimbursable state-mandated new program or higher level of service.

3. Referring Complaint Issues to Other Appropriate State or Federal Agencies (Cal. Code Regs., tit. 5, § 4611):

Title 5 section 4611 provides direction to the CDE and school districts to refer specific types of complaints exempt from the complaint procedures established by the test claim regulations to other appropriate state or federal agencies.

Staff finds that the requirement to refer allegations of child abuse to outside entities is not new, and that the requirement to refer health and safety complaints regarding child development programs is triggered by an underlying discretionary decision on the part of a school district to engage in the program, and therefore not state-mandated. The requirements to refer discrimination issues involving Child Nutrition Programs, Title IX complaints if there are no state discrimination laws at issue, employment discrimination, and allegations of fraud, constitute reimbursable state-mandated new programs or higher levels of service.

4. Local Agency Compliance and Complaint Procedures (Cal. Code Regs., tit. 5, §§ 4620, 4621, 4622, 4631, and 4632):

These title 5 sections set forth the complaint procedures at the school district level for handling complaints of unlawful discrimination and complaints regarding violations of seven educational programs. The regulations include activities such as the adoption of

policies and procedures for the investigation and resolution of complaints, notifying interested parties of these policies and procedures, the actual investigation of complaints, the preparation of a written decision containing the findings and disposition of the complaint, and forwarding information to the State Superintendent when notified that a district decision has been appealed to the state.

Staff finds that school districts are not required to provide the following educational programs subject to the complaint procedures: (1) Consolidated Categorical Aid Programs; (2) Migrant Education; (3) Vocational Education; and (4) Child Care and Development. Thus, the underlying discretionary decision by school districts to provide these programs triggers the requirements of the complaint procedures, and therefore the complaint procedures are not state-mandated for these programs. Also, for complaints regarding special education programs, all of the complaint procedures do not constitute new programs or higher levels of service except for the adoption of policies and procedures.

Additionally, some of the complaint procedures constitute federal mandates for complaints of discrimination on the basis of disability, age, and sex, and therefore, are not reimbursable. Similarly, staff finds that the complaint procedures are not new in regard to processing complaints regarding special education programs, and thus, are not reimbursable for complaints alleging violations of a district's special education program. For complaints of discrimination on the basis of race, ethnic group identification, national origin, religion, sexual orientation (excluding sexual harassment on the basis of sexual orientation), and complaints regarding specific adult education and child nutrition programs, some of the regulations impose reimbursable state-mandated new programs or higher levels of service.

5. State Complaint and Resolution Procedures (Cal. Code Regs., tit. 5, §§ 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670):

These regulations set forth the complaint procedures at the state level, upon appeal by a complainant or direct intervention by the Department of Education.

Staff finds that the plain language of the regulations does not impose any activities on school districts. Additionally, the state level complaint process applies equally to both school districts and private individuals, and thus, does not impose unique requirements on school districts. Therefore, even if the plain language of the state level complaint process imposed activities on school districts, these activities would not constitute "programs" subject to article XIII B, section 6 of the California Constitution.

Conclusion

For the reasons discussed above, staff finds that the activities listed in the conclusion of the Staff Analysis, beginning on page 47, constitute reimbursable state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

Staff Recommendation

Therefore, staff recommends that the Commission adopt the staff analysis as its statement of decision to partially approve this test claim.

STAFF ANALYSIS

Claimant

Solana Beach School District

Chronology

07/23/2003	Claimant, Solana Beach School District, filed test claim <i>Uniform Complaints Procedures</i> (03-TC-02) with the Commission on State Mandates (Commission) ⁵
09/03/2003	The Department of Education (CDE) filed request for extension of time for comments on test claim
09/08/2003	Commission staff granted the CDE's extension of time for comments to October 3, 2003
10/02/2003	The CDE filed request for extension of time for comments on test claim
10/03/2003	Commission staff granted the CDE's extension of time for comments to November 5, 2003
10/28/2003	The Department of Finance (Finance) filed request for extension of time for comments on test claim
11/05/2003	The CDE filed comments on the test claim
11/07/2003	Commission staff granted Finance's extension of time for comments to February 7, 2004
12/05/2003	Claimant filed response to the CDE comments
01/08/2007	Claimant filed supplemental information for the test claim
04/30/2012	Commission staff requested additional information from parties
05/08/2012	Finance requested an extension of time for the submittal of additional information
05/11/2012	Commission staff granted Finance's extension of time for submittal of additional information to June 11, 2012
05/14/2012	The CDE requested an extension of time for the submittal of additional information
05/16/2012	Commission staff granted the CDE's extension of time for submittal of additional information to June 15, 2012
06/07/2012	Claimant filed response to Commission staff's request for additional information
06/15/2012	The CDE filed response to the Commission staff's request for additional information

⁵ Potential period of reimbursement begins on July 1, 2002, the start of the 2001-2002 fiscal year. See Government Code section 17557(e).

I. Introduction

This test claim addresses activities associated with the procedures involved for filing, investigating, and resolving complaints arising in a school district.⁶ These procedures are used to process two types of complaints: (1) complaints that allege violations of federal or state law governing specific educational programs;⁷ and (2) complaints that allege discrimination in violation of state and federal antidiscrimination laws. This test claim also addresses the notice requirements regarding the prohibition against discrimination and the available civil remedies for discrimination complaints.

Education Code section 200 et seq. and Government Code section 11135 et seq. prohibit discrimination on the basis of race, ethnic group identification, national origin, religion, disability, sex, sexual orientation, and age, in school districts and entities that receive state funding. Government Code section 11138 requires the CDE to adopt rules and regulations as are necessary to carry out the purpose and provisions of Government Code section 11135 et seq. Education Code section 261 provides that the provisions Education Code section 200 et seq. are to be implemented pursuant to the regulations and procedures adopted pursuant to Government Code section 11138, which governs the filing and handling of written complaints of prohibited discrimination.

California Code of Regulations, title 5, sections 4600 et seq. comprise the regulations adopted by the CDE to carry out the purpose of Government Code section 11135 et seq., and Education Code section 200 et seq. In addition to being the complaint process for unlawful discrimination, title 5, sections 4600 et seq., also set forth the process for complaints alleging violations of the following educational programs: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 525000 – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300).

The claimant alleges reimbursable costs associated with specific provisions of Education Code section 200 et seq., Government Code section 11139, and the title 5 regulations establishing the compliant process for violations of educational programs and allegations of unlawful discrimination by school districts.

II. Positions of the Parties

A. Claimant's Position

⁶ All references to “school districts” mean K-12 school districts and county offices of education, unless otherwise specified.

⁷ The programs subject to the complaint procedures pled are: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 525000 – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300).

The claimant contends that the test claim statutes and regulations impose reimbursable state-mandated costs reimbursable by the state for school districts and county offices of education to engage in state-mandated new programs or higher levels of service related to establishment and implementation of uniform complaint procedures. These activities include having a written policy on sexual harassment, displaying and distributing the district's policy on sexual harassment, investigating complaints alleging noncompliance with specific educational programs or alleging unlawful discrimination, providing an opportunity for complainants and district representatives to present information relevant to the complaints, writing and providing to complainants a written decision containing the findings and disposition of complaints; and appearing and defending civil actions brought by persons alleging violations of the specific educational programs or unlawful discrimination.

On December 5, 2003, in response to the CDE's comments, the claimant argues that the state has imposed requirements in excess of those imposed by federal law on school districts. As a result, the claimant argues that these requirements in excess of federal law create reimbursable mandates.

B. Department of Education's Position

The CDE argues that a number of the statutes and regulations pled by the claimant impose activities already required by federal law. As a result, the CDE's questions whether the alleged activities are federally mandated, and therefore, not reimbursable under article XIII B, section 6 of the California Constitution.⁸

In response to the Commission staff's request for additional information regarding the existence of a complaint process prior to the process established by the title 5 regulations claimed, the CDE argues that federal law already required or anticipated many of the requirements of the title 5 regulations. However, the CDE does not identify a pre-existing complaint process established by the CDE.

C. Department of Finance's Position

Finance has not filed comments for this test claim.

III. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 such local government for the costs of such programs or increased level of service.

⁸ CDE asserts that the claimant has not provided a copy of relevant portions of federal statutes that may impact the alleged mandate, and therefore, questions the completeness of the test claim filing. On August 5, 2003, Commission staff found the test claim filing to be complete, as a result, it is unnecessary to revisit this procedural issue. Instead, this analysis will focus on the substantive issue of whether or not the test claim statutes and regulations impose reimbursable state-mandated new programs or higher levels of service pursuant to article XIII B, section 6 of the California Constitution.

The purpose of article XIII B, section 6 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.”⁹ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹⁰

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹¹
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.¹²
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.¹³
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.¹⁴

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 6.¹⁵ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁶ In making its decisions, the Commission must strictly construe article XIII B,

⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹⁰ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹¹ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, at p. 874.

¹² *San Diego Unified School Dist., supra*, 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁴ *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; Government Code sections 17514 and 17556.

¹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

¹⁶ *County of San Diego, supra*, 15 Cal.4th 68, 109.

section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁷

A. Do the Test Claim Statutes and Regulations Impose a State-Mandated New Program or Higher Level of Service on School Districts within the Meaning of Article XIII B, Section 6?

The claimant has pled various code sections and regulations addressing the prohibition against unlawful discrimination, the complaint procedures used to process complaints of unlawful discrimination and complaints alleging violations of specific educational programs. In the claimant’s December 5, 2003 response to the CDE comments, the claimant indicates that code sections and regulations not included in “Part III, Costs Mandated By The State” section of the test claim filing, are “not alleged to contain any new programs or higher levels of service” by the claimant.¹⁸ The following code sections and regulations are not included in the “Part III, Costs Mandated By The State” section of the test claim: (1) Education Code sections 200, 220, 260, and 261; (2) Government Code sections 11135, 11136, 11137, and 11138; and (3) California Code of Regulations, title 5, sections 4600, 4610, 4630, 4640, 4651, and 4664. These code sections and regulations provide background information for the code sections and regulations alleged to contain new programs or higher levels of service by the claimant.¹⁹

The following conclusions can be drawn in regard to code sections and regulation sections not included in the “Part III, Costs Mandated By The State” section of the test claim filing based on the claimant’s test claim filing and response to the CDE comments: (1) the claimant does not allege that the code sections or regulations impose reimbursable state-mandated new programs or higher levels of service; and (2) there is no evidence in the record of any costs associated with the code sections and regulations not included in the section.

Although the following code sections and regulations help to define the activities claimed for reimbursement, staff finds that there is no evidence in the record that the code sections and title 5 regulations impose reimbursable state-mandated new programs or higher levels of service: (1) Education Code sections 200, 220, 260, and 261; (2) Government Code sections 11135, 11136, 11137, and 11138; and (3) California Code of Regulations, title 5, sections 4600, 4610, 4630, 4640, 4651, and 4664.

In addition, the test claim statutes and regulations address requirements associated with the prohibition of unlawful discrimination and the procedures to process complaints alleging violations of antidiscrimination laws, including federal laws. As a result, prior to discussing

¹⁷ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁸ Exhibit C, comments filed by the claimants in response to comments filed by the California Department of Education, dated December 5, 2003. The claimant cites to Exhibit A, test claim filing, dated July 23, 2003, “Part III, Costs Mandated By the State,” commencing at p. 39.

¹⁹ The Education Code and Government Code sections generally set forth legislative intent regarding the prohibition against unlawful discrimination. The California Code of Regulations sections provide the purpose and scope of the applicability of the regulations, and set forth timelines for a complainant to file a complaint and for actions taken by the Department of Education.

whether the test claim statutes and regulations impose state-mandated new programs or higher levels of service on school districts, the federal laws relevant to this test claim are summarized below.

(1) Federal Antidiscrimination Laws that are Relevant to the Determination of Whether the Test Claim Statutes and Regulations Impose State-Mandated Activities.

Article XIII B, section 6 of the California Constitution requires reimbursement only when the state mandates a new program or higher level of service. Reimbursement under article XIII B, section 6 is not required when costs are mandated by federal law. 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.²⁰

Also, the courts have held that state rules or procedures, including those that may exceed the plain language of a federal mandate, may, under certain circumstances, be considered mandated by federal law and not be eligible for reimbursement under article XIII B, section 6. The California Supreme 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,” and not be reimbursable under article XIII B, section 6.²¹

It is important to note that this test claim alleges activities associated with school districts policies on discrimination and the adoption of complaint procedures to address, among other things, unlawful discrimination in school district programs and activities. Although school districts are subject to many federal antidiscrimination laws,²² some of these laws do not require the adoption of an internal complaint process or activities related to a district’s antidiscrimination policies. As a result, the following analysis will only address federal laws that impose requirements relevant to the allegations in this test claim.²³

²⁰ *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.

²¹ *San Diego Unified School Dist. supra*, 33 Cal.4th 859, 890.

²² For example, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.); the Americans with Disabilities Act (42 U.S.C. § 12111 et seq.); section 504 of the Rehabilitation Act (29 U.S.C. § 794); Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); and the Age Discrimination Act (42 U.S.C. § 6101).

²³ Federal antidiscrimination laws that do not require any activities alleged in this test claim will not be addressed. For example, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), which seeks to eliminate discriminatory employment practices, does not require school districts to develop an internal grievance procedure. Instead, the Equal Employment Opportunity Commission was created as the agency with the initial enforcement responsibility of Title VII.

The following federal laws are relevant here: (1) section 504 of the Rehabilitation Act of 1973 and its implementing regulations (34 C.F.R. § 104); (2) the Age Discrimination Act of 1975; (3) Title IX of the Education Amendments of 1972 and its implementing regulations (34 C.F.R. § 106); (4) Title II of the Americans with Disabilities Act of 1990 (ADA); and the General Education Provisions Act (GEPA) and its implementing regulations (34 C.F.R., § 76). Generally, these federal laws require local governments to provide notice to various individuals of the antidiscrimination policies and grievance procedures for bringing a complaint; to adopt and publish a grievance procedure that provides a prompt and equitable resolution of a complaint; and to provide written assurance of compliance with the antidiscrimination laws to the state agencies administering federal funding.

a. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)

In 1973, Congress enacted the Rehabilitation Act of 1973, section 504 (Section 504) (29 U.S.C. § 794) to extend the protections of the Civil Rights Act of 1964 to the disabled.²⁴ Section 504 prohibits discrimination on the basis of physical or mental disability with respect to “any program or activity receiving federal financial assistance.” It states the following:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity.²⁵

Section 504 and its implementing regulations apply to all recipients of federal financial assistance, including school districts. The U.S. Department of Education, Office of Civil Rights, the agency responsible for enforcing Section 504 in school districts, adopted 34 Code of Federal Regulations part 104 et seq. to implement Section 504. The federal law extends to all of the operations of a school district, not just the program receiving federal financial assistance.²⁶

Compliance with Section 504 and its implementing regulations is a condition on the receipt of federal financial assistance.

In this regard, section 504 [of the Rehabilitation Act] is similar to other statutes placing conditions on the receipt of federal funding...Congress may attach reasonable conditions to federal financial assistance. The recipients of federal funding are not thereby obligated to accept the conditions, however, because they “may terminate their participation in the program and thus avoid” the conditions imposed by the statute. [Citation omitted.]²⁷

²⁴ *Lloyd v. Regional Transp. Authority* (1977) 548 F.2d 1277, 1285.

²⁵ Title 29 United States Code section 794(a) (Pub.L.No. 105-220 (Aug. 7, 1998)).

²⁶ *Consolidated Rail Corp. v. Darrone* (1984) 465 U.S. 624, finding that federal assistance did not need to have a primary purpose to promote employment in order for section 504 to apply to employment practices. *Leake v. Long Island Jewish Medical Center* (E.D.N.Y. 1988) 695 F.Supp. 1414, finding that section 504 applied to all operations of an entity receiving federal financial assistance, not just the specific program receiving assistance.

²⁷ *Greater Los Angeles Council on Deafness, Inc.*, (9th Cir. 1987) 812 F.2d 1103, 1111, fn. 11.

Thus, school districts are not legally compelled to comply with the Section 504.

The courts, however, have acknowledged that federal financial assistance to education is pervasive, such that Section 504 is applicable to virtually all public educational programs in this state and other states.²⁸ Additionally, courts have noted that Congress enacted Section 504 as essentially a codification of the equal protection rights of citizens with disabilities. Violations of Section 504 can result, and has resulted, in the termination of federal funding to the program in which noncompliance was found.²⁹ Along with the termination of federal financial assistance, school districts face litigation by the Attorney General for violations of Section 504 and its implementing regulations.³⁰ Further, litigation by an aggrieved individual is available for violations of Section 504 and possibly for violations of its implementing regulations.³¹ In light of the penalties and legal consequences for failing to comply with Section 504, and the purpose

²⁸ *Hayes, supra*, 11 Cal.App.4th 1564, 1584.

²⁹ Title 29 United States Code section 794a incorporates Title 42 U.S.C 2000d-1, which authorizes the termination of federal financial assistance to the program in which noncompliance is found. 34 Code of Federal Regulations part 104.61 incorporates the procedures to effect compliance found in 34 Code of Federal Regulations part 100.6-100.10, which authorize the termination of federal financial assistance for failure to comply with regulations promulgated under section 504. See, *Freeman v. Cavazos* (11th Cir. 1991) 939 F.2d 1527, 1531, in which the court found that federal funding of a school district was properly discontinued, noting that compliance with any regulation promulgated under section 504 may be obtained by the termination of or refusal to grant or to continue assistance to a recipient of federal assistance. See also, *Fells v. Brooks* (D.D.C. 1981) 522 F.Supp. 30, 34, in finding that resort to administrative remedies by individual complainants is not required nor intended under section 504 and its implementing regulations, the court noted that federal assistance had been withdrawn from a school district.

³⁰ Title 29 United States Code section 794a, subdivision (a)(2), incorporating by reference Title 42 United States Code section 2000d et seq. and Title 42 United States Code section 2000e-5, which authorize litigation for violations of section 504 of the Rehabilitation Act.

³¹ Although Title 42 United States Code section 2000e-5 authorizes litigation by aggrieved individuals for violations of section 504 of the Rehabilitation Act, district courts in the 9th Circuit have split on whether a private cause of action arises from noncompliance with the regulations implementing section 504. see *Huezo v. Los Angeles Community College Dist.* (C.D. Cal. 2008) 672 F.Supp.2d 1045, 1054, in which a 9th Circuit district court, after noting a split between federal circuits and between district courts within the 9th Circuit, found that there is no private cause of action to enforce self-evaluation regulations implementing the ADA and Section 504 of the Rehabilitation Act. Citing to the Supreme Court's decision in *Alexander v. Sandoval* (2001) 532 U.S. 275, the court found that a regulation by regulation analysis, as opposed to an analysis of the regulations as a whole, is required in order to determine if a regulation exhibits a Congressional intent to create a private right of action.

of Section 504, staff finds that school districts are practically compelled to comply with the requirements of Section 504 and its implementing regulations.³²

As relevant to this test claim, Section 504 and its implementing regulations require school districts to engage in the following activities:

1. Designate at least one person to coordinate efforts to comply with 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7(a) (May 9, 1980)).
2. Adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by 34 Code of Federal Regulations part 104 (which implements section 504 of the Rehabilitation Act), if employing 15 people or more. (34 C.F.R. § 104.7(b) (May 9, 1980).)
3. Take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees of school district programs or activities, and unions or professional organizations holding collective bargaining or professional agreements with the school district of the identification of the employee responsible for coordinating the districts efforts to comply with 34 Code of Federal Regulations part 104, which prohibits discrimination based on disability. (34 C.F.R. § 104.8, (a) (Nov. 13, 2000).)

b. Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.)

The Age Discrimination Act of 1975 (codified at 42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. 110) prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.³³ Although the Age Discrimination Act of 1975 explicitly excludes employment discrimination from its scope,³⁴ as further discussed below, employment discrimination is not subject to the complaint procedures alleged in this test claim.

As a result, as relevant to this test claim, the Age Discrimination Act defines “programs or activities” in the same manner as Title IX, Title VI, and Section 504. Thus, the Age Discrimination Act extends to all of the operations of a college, not just the program receiving federal financial assistance.

As noted above, courts have acknowledged that federal financial assistance to education is pervasive.³⁵ Also like Section 504, Title IX, and Title VI, violations of the Age Discrimination Act can result in the termination of federal funding to the program in which noncompliance is found.³⁶ In addition, school districts face litigation by the Attorney General to enforce the Age

³² *City of Sacramento v. State of California*, supra, 50 Cal.3d at p. 76, setting forth the factors to determine whether a federal mandate exists.

³³ Title 42 United States Code section 6102.

³⁴ Title 42 United States Code section 6103, subdivision (c)(1).

³⁵ *Hayes*, supra, 11 Cal.App.4th 1564, 1584.

³⁶ Title 42 United States Code section 6104 (Pub.L.No. 96-88 (Oct. 17, 1979)) and 34 Code of Federal Regulations part 110.35 (Nov. 13, 2000).

Discrimination Act and its implementing regulations.³⁷ Thus, staff finds that the Age Discrimination Act constitutes a federal mandate.

As relevant to this test claim, the Age Discrimination Act and its implementing regulations require school districts to engage in the following activities:

1. Designate at least one employee to coordinate efforts to comply with and carry out the school district's responsibilities under the Age Discrimination Act (42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. § 110 et seq.), including investigation of any complaints that the school district receives alleging violations of the Act and its implementing regulations. (34 C.F.R. § 110.25(a) (Nov. 13, 2000).)
2. Notify school district beneficiaries, in a continuing manner, of information regarding the provisions of the Age Discrimination Act (42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. § 110 et seq.).

Notice must identify the responsible employee by name or title address, and telephone number. (34 C.F.R. § 110.25(b) (Nov. 13, 2000).)

3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Age Discrimination Act (42 U.S.C. § 6101 et seq.) and its implementing regulations (34 C.F.R. § 110 et seq.). (34 C.F.R. § 110.25(c) (Nov. 13, 2000).)

c. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)

Title IX of Education Amendments of 1972 (Title IX) (codified at 20 U.S.C. § 1681 et seq.) and its implementing regulations (34 C.F.R. § 106 et seq.) prohibit discrimination on the basis of sex under any education program or activity receiving federal financial assistance.³⁸ Title IX applies to school districts as recipients of federal financial assistance.³⁹ Courts and the Office for Civil Rights (OCR) of the United States Department of Education have recognized claims of sexual harassment as part of Title IX's prohibition against gender discrimination.⁴⁰ Also, the OCR interprets Title IX and its implementing regulations as prohibiting sexual harassment based on sexual orientation in certain situations. Specifically, OCR states:

³⁷ *Ibid.*

³⁸ Title 20 United States Code sections 1681 and 1687; 34 Code of Federal Regulations part 106.51; *North Haven Bd. of Ed. v. Bell* (1982) 456 U.S. 512, 530-535. See also, *Sharif by Salahuddin v. New York State Educ. Dept.* (S.D.N.Y. 1989) 709 F.Supp. 345, 360 fn. 34, noting that Congress broadened the scope of title 20 United States Code section 1687 with the 1988 adoption of the Civil Rights Restoration Act, such that receipt of federal financial assistance results in institution-wide application of Title IX.

³⁹ *Hayes, supra*, 11 Cal.App.4th 1564, 1584, noting the pervasiveness of federal financial assistance in education.

⁴⁰ *Davis v. Monroe County Bd. of Educ., supra*, 526 U.S. at 650; *Franklin v. Gwinnet County Public Schools, supra*, 503 U.S. at 75; and Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, (Jan. 2001), pgs. 3-4.

Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX ... ⁴¹

Thus, the prohibition and associated requirements regarding discrimination on the basis of sex includes sexual harassment on the basis of sexual orientation in certain instances.

Like Section 504, compliance with Title IX is a condition of receipt of all federal financial assistance, and as a result, school districts are not *legally* required to comply with the provisions of Title IX. However, school districts face practical compulsion to comply with Title IX and its implementing regulations. A failure to comply with Title IX and its implementing regulations can result in the termination of federal financial assistance to the program in which noncompliance is found.⁴² Further, the principal objectives of Title IX are to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those discriminatory practices.⁴³ Thus, staff finds that school districts are practically compelled to comply with the requirements of Title IX (20 U.S.C. § 1681 et seq.) and its implementing regulations. As a result, staff finds the requirements of Title IX and its implementing regulations constitute a federal mandate (34 C.F.R. § 106 et seq.).

As relevant to this discussion, Title IX and its implementing regulations require school districts to engage in the following activities:

1. Designate at least one employee to coordinate efforts to comply with and carry out the responsibilities under 34 Code of Federal Regulations part 106, which implement Title IX, including the investigation of any complaint communicated to the school district alleging its noncompliance with part 106 or alleging any action that would be prohibited by part 106. (34 C.F.R. § 106.8(a) (May 9, 1980).)
2. Notify all students and employees of the name, office address and telephone number of the employee or employees appointed to coordinate school district efforts to comply with and carry out district responsibilities under 34 Code of Federal Regulations part 106 et seq., including any investigation of any complaint communicated to the district alleging

⁴¹ Office for Civil Rights of the United States Department of Education, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX, *supra*, at pg. 12. See also, *Nichols v. Azteca Restaurant Enterprises, Inc.* (9th Cir. 2001) 256 F.3d 864, 874-875, in which the court overturned its finding in *DeSantis v. Pacific Telephone & Telegraph Co., Inc.* (9th Cir. 1979) 608 F.2d 327, that discrimination based on a stereotype that a man "should have a virile rather than an effeminate appearance" does not fall within Title VII's purview. See *OONA, R.-S v. McCaffrey* (9th Cir. 1998) 143 F.3d 473, 476-477, finding that Title VII standards apply to hostile environment claims under Title IX.

⁴² Title 20 United States Code section 1682. See *Dougherty County School System v. Bell* (5th Cir. 1982) 694 F.2d 78, 81, finding that deferring school's federal funding must be done on a program by program basis.

⁴³ *Id.* at p. 704.

noncompliance or any act that would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8(a) (May 9, 1980).)

3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by 34 Code of Federal Regulations part 106 et seq. (34 C.F.R. § 106.8(b) (May 9, 1980).)
4. Implement specific and continuing steps to notify students and parents of elementary and secondary school students, and employees that it does not discriminate on the basis of sex and that it is required by Title IX and 34 Code of Federal Regulations part 106 et seq. not to discriminate in such a manner. (34 C.F.R. § 106.9(a) (Nov. 13, 2000).)
5. Prominently include a statement of the policy prohibiting discrimination on the basis of sex, required under 34 Code of Federal Regulations part 106.9, subdivision (a), in each announcement, bulletin, catalog, application form which it makes available to any person listed in part 106.9, subdivision (a), including students and parents of elementary and secondary school students, and employees. (34 C.F.R. § 106.9(b) (Nov. 13, 2000).)

d. Title II of the Americans with Disabilities Act (42 U.S.C. § 12131-12134)

Title II of the ADA (codified at 42 U.S.C. §§ 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) generally prohibit the exclusion of individuals from participation in or the denial of benefits to individuals of the services, programs, or activities of a public entity due to disability, or for the entity to subject an individual to discrimination based on disability. This prohibition applies to school districts as "public entities" without regard to the receipt of any federal funds. As a result, the plain language of Title II of the ADA imposes a federal mandate upon school districts.

As relevant to this discussion, Title II of the ADA (42 U.S.C. § 12131-12134) and its implementing regulations (28 C.F.R. § 35 et seq.) impose the following activities on school districts:

1. Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 28 Code of Federal Regulations part 35 et seq., including any investigation of any non-employment related complaint communicated to it alleging noncompliance with part 35 or alleging any actions that would be prohibited by part 35. (28 C.F.R. § 35.107(a) (July 26, 1991).)
2. Make available to all interested individuals the name, office address, and telephone number of the employee or employees responsible for the school districts efforts to comply with and carry out the responsibilities under 28 Code of Federal Regulations part 35 et seq. (28 C.F.R. § 35.107(a) (July 26, 1991).)
3. Adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by 28 Code of Federal Regulations part 35 et seq., if employing 50 or more persons. (28 C.F.R. § 35.107, subd. (b) (July 26, 1991).)

e. General Education Provisions Act (20 U.S.C. §§ 1221-1234i)

Among other things, the GEPA (20 U.S.C. §§ 1221-1234i) and its implementing regulations (34 C.F.R. § 76 et seq.) set forth general conditions which school districts must comply with to receive federal education funds under programs administered by the U.S. Department of

Education.⁴⁴ Failure to comply with the GEPA conditions can trigger the U.S. Department of Education's initiation of a process which could result in the withdrawal of all federal education funds.⁴⁵ As noted by the court in *Hayes*, federal assistance to education is pervasive.⁴⁶ In addition, the Commission has previously noted that funding provided under Title I of the Elementary and Secondary Education Act, which is one of the programs subject to the GEPA, exceeded \$1 billion and that this funding has been relied on for over 40 years.⁴⁷ In light of the penalties for failing to comply with the GEPA and its implementing regulations, and the length of time that federal educational funding has been relied on, staff finds that school districts are practically compelled to comply with the GEPA and its implementing regulations.

As relevant to this test claim, the GEPA mandates school districts to submit a general application to the state agency or board administering federal funds with assurances that the district will administer each program subject to the GEPA in accordance with all applicable statutes, regulations, program plans, and applications.⁴⁸ The regulations implementing the GEPA require school districts to comply with Title VI of the Civil Rights Act, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act, and their implementing regulations.⁴⁹ These federal laws prohibit discrimination on the basis of race, color, national origin, sex, disability, and age. Thus, school districts are required to provide assurance that programs receiving federal education funds are provided in compliance with Title VI of the Civil Rights Act, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act, which prohibit discrimination on the basis of race, color, national origin, sex, disability, and age.

In addition, the GEPA requires school districts to provide an assurance to the state agency or board that the district will make such reports and maintain and provide access to such records as the state agency or board deem necessary to perform their duties.⁵⁰ The duties of state agencies or boards include monitoring of agencies, institutions, and organizations responsible for carrying out each program subject to the GEPA, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law.⁵¹ Thus, school districts are required to

⁴⁴ The programs include the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Education Act.

⁴⁵ 20 U.S.C. §§ 1234-1234i and 34 Code of Federal Regulations part 76.901.

⁴⁶ *Hayes, supra*, 11 Cal.App.4th at p. 1584. As an example, the court cites to Education Code sections 12000-12405, 49540 et seq., and 92140 et seq., which set forth provisions regarding the administration of federal programs by the State Board of Education, participation in the federal child care food program, and participation in federal programs for education in agriculture and mechanical arts.

⁴⁷ Statement of decision for *Pupil Suspensions II, Pupil Expulsions II, and Educational Services Plan for Expelled Pupils* (96-358-03, 03A, 03B, 98-TC-22, 01-TC-18, 96-358-04, 04A, 04B, 98-TC-23, 01-TC-17, 97-TC-09) test claims, adopted August 1, 2008, at <<http://www.csm.ca.gov/sodscan/052011sod.pdf>> as of July 30, 2012.

⁴⁸ Title 20 United States Code section 1232e(b)(1).

⁴⁹ 34 Code of Federal Regulations part 76.500.

⁵⁰ Title 20 United States Code section 1232e(b)(4).

⁵¹ Title 20 United States Code section 1232d(b)(3)(A).

provide compliance reports to state agencies or boards administering federal education funding as may be required by those state agencies or boards.

As relevant to this discussion, the GEPA (20 U.S.C. §§ 1221-1234i) and its implementing regulations (34 C.F.R. § 76 et seq.) impose the following activities on school districts:

1. Provide a written assurance to state agencies or boards administering federal education funding that programs receiving federal education funding are provided in compliance with Title VI of the Civil Rights Act, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act, which prohibit discrimination on the basis of race, color, national origin, sex, disability, and age. (20 U.S.C. § 1232e(b)(1).)
2. Provide compliance reports to state agencies or boards administering federal education funding, as may be required by the agencies or boards. (20 U.S.C. § 1232e(b)(4).)

(2) Some of the Test Claim Statutes and Regulations Impose State-Mandated New Programs or Higher Levels of Service on School Districts that Exceed the Requirements of Federal Law.

Some of the test claim statutes and regulations pled in this test claim impose activities that are mandated by the federal antidiscrimination laws described above and, thus, are not reimbursable under article XIII B, section 6 of the California Constitution. In addition, some of the activities pled are triggered by the school district's discretionary decision to offer certain optional educational programs. As described further below, activities required by a statute or regulation that are triggered by a local discretionary decision are not eligible for reimbursement. And some activities that are mandated by the state are not new and, thus, do not impose a new program or higher level of service.

The following analysis addresses the test claim statutes and regulations in two separate sections. The first section addresses the test claim statutes which provide for the general prohibition against discrimination and various notices regarding an individual's rights in regard to this prohibition. The second section address the test claim regulations which set forth the local and state level complaint procedures to handle complaints alleging both discrimination complaints and complaints alleging violations of specific educational programs. For the reasons below, staff recommends that Commission partially approve this test claim for those activities that constitute a state-mandated new program or higher level of service.

- a. Policies, Notices, and Assurances Regarding Unlawful Discrimination, and Notices Regarding Civil Remedies (Ed. Code, §§ 231.5, 250, 251, 253, 262.3, and 262.4; Gov. Code, § 11139).

Education Code sections 231.5, 250, 251, 253, 262.3, and 262.4; and Government Code section 11139 address: (1) a district's written policy on sexual harassment; (2) a written assurance by districts regarding compliance with antidiscrimination laws; (3) the provision of notice regarding any possible civil remedies; and (4) the enforcement of the prohibition of discrimination by civil action.

- (i) Written Policy on Sexual Harassment (Ed. Code, § 231.5).

Section 231.5 identifies as the policy of the State of California that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. In light of this policy, section 231.5 requires school districts to provide notification of the

prohibition against sexual harassment as a form of sexual discrimination and to provide notification of available remedies. Specifically, section 231.5 requires school districts to engage in the following activities:

1. Have a written policy on sexual harassment, which includes information on where to obtain specific rules and procedures for reporting charges of sexual harassment and for pursuing remedies. It is intended that the written policy is included as part of a school district's regular policy statement rather than distributed as an additional written document. (Ed. Code, § 231.5(b) and (c) (Stats. 1998, ch. 914).)
2. Display the written policy in a prominent location in the main administrative building or other area of the campus or school site. (Ed. Code, § 231.5(d) (Stats. 1998, ch. 914).)
3. Provide the policy on sexual harassment, as it pertains to students, to new students as part of any orientation program conducted at the beginning of each session. (Ed. Code, § 231.5(e) (Stats. 1998, ch. 914).)
4. Provide faculty members, administrative staff, and support staff with the written policy on sexual harassment at the beginning of each year or at the time a new employee is hired. (Ed. Code, § 231.5(f) (Stats. 1998, ch. 914).)
5. Include a copy of the policy in any publication of the school that sets forth the comprehensive rules, regulations, procedures, and standards of conduct for the school. (Ed. Code, § 231.5(g) (Stats. 1998, ch. 914).)

However, as discussed above, Title IX imposes a federal mandate on school districts to have a written policy prohibiting discrimination on the basis of sex, which includes sexual harassment.⁵² School districts are federally mandated to adopt a grievance procedure for allegations of discrimination on the basis of sex, and to notify all students and employees of the procedures for reporting discrimination on the basis of sex.⁵³ Also school districts are federally mandated to continually notify all students and employees of the school district's policy against discrimination on the basis of sex, or engaging in sexual harassment.⁵⁴ In addition, school districts are federally mandated to include a statement of its policy prohibiting discrimination on the basis of sex in each announcement, bulletin, catalog, application form which it makes available to any person, including students and parents of elementary and secondary school students, and employees.⁵⁵ Thus, the requirements to have a written policy on sexual harassment that includes a grievance procedure, to provide the policy to students and employees, and to include the policy in any publication that sets forth the rules, regulations, and procedures, and standards of conduct for the school constitute federal mandates and are not reimbursable under article XIII B, section 6 of the California Constitution.⁵⁶

⁵² 34 Code of Federal Regulations part 106.9(b).

⁵³ 34 Code of Federal Regulations part 106.8(a).

⁵⁴ 34 Code of Federal Regulations part 106.9(a).

⁵⁵ 34 Code of Federal Regulations part 106.9(b).

⁵⁶ These activities correspond to Education Code section 231.5 (b), (c), (e), (f), and (g).

Additionally, although the federal mandates on school districts to notify students, parents, and employees, in a continuing manner does not specifically require notice by displaying the policy in a prominent location in the main administrative building, staff finds that displaying the policy implements the federal mandates to take continuing steps to provide notification of the policy and is part and parcel of the federal law.

In *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* the California Supreme Court addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The issue in *San Diego Unified School Dist.* was whether procedural due process activities imposed by the test claim statute were reimbursable when a school district sought to expel a pupil. The court recognized that federal due process law requires school districts to comply with federal procedural steps, such as notice and a hearing, to safeguard the rights of a pupil when the pupil is subject to an expulsion from school. The Education Code statute pled in the test claim mandated procedures on school districts to implement federal due process requirements. The test claim statute also required school districts to comply with additional procedures that were not expressly required by federal law; i.e. “primarily various notice, right of inspection, and recording rules.”⁵⁷

The court held that all procedures set forth in the test claim statute, including those that exceed federal law, are considered to have been adopted to implement a federal due process mandate and, thus, the costs were not reimbursable under article XIII B, section 6 of the California Constitution and Government Code section 17556.⁵⁸ The court held 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.”⁵⁹

The court made this finding in regard to state procedures to provide an expulsion hearing to students facing a discretionary expulsion. In making its finding, the court states:

[T]he Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively,

⁵⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 873, footnote 11, and 890. As stated in footnote 11 of the court’s decision, the excess activities in the *San Diego Unified School Dist.* case included (1) the adoption of rules and regulations, (2) the inclusion of several notices in the notice of expulsion hearing, (3) allowing the pupil or the parent to inspect and obtain copies of documents to be used at the hearing, (4) sending written notice on the rights and obligations of the parents, (5) maintenance of a record of each expulsion, and (6) recording of the expulsion order and the cause thereof in the student’s mandatory interim record.

⁵⁸ *Id.* at page 888.

⁵⁹ *Id.* at page 890.

they did not significantly increase the cost of compliance with the federal mandate.⁶⁰

Similarly, the displaying of a district's policy in a prominent location is a reasonable articulation of incidental procedures of the federal mandate to take continuing steps to provide notice, which is de minimis in context of providing notice on a *continuing* basis. Thus, the requirement to display the district's policy on sexual harassment in a prominent location in the main administrative building or other area of the campus or school site constitutes a federal mandate not subject to article XIII B of the California Constitution. Thus, staff finds that Education Code section 231.5 does not impose a state-mandated new program or higher level of service.

(ii) Assurance of Compliance with Antidiscrimination Laws (Ed. Code, §§ 250, 251, and 253).

Section 250 requires school districts to provide a written assurance to state agencies extending state financial assistance or student financial aid that each program or activity conducted by the district will be conducted in compliance with state laws prohibiting discrimination. "State financial assistance" and "student financial aid" are defined to include federal funds administered by a state agency.⁶¹ To meet this requirement, section 250 provides that a single assurance, not more than one page in length and signed by an appropriate responsible official of the school district may be provided for all the programs and activities conducted by an educational institution. To be clear, the activity required by Education Code section 250 is not *compliance* with state law prohibiting discrimination. Rather, the activity required is the *provision of a written assurance*, intended to be not more than one page in length for all programs and activities.

Read in context with section 250, section 251 requires districts to provide compliance reports to the CDE regarding the prohibition of unlawful discrimination in a district's activities, as may be required by the CDE, and to make those reports open for inspection during the normal business hours of the district.

As discussed above in the section of this analysis addressing the relevant federal laws, school districts are federally mandated to provide state agencies administering federal education funds with a general assurance that its programs that utilize federal education funding comply with federal antidiscrimination laws.⁶² Specifically, federal law requires school districts to provide a written assurance that its programs comply with federal laws prohibiting discrimination on the basis of race, color, national origin, sex, disability, and age.⁶³ Additionally, federal law

⁶⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 889.

⁶¹ Education Code sections 213 and 214.

⁶² Title 20 United States Code section 1232e.

⁶³ 34 Code of Federal Regulations part 76.500. Providing that a school district shall comply with Title VI of the Civil Rights Act (45 U.S.C. § 2000d et seq; and 34 CFR § 100 et seq), which prohibits discrimination on the basis of race, color, or national origin. In addition, part 76.500 requires districts to comply with Title IX, Section 504, and the Age Discrimination Act.

mandates school districts to provide compliance reports to state agencies or boards administering federal education funding, as may be required by the state agencies or boards.⁶⁴

Similarly, state antidiscrimination law prohibits discrimination on the basis of race, national origin, disability, sex, and age. As a result, providing a written assurance of compliance and compliance reports as may be required by the CDE regarding the prohibition of discrimination on the basis of race, national origin, disability, sex, and age constitutes a federal mandate that is not subject to reimbursement under article XIII B, section 6 of the California Constitution.

However, state antidiscrimination laws also require assurance that a school district is complying with the prohibition of discrimination on the basis of religion and sexual orientation, which is not required by federal law.⁶⁵ Also, providing compliance reports to the CDE regarding the prohibition of discrimination on the basis of religion and sexual orientation, as may be required by the CDE, is not required by federal law. As a result, the provision of an assurance that a school district is complying with the prohibition of discrimination on the basis of religion and sexual orientation and the provision of compliance reports as may be required by the CDE constitute state-mandated activities.

In addition, these state-mandated activities impose unique requirements on school districts in order to implement the state's policy against unlawful discrimination within schools. Prior to the 1998 amendment of sections 250 and 251, school districts were not required to engage in the activities mandated by the sections.⁶⁶ Thus, staff finds that Education Code sections 250 and 251 impose the following state-mandated new programs or higher levels of service on school districts:

1. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation.⁶⁷ (Ed. Code, § 250 (Stats. 1998, ch. 914).)
2. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)

⁶⁴ Title 20 United States Code section 1232e(b)(4).

⁶⁵ Education Code section 200.

⁶⁶ Exhibit A, *supra*, p. 4-5, and 13. The claimant cites to Statutes 1982, chapter 1117; and Statutes 1998, chapter 914. The 1982 version of section 250 only required school districts to provide assurance of compliance with laws prohibiting discrimination on the basis of sex. In 1998, the Legislature expanded the scope of the assurance required by Section 250 to include all forms of unlawful discrimination. Section 251 remained substantively unchanged between 1982 and 1998. Immediately prior to the enactment of sections 250 and 251 in 1982 and section 250's amendment in 1998, school districts were not required to engage in the activities mandated by the sections.

⁶⁷ Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

In contrast, staff finds that the activity of making the compliance reports available for public inspection during regular business hours pursuant to Education Code section 251, and the activities alleged to be imposed by Education Code section 253 do not constitute state-mandated new programs or higher levels of service.

The claimant also asserts that the provision in section 251 to make the compliance reports available for public inspection during regular business hours imposes a new program or higher level of service on school districts. However, prior to 1975 “public records” of school districts were required to be open to inspection at all times during district office hours.⁶⁸ In addition, since before 1975 “public record” has been defined to include “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic.”⁶⁹ The content of the compliance report specifically relates to the “public’s business” and is prepared and retained by the district. As a result, the compliance report constitutes a “public record” and the requirement to make it available for public inspection is not new.

Section 253 requires the State Superintendent of Public Instruction to include specific information in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent, and for the Superintendent to annually review school districts for compliance with “sex discrimination” laws. The claimant asserts that section 253 requires school districts to comply with the sex discrimination provisions of state law as included in the annual Coordinated Compliance Review Manual provided to school districts by the Superintendent of Public Instruction and to cooperate with the Superintendent if selected in his or her annual review for compliance with “sex discrimination” laws.⁷⁰ However, the plain language of section 253 does not impose any activities on school districts. Rather, section 253 imposes activities on the State Superintendent of Public Instruction to include specific information in the Coordinated Compliance Review Manual and to review school districts for compliance with “sex discrimination” laws in fiscal years in which sufficient funds have been appropriated. None of the activities contained in section 253 are directed toward school districts. Thus, staff finds that Education Code section 253 does not require school districts to engage in any activities.

(iii) Notification of Possible Civil Remedies (Ed. Code, § 262.3)

Education Code section 262.3 addresses the rights of individuals that have filed a complaint of unlawful discrimination with a school district, and the notification these individuals receive regarding civil law remedies that may be available. Education Code section 262.3 requires school districts to engage in the following activities:

1. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

⁶⁸ Government Code section 6253 (Stats. 1974, ch. 544).

⁶⁹ Government Code section 6252 (Stats. 1970, ch. 575).

⁷⁰ Exhibit A, test claim filed by claimant, dated July 23, 2003, pgs. 41-2.

2. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)

The activities required by Education Code sections 262.3(b) are not required by federal law. As a result, staff finds that the above activities constitute state-mandated activities. Additionally, section 262.3 imposes unique duties upon school districts to advise individuals that have filed complaints alleging unlawful discrimination of the available civil law remedies. The claimant has pled Statutes 1988, chapter 1514, which amended Education Code sections 260 and 262, and added sections 262.1, 262.2, 262.3, and 265.⁷¹ The state-mandated activities listed above were originally contained in Education Code section 265 as added by Statutes 1988, chapter 1514. Immediately prior to the enactment of this test claim statute, school districts were not required to engage in the above activities. Thus, staff finds that the above listed activities constitute state-mandated new programs or higher levels of service.

(iv) Enforcement of the Prohibition of Discrimination by Civil Action (Ed. Code, § 262.4 and Gov. Code, § 11139)

Education section 262.4 and Government Code section 11139 provide that specific provisions of state law prohibit discrimination in educational programs on the basis of specific characteristics. As further discussed below, staff finds that Education Code section 262.4 and Government Code section 11139 do not require school districts to engage in any activities.

Education Code section 262.4 provides, “[Chapter 2 of part 1 of division 1 of title 1 of the Education Code] may be enforced through a civil action.” The chapter referenced in section 262.4 consists of Education Code sections 200-283 which prohibit discrimination on a variety of bases, and require specific acts of state and local entities to enforce or comply with this prohibition. Despite the requirements that may be in Chapter 2, the plain language of Education Code section 262.4 *does not* require school districts to engage in any activity. Rather, it provides individuals the ability to enforce Chapter 2 and its prohibitions through civil action.

Similarly, Government Code section 11139 provides in relevant part, “This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.” The article referenced by section 11139 consists of Government Code sections 11135-11139.7, which prohibit discrimination on a variety of bases. However, like Education Code section 262.4, the plain language of Government Code section 11139 does not impose any activities on school districts. Instead, section 11139 provides individuals the ability to enforce sections 11135-11139.7 through civil action.

Therefore, staff finds that Education Code section 262.4 and Government Code section 11139 does not impose any state-mandated new programs or higher levels of service on school districts within the meaning of article XIII B, section 6 of the California Constitution.

- b. Uniform Complaint Procedures (Cal. Code Regs., tit. 5, §§ 4611, 4620, 4621, 4622, 4631, 4632, 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670)

⁷¹ Exhibit A, test claim filing, *supra*, “test claim form,” and p. 6.

The title 5 regulations analyzed in this section set forth some of the complaint procedures adopted by the CDE to govern the filing and handling of complaints of prohibited discrimination *and* complaints of violations of seven educational programs discussed immediately below.

(i) Complaint Procedures Scope of Applicability (Cal. Code Regs., tit. 5, § 4610)

Although the claimant does not allege title 5 section 4610 to impose any state-mandated new programs or higher levels of service, section 4610 establishes the scope of the complaints that are to be processed with the procedures set forth in title 5 section 4600 et seq.

In regard to complaints of unlawful discrimination, section 4610 provides that the complaint procedures apply to the filing of complaints alleging unlawful discrimination on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, in any program or activity conducted by” a school district.⁷² However, this does not include complaints of employment discrimination, which are instead required to be forwarded to the State Department of Fair Employment and Housing.⁷³ In addition, as further discussed below, in section (b)(ii) of this analysis (titled “Complaint Process”), some of the complaint procedures are mandated by federal law to the extent that they apply to complaints alleging discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age. But as applicable to complaints alleging discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), the procedures are not mandated by federal law. Also, the activity of forwarding information to the State Superintendent of Public Instruction regarding a decision by the district that was appealed to the Superintendent, is not mandated by any federal antidiscrimination laws, and thus, constitutes a state-mandated activity.

In addition to being the complaint procedures for allegations of unlawful discrimination, the regulations comprise the complaint procedures that apply to alleged violations of the following programs: (1) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 525000 – 52616.5); (2) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a)); (3) Migrant Education (Ed. Code, §§ 54440 – 54445); (4) Vocational Education (Ed. Code, §§ 52300 – 52480); (5) Child Care and Development programs (Ed. Code, §§ 8200 – 8493); (6) Child Nutrition programs (Ed. Code, §§ 49490 – 49560); and (7) Special Education programs (Ed. Code, §§ 56000 – 56885 and 59000 – 59300). However, not all of the educational programs are required by law.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term “state mandate” as it appears in article XIII B, section 6 of the California Constitution.⁷⁴ The court held 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.⁷⁵ In addition, the court in *Kern High School Dist.* left open the possibility that a state mandate might be found in circumstances of practical

⁷² California Code of Regulations, title 5, section 4610 (Register 92, No. 3).

⁷³ California Code of Regulations, title 5, section 4611 (Register 92, No. 3).

⁷⁴ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727.

⁷⁵ *Id.* at p. 743.

compulsion, where a local entity faced certain and severe penalties as a result of noncompliance with a program that is not legally compelled.⁷⁶

As a result it is necessary to determine whether school district participation in any of the seven educational programs listed above is required by law.⁷⁷ If a school district is not required to participate in one of the educational programs, the downstream requirement imposed by the title 5 regulations to process complaints alleging violations of the voluntary program using the complaint process set forth in title 5 section 4600 et seq., are not mandated by the state.

(a) Adult Basic Education (Ed. Code, §§ 8500 – 8538 and 52500 – 52616.5)

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis.⁷⁸ The only exceptions are adult English classes and classes in citizenship. Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.⁷⁹ Similarly, Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.⁸⁰

Under *Kern High School Dist.*, a school district's underlying discretionary decision to provide adult basic education programs, other than adult English classes and citizenship classes, triggers any subsequent requirement to process complaints. Thus, school districts are not mandated by the state to process complaints alleging violations of adult basic education programs established pursuant to Education Code sections 8500-8538 and 52500-52616.5, with the exception of adult English classes and citizenship classes provided pursuant to Education Code sections 52540 and 52552.

(b) Consolidated Categorical Aid Programs (Ed. Code, § 64000(a))

The consolidated categorical aid programs listed in Education Code section 64000(a) consist of 14 state and federal aid programs that provide funding for a variety of purposes ranging from bilingual education to safe and drug free schools and communities. Section 64000 describes how a school district receives funding for these programs, providing in relevant part:

⁷⁶ *Id.* at pg. 731.

⁷⁷ For purposes of this discussion, it is not important whether the educational programs are required by state law or by federal mandate. This discussion only addresses whether school districts are required to engage in the complaint procedures set forth by the test claim regulations in regard to specified educational programs. The extent that any of the activities imposed by the test claim regulations are mandated by federal law will be discussed later in this analysis.

⁷⁸ Education Code section 52301 allows the county superintendent of schools of each county, with the consent of the state board, to establish and maintain a regional occupational center, or regional occupational program (ROC/P) in the county to provide education and training in career technical courses. Education Code sections 52501, 52502, and 52503 allow high school districts or unified school districts to establish and maintain adult education classes and/or schools.

⁷⁹ Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

⁸⁰ Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

(b) Each school district that *elects to apply* for any of these state funds shall submit to the department, for approval by the state board, a single consolidated application for approval or continuance of those state categorical programs subject to this part. (Emphasis added.)

(c) Each school district that *elects to apply* for any of these federal funds may submit to the department for approval, by the state board, a single consolidated application for approval or continuance of those federal categorical programs subject to this part. (Emphasis added.)

As shown by the language above, districts elect to apply for and receive funding from the consolidated categorical aid programs listed in Education Code section 64000(a). Thus, school districts are not legally required to participate in the consolidated categorical aid programs. In addition, there is no evidence in the record that districts are practically compelled to engage in the programs. Thus, the requirement to process complaints alleging violations of a consolidated categorical aid program using the complaint process set forth in the test claim regulations is triggered by a school district's underlying discretionary decision to participate in the consolidated categorical aid programs. As a result, under *Kern High School Dist.*, any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of any of the consolidated categorical aid programs as listed in Education Code section 64000(a).

(c) Migrant Children Education (Ed. Code, §§ 54440 – 54445)

In *Kern High School Dist.* the California Supreme Court found the Migrant Children Education Programs (Ed. Code, § 54440 et seq.) to be a voluntary educational program.⁸¹ Thus, under *Kern High School Dist.*, any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of the Migrant Children Education program.

(e) Vocational Education (Ed. Code, §§ 52300 – 52480)

Education Code sections 52300 through 52480 set forth various vocational education programs in which school districts can voluntarily participate. The voluntary nature of the programs is indicated by the plain language of the code sections. For example, Education Code section 52301 provides that a county superintendent of schools “*may* establish and maintain, . . . , a regional occupational center, or regional occupational program” and that any school districts maintaining high schools are authorized to cooperate in the establishment of the center or program. Likewise, Education Code section 52450 et seq. creates a state program of agricultural career technical education, which a school district “*may, at their option, include as part of the curriculum of that district.*”⁸² The remaining code sections in Education Code sections 52300-52480 contain similar language or provisions indicating the optional nature of the programs. Thus, under *Kern High School Dist.*, any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of Vocational Education established pursuant to Education Code section 52300 through 52480.

⁸¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 733.

⁸² Education Code section 52450.

(f) Child Care Development (Ed. Code, §§ 8200 – 8493)

Education Code sections 8200 through 8493 (Child care and Development Services Act) establish a program under which various entities, both public and private, can contract with the CDE to provide child care development services.⁸³ Public and private agencies are authorized to apply for a contract to provide child care development services, but are not required to do so. As a result, under *Kern High School Dist.*, any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of child care development services provided pursuant to Education Code sections 8200-8493.

(g) Child Nutrition Programs (Ed. Code, §§ 49490 – 49560)

Under Education Code section 49550, each school district maintaining any K-12 grades must provide each needy pupil enrolled with one nutritionally adequate free or reduced price meal during each school day. The remaining code sections in Education Code sections 49490 through 49560 establish funded nutrition programs in which school districts can participate in order to meet or supplement the requirement to provide a free or reduced price meal during each school day. Although, school districts are authorized to participate in the various programs set forth in Education Code sections 49490 – 49560, they are not mandated by the state to do so. School districts are only required to provide one nutritionally adequate free or reduced price meal during each school day pursuant to Education Code section 49550. Thus, under *Kern High School Dist.*, any activities contained in the test claim regulations are not mandated by the state for complaints alleging violations of child nutrition programs provided pursuant to Education Code sections 49490-49560, with the exception of section 49550.

(h) Special Education (Ed. Code, §§ 56000 – 56885 and 59000 – 59300)

Under state and federal law a free appropriate public education shall be available to individuals with exceptional needs. Education Code sections 56000 – 56885 and 59000 – 59300 set forth the rights of various parties in relation to special education, the administrative duties of state and local entities in regard to the provision of special education, and a variety of special education programs required or authorized to be offered by state and local entities.

Title 5 section 4610 provides that the complaint process applies to special education programs established pursuant to Education Code sections 56000 – 56885 and 59000 – 59300. Generally, school districts are required by law to provide the special education programs and comply with the requirements set forth in those code sections. However, school districts are not required to offer programs provided pursuant to Education Code sections 56390 – 56392, 56400 – 56414, 56452 – 56474, 56475 – 56476, 56846 – 56847, and 59000-59300.

Education Code sections 56390 – 56392 provide school districts with the authority to award an individual with exceptional needs a certificate or document of educational achievement or completion. The provision of a certificate is not intended to eliminate an opportunity for an

⁸³ See Education Code section 8208, defining “applicant or contract agency” to mean school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter.” See also, California Code of Regulations, title 5, section 18000 et seq., describing the process for application for, and award of, a contract.

individual with exceptional needs to earn a standard diploma. Although school districts are given this authority, they are not required to utilize the authority. As a result, a school district voluntarily provides this certificate and any subsequent complaints processed through the uniform complaint procedures are triggered by this voluntary decision and not mandated by the state.

Education Code sections 56400 – 56414, 56472 – 56474, 56475 – 56476, and 56846 – 56847 provide for family empowerment centers on disabilities, career and vocation programs, transition services, and project workability, interagency agreements entered into by the Superintendent, and the Superintendent’s autism advisory committee. However, the activities or provisions of these code sections apply to the state or private individuals. As a result, these code sections do not impose any requirements on school districts.

Similarly, Education Code sections 59000 – 59300 establish state operated schools for severely handicapped students, including schools for the deaf (Ed. Code, § 59000 et seq.) and the blind (Ed. Code, § 59100 et seq.), and diagnostic centers to provide various services including pupil assessments (Ed. Code, § 59200 et seq.).⁸⁴ Thus, the test claim regulations as they relate to Education Code sections 59000 – 59300, direct the state to engage in specific activities, but do not impose any activities on school districts.

Based on this discussion, school districts are required to provide special education programs pursuant to Education Code section 56000 et seq., except for programs provided pursuant to Education Code sections 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, 56846 – 56847, and 59000 – 59300.

In summary, staff finds that complaints regarding the following educational programs listed in title 5 section 4610 are required by state law on the limited bases discussed above: (1) adult basic education; (2) child nutrition; and (3) special education. To the extent the complaint process activities discussed below are required, they are only mandated by the state for complaints alleging violations of these educational programs *and* complaints of unlawful discrimination not mandated by federal law.

(ii) Complaint Process

The title 5 regulations setting forth the uniform complaint procedures includes processes on the school district level (Cal. Code Regs., tit. 5, §§ 4620, 4621, 4631, and 4632) and the state (Superintendent/the CDE) level (Cal. Code Regs., tit. 5, §§ 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670).

On the school district level, the complaint process involves a complainant filing a complaint with the school district alleging unlawful discrimination or a violation of the educational programs described in California Code of Regulations, title 5, section 4610.⁸⁵ Prior to the initiation of an official investigation into the complaint, local mediation may be conducted if offered by the

⁸⁴ *Lucia Mar Unified School Dist. v Honig* (1988) 44 Cal.3d 830, 832. See also, Education Code sections 59002, 59102, and 59202, providing that the administration of these schools and centers is under the State Department of Education/Superintendent of Public Instruction.

⁸⁵ Staff notes that any state-mandated new programs or higher levels of service found in this part of the analysis, is limited by the findings that some of the educational programs listed in California Code of Regulations, title 5, section 4610 are not mandated by the state.

school district to resolve complaints. If mediation is unsuccessful, or does not occur, the school district superintendent conducts an investigation and prepares a written decision containing the school district's findings and disposition of the complaint.

The state level complaint process is initiated in two ways: (1) direct state intervention; and (2) appeal of the school district's decision to the Superintendent by a complainant. Regardless of how the state complaint process is initiated, the state is required to offer state mediation to resolve the dispute, which either party can waive. If mediation is waived or is unsuccessful, the Superintendent initiates an investigation. An investigation includes the request of documentation regarding the allegations, and interviews of the involved persons, as appropriate, to determine the facts of the case. In addition, the parties involved are given an opportunity to present information. After the investigation, an investigation report containing findings of facts, conclusions, and any required/recommended corrective actions, is mailed to the parties. After receipt of the state's investigation report, the complainant or the school district may request reconsideration by the Superintendent. Upon determination by the state that a school district has violated the provisions of Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600), the Superintendent notifies the school district of the action the Superintendent will take to effect compliance.

The following will analyze whether the complaint process imposes state-mandated new programs or higher levels of service on school districts.

(a) Referring Complaint Issues to Other Appropriate State or Federal Agencies (Cal. Code Regs., tit. 5, § 4611)

Title 5 section 4611 provides direction to the CDE and school districts to refer specific types of complaints exempt from the complaint procedures established by the test claim regulations to other appropriate state or federal agencies.

As amended in Register 93, number 51, section 4611 excludes the following complaints from the school district complaint procedures set forth in title 5, section 4600 et seq. and requires school districts to refer the complaints to the following specific agencies for resolution:

1. Allegations of child abuse to the applicable County Department of Social Services, Protective Services Division or appropriate law enforcement agency. (Cal. Code Regs., tit. 5, § 4611(a) (Register 92, No. 3).)
2. Health and safety complaints regarding a Child Development Program to the Department of Social Services (DSS) for licensed facilities, and to the appropriate Child Development regional administrator for licensing-exempt facilities. (Cal. Code Regs., tit. 5, § 4611(b) (Register 92, No. 3).)
3. Discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue. (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 3).)
4. Complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and

Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)⁸⁶

5. Employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH). The complainant must be notified by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 3).)
6. Allegations of fraud to the responsible CDE Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 3).)

The claimant has pled the activity of referring allegations of child abuse to the applicable county agency or appropriate law enforcement agency as added in 1991 and last amended in 1993.⁸⁷ However, in order for an activity to constitute a new program or higher level of service it has to be new as compared with the legal requirements in effect immediately before the adoption of the regulation.⁸⁸ Immediately before the adoption of the regulation in 1991, the Child Abuse and Neglect Reporting Act (commencing with Pen. Code, § 11164) already required districts to report suspected instances of child abuse to a child protective agency, which includes local law enforcement or county welfare departments.⁸⁹ As a result, staff finds that the requirement to refer allegations of child abuse to other appropriate agencies does not constitute a new program or higher level of service.

In addition, as discussed above, child development programs are established by school districts on a voluntary basis. As a result, receiving and then referring health and safety complaints regarding child development programs is triggered by the underlying voluntary decision to establish such a program. Thus, based on *Kern High School Dist.*, staff finds that referring such complaints to the DSS or the appropriate child development regional administrator is not a state-mandated new program or higher level of service.

In regard to the remaining types of complaints, referring these complaints to the specified state and federal agencies is not a result of an underlying voluntary decision by the school district. In addition, referring these complaints to the specified agencies is not mandated by federal law. Also, referring these complaints imposes unique requirements on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs. This requirement did not exist immediately prior to the adoption of this regulation. As a result, staff finds that California Code of Regulations, title 5, section 4611 imposes the following state-mandated new programs or higher levels of service:

⁸⁶ California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

⁸⁷ Exhibit A, *supra*, p. 24. This coincides with Register 92, number 3; and Register 93, No. 51.

⁸⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁸⁹ Penal Code section 11164 et seq. (Stats. 1987, ch. 1071).

1. Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue. (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 31).)
2. Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)⁹⁰
3. Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 31).)
4. Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 31).)

(b) Local Agency Compliance and Complaint Procedures (Cal. Code Regs., tit. 5, §§ 4620, 4621, 4622, 4631, and 4632)

This section analyzes the title 5 sections that set forth the complaint procedures at the school district level. Section 4620 states the responsibility that districts have to ensure compliance with state and federal laws and regulations and investigate complaints of a district's failure to comply with state and federal laws in accordance with the procedures set out in the regulations. However, title 5 section 4620 does not, in and of itself, require school districts to engage in a specific activity. Rather, the actual activities taken to meet a school district's responsibility are set forth in the subsequent regulations (Cal. Code Regs., tit. 5, §§ 4621 – 4632), which were pled by the claimant.

These regulations include activities such as the adoption of policies and procedures for the investigation and resolution of complaints, notifying interested parties of these policies and procedures, the actual investigation of complaints, the preparation of a written decision containing the findings and disposition of the complaint, and forwarding information to the State Superintendent when notified that a district decision has been appealed to the state.

As a reminder, any activity required by the complaint procedures discussed below are limited to non-employment discrimination complaints, complaints alleging discrimination for which federal law does not require a district complaint procedures, and for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, § 56000 et seq., excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, 56846 – 56847, and 59000 – 59300). In addition, the complaints

⁹⁰ California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

that are processed through the policies and procedures adopted by school districts *do not* include complaints of employment discrimination, which are to be referred to the DFEH pursuant to title 5 section 4611.

1) Adoption of Policies and Procedures (Cal. Code Regs., tit. 5, § 4621)

Title 5 section 4621 addresses the adoption of policies and procedures for the investigation and resolution of complaints of alleged discrimination or violations of the educational programs specified in Title 5 section 4610.⁹¹ Based on the plain language of section 4621, school districts are required to engage in the following *one-time* activity:

Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints. Adoption is to occur within one year from the effective date of Chapter 5.1 of title 5 of the California Code of Regulations (September 25, 1992) by submission of the policies and procedures to the governing board for adoption.

Policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate.

Policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)⁹²

The types of complaints processed through the complaint procedures are limited by the types of discrimination prohibited by state law that exceed the prohibitions of federal law. Federal law mandates the adoption of district level complaint procedures and policies for discrimination on the basis of specific characteristics. As addressed in the federal law section of this analysis, Section 504 of the Rehabilitation Act, Title IX, the Age Discrimination Act and Title II of the ADA mandate school districts to adopt policies and procedures for the investigation and resolution of complaints of discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age. These laws also mandate school districts to identify the employee responsible for compliance with the regulations implementing the federal prohibitions against discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age. Thus, as applicable to complaints regarding discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, the activities required by title 5 sections 4621(a) and 4621(b) regarding the adoption of policies and procedures for the investigation and resolution of complaints and the inclusion of the identity of the person responsible for the complaint process in the policies and procedures constitute a federal mandate not subject to article XIII B of the California Constitution.

⁹¹ As discussed above, any activities found to constitute state-mandated new programs or higher levels of service are limited by the findings that some of the educational programs set forth in California Code of Regulations, title 5, section 4610 are not mandated.

⁹² Exhibit A, *supra*, p. 25. The 1991 addition of this regulation cited to by the claimant coincides with Register 92, number 3.

However, as applicable to complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), or violations of the mandated education programs discussed above, the activity is not mandated by federal law. As a result, subject to the limitations discussed above, staff finds the activity imposed by title 5 sections 4621(a) and (b) constitutes a state-mandated activity.

Also, the above activity imposes a unique requirement on school districts and does not apply generally to all residents and entities in the state. Moreover, it implements the state policy against unlawful discrimination and violations of specified educational programs. Immediately prior to the adoption of title 5 section 4621, as added in 1991, school districts were not required to engage in the activity mandated by section 4621. Thus, the activity constitutes a state-mandated new program or higher level of service.

It must be noted that the adoption of policies and procedures was required to be done within one year of the effective date of Chapter 5.1 of title 5 of the California Code of Regulations. The effective date was September 25, 1991, thus this one-time activity should have been done by September 25, 1992, which is outside of the reimbursement period that starts on July 1, 2002. However, new district formation may have occurred during the period of reimbursement, and thus, the adoption of policies and procedures would have had to occur outside of the timeframe set forth in the regulations and within the period of reimbursement.

Thus, staff finds that the following one-time activity imposed by title 5 section 4621 constitutes a state-mandated new program or higher level of service for school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year, but only for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, § 56000 et seq., excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, 56846 – 56847, and 59000 – 59300):

Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.

Policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

2) Notification of District Procedures (Cal. Code Regs., tit. 5, § 4622)

Title 5 section 4622 requires school districts to notify various individuals of the districts' complaint procedures. Specifically, section 4622 requires school districts to engage in the following activities:

1. Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures, including the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600). The annual notice shall include: (1) the identity of the person(s) responsible for processing complaints; and (2) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)
2. The annual notification shall, when necessary, be in the primary language of the recipient pursuant to Education Code section 48985. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

However, as discussed in the federal law section of this analysis, federal law mandates school districts to, in a continuing manner, notify individuals of the district complaint procedures and the identity of the individual responsible for processing complaints of discrimination on the basis of disability, sex, and age.⁹³ Although the federal mandates on school districts to notify students, parents, and employees, in a continuing manner does not specifically require annual notification, staff finds that the annual notification implement and are part and parcel of the federal mandate.⁹⁴

Title 5 section 4622's specification that the *continuing* notice will be on an annual basis is a reasonable articulation of incidental procedural protections of the federal mandate, which is de minimis in context of providing notice on a *continuing* basis. Thus, as applicable to complaints regarding discrimination on the basis of age, disability, and sex, the activity required by title 5 section 4622 to provide annual notification of the district's complaint process constitutes a federal mandate not subject to article XIII B of the California Constitution.

As applicable to non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), or violations of the mandated education programs discussed above (i.e. adult basic education for English and citizenship, a child nutrition program for the provision of one free or reduced price meal each school day to each needy pupil, and special education), this activity is not mandated by federal law. In addition, the requirement that the annual notification be in the primary language of the recipient, when necessary, does not constitute a federal mandate. As a result, subject to the limitations discussed above, staff finds the activities imposed by title 5 section 4622 constitute state-mandated activities.

In order to determine if the state-mandated activities constitute "new programs or higher levels of service" the activities must carry out the governmental function of providing a service to the public, or impose unique requirements on the school district to implement a state policy. In addition, the requirements must be new in comparison to the legal requirements in effect immediately prior to the enactment of the mandate. Here, the state-mandated activities impose

⁹³ 34 Code of Federal Regulations parts 104.8, 106.9, and 110.25.

⁹⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 890.

unique requirements on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs.

As applicable to special education programs established pursuant to Education Code section 56000 et seq., however, the requirement to annually notify students, employees, parents or guardians of its complaint process is not new. Immediately, prior to the adoption of title 5 section 4622 in 1991,⁹⁵ former California Code of Regulations, title 5, section 3081 established complaint procedures specifically for complaints regarding special education programs established pursuant to Education Code section 56000 et seq. These procedures were replaced by the uniform complaint process pled in this test claim, and contain many of the same requirements. Specifically, prior to 1991, former title 5 section 3081, already required school districts to annually notify individuals, agencies, and organizations of their right to file a complaint pursuant to the established complaint process.⁹⁶ Thus, as applicable to special education programs established pursuant to Education Code section 56000 et seq., the requirement to provide annual notification of the complaint process does not constitute a new program or higher level of service.

Similarly, the requirement to provide the annual notice in the primary language of the recipient, in specific circumstances, is not a new requirement. Prior to the adoption of title 5 section 4622, *all notices* were already subject to the Education Code section 48985 requirement to provide notices in the primary language of the recipient under specific circumstances. Thus, providing the annual notification in the primary language of the recipient does not impose a new program or higher level of service.

However, the requirement to provide annual notice regarding a district's complaint process, excluding complaints regarding special education programs, and unlawful discrimination on the basis of disability, age, and sex, did not exist prior to the adoption of title 5 section 4622 in 1991.⁹⁷ Thus, this activity constitutes a new program or higher level of service.

Based on the above discussion, staff finds that the following activity imposed by title 5 section 4622 constitutes a state-mandated new program or higher level of service only for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), and for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):

Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

⁹⁵ Exhibit A. Test claim filing, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

⁹⁶ Former California Code of Regulations, title 5, section 3081(a)(1) (Register 88, No. 15).

⁹⁷ Exhibit A. Test claim filing, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

3) Investigation and Disposition of Complaints (Cal. Code Regs., tit. 5, § 4631)

Title 5 section 4631 sets forth the complaint procedures for school districts to address allegations of discrimination or of violations of the specified educational programs. Based on the plain language of section 4631, school districts are required to engage in the following activities:

1. Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)
2. Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

3. The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

The claimant alleges that section 4631 also requires school districts to attempt to resolve complaints through mediation prior to the initiation of a formal compliance investigation. The source of this alleged requirement is section 4631(d). However, the plain language of subdivision (d) provides that school districts "*may* establish procedures for attempting to resolve complaints through mediation prior to the initiation of a formal compliance investigation." Based on the plain language of subdivision (d) school districts are authorized to establish procedures allowing for mediation, but are not required to do so. Thus, based on the plain language, staff finds that section 4631 does not require school districts to engage in any mediation related activities.

In addition, federal law mandates school districts to have complaint procedures, which include investigations into complaints, that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability, sex, and age.⁹⁸ As discussed above, the

⁹⁸ 34 Code of Federal Regulations part 104.7(b) and 28 Code of Federal Regulations part 35.107(b), implement Section 504 of the Rehabilitation Act and Title II of the ADA prohibiting discrimination on the basis of disability. 34 Code of Federal Regulations part 110.25(c) implements the Age Discrimination Act, which prohibits non-employment discrimination on the basis of age. 34 Code of Federal Regulations part 106.8(a) and (b) implements Title IX which prohibits discrimination on the basis of sex.

California Supreme Court has found that rules or procedures that are intended to implement an applicable federal law, and whose costs are de minimis in context, should be treated as part and parcel of the underlying federal mandate.⁹⁹ The court made this finding where the Legislature adopted various incidental procedural protections designed to make an underlying federal right enforceable and to set forth procedural details that were not expressly articulated. These incidental procedural protections included: (1) the adoption of rules and regulations pertaining to pupil expulsions; (2) the inclusion in the notice of hearing of (a) a copy of the disciplinary rules of the district, and (b) a notice of the opportunity to inspect and obtain copies of all documents to be used at the hearing; (3) allowing upon request, the pupil or parent to inspect and obtain copies of the documents to be used at the hearing; and (4) sending written notice concerning (a) any decision to expel or suspend the enforcement of an expulsion order during a period of probation, and (b) the right to appeal the expulsion to the county board of education.¹⁰⁰

Similarly, as applicable to complaints of discrimination on the basis of age, disability, and sex, the requirements of title 5 section 4631 were intended to implement federal law by setting forth incidental procedural details not expressly articulated. The requirements to complete the investigation into complaints within 60 days of receiving the complaint, prepare a written decision and provide it to the complainant, and to provide an opportunity for parties to provide information relevant to the complaint are reasonably articulated procedural protections designed to make the underlying federal right to a prompt and equitable complaint process enforceable and to set forth procedural details not expressly articulated. In addition, viewed in the context of the requirement to have a complaint process providing for *prompt* and *equitable* resolution of complaints, these incidental activities are de minimis in nature. Thus, as applicable to complaints of discrimination on the basis of age, disability, and sex, the activities required by title 5 section 4631 constitute a federal mandate not subject to article XIII B, section 6 of the California Constitution.

However, as applicable to complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), or violations of the education programs discussed above (i.e. adult basic education for English and citizenship, a child nutrition program for the provision of one free or reduced price meal each school day to each needy pupil, and special education), these activities are not mandated by federal law. As a result, subject to the limitations discussed above, staff finds the activities imposed by title 5 section 4631 constitute state-mandated activities.

In addition, the state-mandated activities imposed by title 5 section 4631 impose unique requirements on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs. As applicable to complaints of unlawful discrimination, as limited above, and complaints regarding adult basic education and child nutrition programs, as limited above, the requirements did not exist prior to the adoption of

⁹⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 890.

¹⁰⁰ *Id.* at p. 873.

title 5 section 4622 in 1991.¹⁰¹ Thus, for these complaints the activities constitute new programs or higher levels of service.

However, as discussed above, former title 5 section 3081, which existed immediately before title 5 section 4631, required complaint procedures for complaints of violations of special education programs established pursuant to Education Code section 56000. These procedures included the requirement to conduct an investigation into the complaint and the preparation of a district decision that included the district's findings, conclusions, rationale, and corrective actions, if necessary.¹⁰² In addition, districts were required to provide the complainant a copy of its decision, and notify the complainant of his or her right to appeal the decision.¹⁰³ In addition, the process was required to provide an opportunity for the complainant and school district representatives to present information relevant to the complaint.¹⁰⁴ As a result, as applicable to complaints regarding special education programs established pursuant to Education Code section 56000 et seq., the state-mandated activities *do not* constitute new programs or higher levels of service.

Based on the above discussion, staff finds that the following activities imposed by title 5 section 4631 constitute state-mandated new programs or higher levels of service but only for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):

1. Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)
2. Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

3. The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

¹⁰¹ Exhibit A. Test claim filing, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

¹⁰² Former California Code of Regulations, title 5, section 3081(f)(1) (Register 88, No. 15).

¹⁰³ Former California Code of Regulations, title 5, section 3081(f)(1) and (2) (Register 88, No. 15).

¹⁰⁴ Former California Code of Regulations, title 5, section 3081(g)(1) (Register 88, No. 15).

4) Forwarding Information to the Superintendent (Cal. Code Regs., tit. 5, § 4632)

A complainant is authorized to appeal a school district's Decision to the Superintendent.¹⁰⁵ If a complainant utilizes this authority, title 5 section 4632 requires school districts to forward specified information to the Superintendent upon notification by the Superintendent of the appeal. Specifically, section 4632 requires school districts to engage in the following activity:

Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

This activity is not mandated by federal law. Thus, staff finds the above activity constitutes a state-mandated activity for non-employment discrimination complaints alleging unlawful discrimination on any basis and for the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, § 56000 et seq., excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, 56846 – 56847, and 59000 – 59300).

In addition, this activity imposes a unique requirement on school districts in order to implement the state policy against unlawful discrimination and violations of specified educational programs. Also, as applicable to non-employment discrimination complaints of unlawful discrimination, as limited above, and complaints regarding adult basic education and child nutrition programs, as limited above, the requirements did not exist prior to the adoption of title 5 section 4622 in 1991.¹⁰⁶ Thus, for these complaints the requirement to forward specified information to the State Superintendent constitutes a new program or higher level of service.

However, as applicable to special education programs established pursuant to Education Code section 56000, the state-mandated activity is not new as compared to the requirements in effect immediately before the adoption to title 5 section 4632 in 1991. Former California Code of Regulations, title 5, section 3081(i), already required school districts to provide the specified information to the State Superintendent if a complainant appealed a school districts decision on a complaint regarding special education programs to the State Department of Education. Thus, the state-mandated activity does not constitute a new program or higher level of service as applicable to complaints regarding special education programs established pursuant to Education Code section 56000 et seq.

Based on the above discussion, staff finds that the above activity constitutes a state-mandated new program or higher level of service for non-employment discrimination complaints alleging

¹⁰⁵ California Code of Regulations, title 5, section 4652 (Register 92, No. 3).

¹⁰⁶ Exhibit A. Test claim filing, *supra*, p. 45. The claimant pled title 5 section 4622 as added in 1991. This corresponds to Register 92, number 3.

unlawful discrimination and for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550).

(c) State Complaint and Resolution Procedures (Cal. Code Regs., tit. 5, §§ 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670)

The claimant alleges that title 5 sections 4650, 4652, 4660, 4661, 4662, 4663, 4665, and 4670 impose reimbursable state-mandated programs on school districts, including: (1) cooperating with the State Superintendent in mediation or investigations if the Superintendent intervenes directly into a complaint or if a district's decision on complaint is appealed to the Superintendent; (2) cooperating with state investigators by providing various documents and information regarding the allegations of a complaint to the investigators; (3) requesting reconsideration of an investigation report by the state; and (4) "appearing and presenting evidence in a court of competent jurisdiction when the Superintendent files an action seeking an order compelling compliance with provisions of the chapter."¹⁰⁷ However, for the reasons discussed below, staff finds that the title 5 regulations discussed in this section do not mandate new programs or higher levels of service on school districts.

First, the plain language of the regulations discussed in this section of the analysis does not impose any activities on school districts. Rather, the regulations authorize complainants to appeal a school district's decision and findings regarding allegations of the school district violating state or federal law to the State Superintendent.¹⁰⁸ In addition, the regulations impose requirements on the State Superintendent to investigate school districts if a complainant appeals a school district's decision or if specific conditions exist that require the State Superintendent to intervene without waiting for a school district action or complainant appeal.¹⁰⁹ After the CDE issues its investigation report, a complainant or school district is authorized to request reconsideration by the Superintendent, but is not required to seek reconsideration.¹¹⁰ If the Superintendent finds that a school district is in violation of the provisions of Chapter 5.1 of the title 5 regulations (commencing with section 4600), the Superintendent is then authorized to take specified actions to seek compliance by the school district.¹¹¹ Thus, the plain language of the regulations does not require *school districts* to engage in any activities.

Second, even if the plain language required school district to engage in the activities alleged by the claimant, those activities do not constitute a "program" under article XIII B, section 6 of the California Constitution. A mandated activity constitutes a "program" when it: (1) carries out the governmental function of providing a service to the public; or (2) imposes unique requirements

¹⁰⁷ Exhibit A. *Id.* at pgs. 47-48.

¹⁰⁸ California Code of Regulations, title 5, section 4652 (Register 92, No. 3).

¹⁰⁹ California Code of Regulations, title 5, section 4650, 4660, 4661, 4662, and 4663 (Register 92, No. 3).

¹¹⁰ California Code of Regulations, title 5, section 4665 (Register 92, No. 3).

¹¹¹ California Code of Regulations, title 5, section 4670 (Register 92, No. 3).

on local agencies or school districts and does not apply generally to all residents and entities in the state.¹¹²

The claimant generally alleges that the regulations impose a reimbursable program on school districts to cooperate with the state's investigation into allegations by a complainant that a school district has violated state or federal law. Staff presumes this allegation is based on the language in title 5 section 4663, which sets forth the actions the state will take if a complainant or school district refuses to cooperate with the investigation. Section 4663 provides in relevant part:

Refusal by the local agency or complainant to provide the investigator with access to records and other information relating to the complaint which the investigator is privileged to review, or any other obstruction of the investigative process shall result in either a dismissal of the complaint or imposition of official applicable sanctions against the local agency.¹¹³

However, as indicated by the language above, the state complaint resolution process applies equally to the school district being investigated and the complainant, which can be a private individual.¹¹⁴ Thus, cooperating with the state's investigation is not a unique requirement imposed on school districts. As a result, even if the language of the regulations specifically required school districts to cooperate with the state's investigation, staff finds that this activity does not constitute a "program" under articles XIII B, section 6 of the California Constitution.

In addition, the claimant alleges that title 5 section 4670 imposes a state-mandate program on school districts to "[appear] and [present] evidence in a court of competent jurisdiction when the Superintendent files an action seeking an order compelling compliance with the provisions of [Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600)]." In other words, the claimant alleges that appearing and presenting evidence in court in order to oppose an order to compel the school district to comply with state law constitutes a "program" under article XIII B, section 6 of the California Constitution.

The claimant has not provided, nor can staff find, an argument to explain why appearing and presenting evidence in court in order to oppose an order to compel a school district to comply with state law provides a service to the public. Additionally, facing litigation for allegations of failing to meet one's legal obligations is not a unique requirement imposed on school districts. Both private and public individuals and entities face litigation to compel compliance with their legal obligations. In fact, the primary judicial function of courts is to enforce legal obligations and redress injuries to legal rights by the determination of controversies between litigants, both

¹¹² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

¹¹³ California Code of Regulations, title 5, section 4663(b) (Register 92, No. 3). Staff must make this presumption because the language of the regulations is directed at the Superintendent and the claimant does not specifically identify the language requiring cooperation with the Superintendent's investigation.

¹¹⁴ California Code of Regulations, title 5, section 4600 (Register 92, No. 3). Defining "Complainant" to include "any individual, including a person's duly authorized representative or a interested third party"

private and public.¹¹⁵ Thus, staff finds that the activity alleged by the claimant to be mandated by title 5 section 4670 does not constitute a “program” under article XIII B section 6 of the California Constitution.

B. The Test Claim Statutes and Regulations Impose Costs Mandated by the State within the Meaning of Government Code Sections 17514 and 17556.

The final issue is whether the state-mandated activities impose costs mandated by the state,¹¹⁶ and whether any statutory exceptions listed in Government Code section 17556 apply to the test claim. Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.” “Any increased costs” for which a claimant may seek reimbursement include both direct and indirect costs.¹¹⁷ Government Code section 17564 requires reimbursement claims to exceed \$1,000 to be eligible for reimbursement.

The claimant estimates that the Solana Unified Beach School District “incurred more than \$1,000 in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2002 through June 30, 2003” to implement all duties alleged by the claimant to be mandated by the state.¹¹⁸ Thus, the claimant has met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

In addition, none of the statutory exceptions listed in Government Code section 17556 apply to the state-mandated new programs or higher levels of service found in the analysis above. As a result, the staff finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on employers within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

IV. Conclusion

For the reasons discussed above, staff finds that the following activities constitute reimbursable state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514:

1. Assurance of Compliance with Antidiscrimination Laws in Excess of Federal Law, and Notices Regarding Civil Remedies (Ed. Code, §§ 250, 251, and 262.3)
 - a. Provide written assurance to any state agency administering state financial assistance or student financial aid to the school district that each program or activity conducted by the school district will be in compliance with state antidiscrimination laws

¹¹⁵ 16 California Jurisprudence Third (2002) Courts, section 30, p. 387, citing *Warner v. F. Thomas Parisian Dyeing & Cleaning Works* (1895) 105 Cal. 409, 412.

¹¹⁶ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

¹¹⁷ Government Code section 17564.

¹¹⁸ Exhibit A, test claim filing, dated July 23, 2003, Exhibit 1 Declaration of Ellie Topolovac, Superintendent of Solana Beach School District.

prohibiting discrimination on the basis of religion and sexual orientation.¹¹⁹ (Ed. Code, § 250 (Stats. 1998, ch. 914).)

- b. Submit timely, complete, and accurate compliance reports regarding compliance with state antidiscrimination laws prohibiting discrimination on the basis of religion and sexual orientation to the State Department of Education as the State Department of Education may require. (Ed. Code, § 251 (Stats. 1982, ch. 1117).)
 - c. Advise people who have filed a complaint with the school district pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200), which prohibits unlawful discrimination, that civil law remedies, including, but not limited to injunctions, restraining orders, or other remedies or orders, may also be available to complainants. (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
 - d. Make available by publication in appropriate informational materials the information regarding the availability of civil remedies to people who have filed a complaint pursuant to Education Code, division 1, part 1, chapter 2 (commencing with Ed. Code, § 200). (Ed. Code, § 262.3(b) (Stats. 1988, ch. 1514).)
2. Uniform Complaint Procedures
- a. Referral of Complaints to Appropriate Entities (Cal. Code Regs., Tit. 5, § 4611)
 - (1) Refer discrimination issues involving title IX of the Educational Amendments of 1972 to the U.S. Office of Civil Rights (OCR) *only* if there is no state discrimination law or regulation at issue.¹²⁰ (Cal. Code Regs., tit. 5, § 4611(c) (Register 92, No. 31).)
 - (2) Refer complaints of discrimination involving Child Nutrition Programs administered by the CDE from program participants or applicants to either the Administrator for the Food and Nutrition Service at the United States Department of Agriculture or to the United States Secretary of Agriculture. (Cal. Code Regs., tit. 5, § 4611(d) (Register 93, No. 51).)¹²¹
 - (3) Refer employment discrimination complaints to the State Department of Fair Employment and Housing (DFEH) and notify the complainant by certified mail of any DFEH transferral. (Cal. Code Regs., tit. 5, § 4611(d) (Register 92, No. 31).)

¹¹⁹ Education Code section 250 provides that a single assurance may be provided for all the programs and activities conducted by an educational institution.

¹²⁰ The limitation's reference to "state discrimination law or regulation at issue" refers to *any* state discrimination laws or regulations.

¹²¹ California Code of Regulations, title 5, section 4611(c) was amended in Register 93, number 51, by separating complaints of discrimination involving Title IX and complaints of discrimination involving Child Nutrition Programs. The latter complaint became the subject of subdivision (d), shifting the remaining complaint types down a subdivision. The result is in Register 93, number 51 former subdivisions (d) and (e) became (e) and (f).

(4) Refer allegations of fraud to the responsible California Department of Education (CDE) Division Director and the CDE's Legal Office. (Cal. Code Regs., tit. 5, § 4611(e) (Register 92, No. 31).)

b. Adoption of Policies and Procedures for the Investigation of Complaints (Cal. Code Regs., Tit. 5, § 4621)

Only school districts formed during the reimbursement period that could not have adopted policies and procedures prior to the 2002-2003 fiscal year are mandated to engage in the below activity, but *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (3) special education (Ed. Code, § 56000 et seq., excluding §§ 56390 – 56392, 56400 – 56414, 56472 – 56474, 56475 – 56476, 56846 – 56847, and 59000 – 59300):¹²²

Adopt policies and procedures consistent with Chapter 5.1 of title 5 of the California Code of Regulations (commencing with section 4600) for the investigation and resolution of complaints.

The policies must ensure that complainants are protected from retaliation and that the identity of the complainant alleging discrimination remains confidential as appropriate. In addition, the policies and procedures are to include the person(s), employee(s), or agency position(s) or unit(s) responsible for receiving complaints, investigating complaints and ensuring local educational agency compliance. (Cal. Code Regs., tit. 5, §§ 4621(a) and (b) (Register 92, No. 3).)

c. Notification of Complaint Procedures, and Investigation and Disposition of Complaints (Cal. Code Regs., Tit. 5, §§ 4622 and 4631)

¹²² This activity *is not reimbursable* for complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390-56392, 56400-56414, 56472-56474, 56475-56476, 56846-56847, and 59000-59300.

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination on the basis of race, ethnic group identification, national origin, religion, and sexual orientation (excluding sexual harassment on the basis of sexual orientation), *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):¹²³

- (1) Annually notify in writing school district students, employees, parents or guardians of its students, the district advisory committee, school advisory committees, and other interested parties, of the school district complaint procedures.

The annual notice shall include: (1) the opportunity to appeal to the CDE and the provisions of Chapter 5.1 of title 5 of California Code of Regulations (commencing with section 4600); (2) the identity of the person(s) responsible for processing complaints; and (3) notice of any civil law remedies that may be available, and of the appeal and review procedures contained in California Code of Regulations, title 5, sections 4650, 4652, and 4671. (Cal. Code Regs., tit. 5, § 4622 (Register 92, No. 3).)

- (2) Complete the investigation of a complaint in accordance with the local procedures developed pursuant to section 4621 within 60 days from receipt of the complaint. (Cal. Code Regs., tit. 5, § 4631(a) (Register 92, No. 3).)
- (3) Prepare a written Local Educational Agency Decision (Decision) and send the Decision to the complainant within 60 days from receipt of the complaint.

The Decision shall contain the findings and disposition of the complaint, including corrective actions if any, the rationale for such disposition, notice of the complainant's right to appeal the local educational agency decision to the CDE, and the procedures to be followed for initiating an appeal to the CDE. (Cal. Code Regs., tit. 5, § 4631(a) and (c) (Register 92, No. 3).)

¹²³ These activities *are not reimbursable* for complaints regarding employment discrimination and discrimination on the basis of disability, sex (including sexual harassment generally and on the basis of sexual orientation), and age, and regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56000-56885 and 59000-59300.

(4) The investigation must provide an opportunity for the complainant, or the complainant's representative, or both, and school district representatives to present information relevant to the complaint. (Cal. Code Regs., tit. 5, § 4631(b) (Register 92, No. 3).)

d. Forwarding of Information to the Superintendent of Public Instruction Regarding Appealed District Decisions (Cal. Code Regs., Tit. 5, § 4632)

School districts are mandated to engage in the below activities *only* for non-employment discrimination complaints alleging unlawful discrimination *and* for complaints alleging violations of the following educational programs: (1) adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552); and (2) child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550):¹²⁴

Forward the following to the Superintendent of Public Instruction upon notification by the Superintendent that the Decision has been appealed to the state-level by a complainant: (1) the original complaint; (2) a copy of the Local Educational Agency Decision; (3) a summary of the nature and extent of the investigation conducted by the local agency, if not covered in the Local Educational Agency Decision; (4) a report of any action taken to resolve the complaint; (5) a copy of the school district complaint procedures; and (6) such other relevant information as the Superintendent may require. (Cal. Code Regs., tit. 5, § 4632 (Register 92, No. 3).)

Any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

V. Staff Recommendation

Therefore, staff recommends that the Commission adopt the staff analysis as its statement of decision to partially approve this test claim.

¹²⁴ "Unlawful discrimination" as used in this activity is not limited and applies to complaints alleging unlawful discrimination on all grounds. This activity, however, is not reimbursable with respect to complaints regarding the following educational programs: (1) Adult Basic Education established pursuant to Education Code sections 8500-8538 and 52500-52616.5 (except for Adult basic education for English and citizenship (Ed. Code, §§ 52540 and 52552)); (2) Consolidated Categorical Aid Programs as listed in Education Code section 64000(a); (3) Migrant Education established pursuant to Education Code sections 54440-54445; (4) Vocational Education established pursuant to Education Code section 52300-52480; (5) Child Care and Development programs established pursuant to Education Code sections 8200-8493; (6) Child Nutrition programs established pursuant to Education Code sections 49490-49560 (except child nutrition programs for the provision of one free or reduced price meal each school day to each needy pupil (Ed. Code, § 49550); and (7) Special Education programs established pursuant to Education Code sections 56390-56392, 56400-56414, 56472-56474, 56475-56476, 56846-56847, and 59000-59300.

TITLE 5

HANDICAPPED CHILDREN

§ 3081

(Register 88, No. 15-4-9-88)

(p. 101)

An elementary school district shall notify a high school district of all pupils placed in nonpublic school or agency programs prior to the annual review of the individualized education program for each pupil who may transfer to the high school district.

NOTE: Authority cited: Sections 56100(a), (i), (j), Education Code; 20 U.S.C. 1414(c) (2) (B); and 34 CFR 300.600. Reference: Sections 56345, 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403.

3069. Graduation.

When an individual with exceptional needs meets public education agency requirements for completion of prescribed course of study and adopted differential proficiency standards as designated in the pupil's individualized education program, the public education agency which developed the individualized education program shall award the diploma.

NOTE: Authority cited: Sections 56100(a), (i), (j), Education Code; 20 U.S.C. 1414(c) (2) (B); and 34 CFR 300.600. Reference: Sections 56345, 56365-56366.5, Education Code; and 34 CFR 300.4, 300.302, 300.317, 300.343-348 and 300.400-403.

Article 7. Procedural Safeguards

3080. General Provisions.

(a) Section 3081 applies to the filing of a complaint, in accordance with provisions of Title 34, Code of Federal Regulations, Section 76.780-783, regarding a public agency's alleged violation of federal or state law or regulation relating to the provision of a free appropriate public education.

(b) Section 3082 applies to due process hearing procedures which govern the resolution of disagreements between a parent and a public agency regarding the proposal, or refusal of a public agency to initiate or change the identification, assessment, or educational placement of the pupil or the provision of a free appropriate public education to the pupil.

NOTE: Authority cited: Sections 56100(a) and (j), Education Code. Reference: Sections 56500.1 and 56500.2, Education Code; and 34 CFR 76.780-783.

HISTORY:

- 1. Amendment filed 3-21-88; operative 4-20-88 (Register 88, No. 15).

3081. Complaint Procedures.

(a) Notice and Filing Procedures.

(1) Public education agencies shall annually notify individuals, agencies, and organizations of their right to file a complaint under this section and of the procedures for implementation. Such notification shall include annual notice in a newspaper with local distribution of the right to file a complaint under this section and of the procedures for implementation, and individual notice to parents or guardians in their primary language or other mode of communication at least annually in conjunction with the public education agency's normal notification procedures.

(2) Any individual, public agency, or organization may file a written complaint with the Superintendent of Public Instruction with a copy to the involved public agency alleging a matter which, if true, would constitute a violation by that public agency of federal or state law or regulation governing special education and related services.

(3) If the complainant files a written complaint with the superintendent of the concerned public education agency, the local superintendent shall upon receipt transmit the complaint to the Superintendent of Public Instruction, and the procedures in Section 3081 (c) shall be followed.

(b) Each person or organization filing a complaint pursuant to Section 3081 (a) shall provide any and all information the complainant believes will support the complaint.

(c) The following procedures will be followed by the Superintendent of Public Instruction or his or her designated compliance specialist for the resolution of complaints:

(1) All complaints received by the Department of Education shall be referred to the Special Education Division, which shall designate specific individuals within the Special Education Division who will be responsible for the processing of the complaint. Such individuals shall be knowledgeable of federal and state laws and regulations pertaining to the education of individuals with exceptional needs.

(2) The complainant filing an oral complaint shall be informed of the procedure for filing a written complaint. The complainant shall be informed of the availability of a list of free or low-cost legal services and other relevant services within the geographical area.

(3) Upon receipt of a written complaint, the State Department of Education shall within five (5) days so inform the public agency involved and nonpublic school or agency, as applicable, and the complainant in writing, and a file shall be opened in the Special Education Division. Maintenance of the file shall be in accordance with existing federal and state laws and regulations relating to confidentiality, including Education Code Sections 49060 et seq.

(4) The complaint shall be reviewed within five days to determine whether direct state intervention is necessary pursuant to Section 3081 (d), or whether the complaint must first be investigated by the public education agency pursuant to Section 3081 (f).

(d) The State Department of Education shall intervene directly if one of the following criteria is met:

(1) When the complaint indicates that the public education agency has failed or refused to implement the local-level complaint procedure.

(2) When the complaint indicates that the public agency has failed or refused to implement a final decision from a due process hearing.

(3) When the complaint includes information which indicates that the public agency fails or refuses to comply with the due process procedures or requirements established in federal and state law or regulations to resolve disagreements between the parent and the public education agency through the due process procedures.

(4) When the State Superintendent of Public Instruction or designee determines that the alleged violation presents an immediate danger to the health, safety, or welfare of a child or group of children.

(5) When the complaint indicates that a public agency other than a district, county office, or special education local plan area fails or refuses to comply with federal or state law or regulation relating to the provision of a free appropriate public education.

(e) If the complaint is determined to be appropriate for direct intervention by the State Department of Education, the procedures set forth in Section 3081 (i) (2) and (j) (2) shall be followed for such complaint. If the complaint does not meet the criteria for direct State Department of Education intervention, a copy of the complaint shall be sent immediately to the involved local public education agency and the agency shall be directed to implement local complaint procedures in accordance with Section 3081 (f). The time-lines for local resolution shall commence as of the date of receipt by the involved public

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TITLE 5**HANDICAPPED CHILDREN**

§ 308

(Register 88, No. 15-4-9-88)

(p. 103)

education agency of the copy of the complaint. The complainant shall be immediately notified in his or her primary language or other mode of communication by the State Superintendent of Public Instruction or designee of the action taken and of the local procedures to be followed in handling complaints.

(f) Within thirty (30) days from the receipt of the complaint from the State Department of Education, the superintendent or designee of the involved public education agency shall:

(1) Investigate the complaint and prepare a written report of the findings, conclusions, and rationale for the conclusions and corrective action, if necessary. This report shall be in English and, when necessary, in the primary language or mode of communication of the complainant, and shall include a notice of the complainant's right to a review of the local decision by the local board of education and State Superintendent of Public Instruction, pursuant to Section 3081 (g) and (h) and the procedure to be followed in requesting a review.

(2) Provide the complainant with a copy of the report no later than five (5) days after completion and within the thirty (30) days allowed for investigation and reporting.

(3) Submit a copy to the local governing board and schedule and conduct a hearing before the board within the thirty (30) days allowed, and notify the complainant of the hearing date, time, and location.

(4) Prepare a report of the findings, rationale for conclusions, and corrective actions if necessary, which shall be forwarded by the public education agency to the Special Education Division following the local governing board meeting at which the complaint is scheduled and within the 30 days allowed for investigation and reporting.

(g) The complainant may pursue either of the following remedies if he/she is dissatisfied with the decision rendered by the superintendent of the public education agency or the local governing board of education:

(1) Appear at the scheduled hearing before the local governing board of education regarding the complaint. The local governing board is empowered to affirm, reverse, or revise the decision of the superintendent of the public agency if the complainant has submitted evidence or argument, either written or oral, to the board opposing the local superintendent's decision. If the local superintendent and complainant agree to the superintendent's decision, and the local board disagrees, the local governing board shall provide notice to the complainant and grant the complainant the right to a second hearing before any action is taken to the contrary. This shall be completed within the thirty (30) days specified in Section 3081 (f) unless the complainant agrees to an extension of the time-line. The complainant may then appeal to the Superintendent of Public Instruction for review of the local decision if he or she is dissatisfied with the local board's resolution.

(2) Waive the right to a hearing before the local governing board and appeal directly to the State Department of Education for review of the local decision pursuant to this section.

(h) Procedure for an appeal of a complaint.

(1) Any appeal to the State Department of Education for review of a district-level decision shall be made within fifteen (15) days following receipt by the complainant of the final written report of the decision of the local governing board.

(i) Procedure for investigation:

(1) Upon receipt of the request for an appeal, the following information shall be obtained, for the purpose of conducting an impartial review:

- (A) Copies of all documents prepared and/or reviewed.
- (B) Copies of findings, rationale for conclusions, and corrective action when required.

(C) Any other pertinent materials including any submitted by the complainant for this purpose.

(2) Any appropriate actions necessary to investigate the complaint may be taken, including telephone calls and/or on-site visits. At any point in the review either party may submit additional information related to the complaint. As part of the investigation, the complainant shall be provided with an opportunity to respond to information obtained from the public education agency.

(j) Time-lines:

(1) If a complaint is appealed to the Superintendent of Public Instruction or designee, the impartial review shall be completed and a written report including findings, conclusions, rationale for conclusions, and corrective action, if necessary, shall be rendered within twenty-five (25) calendar days of the receipt of the request for an appeal. This report shall be in English and, when necessary, in the primary language or mode of communication of the complainant, and shall include a notice of the complainant's right to request a review of the State Department of Education's decision by the federal Education Department pursuant to Title 34, Code of Federal Regulations, Section 76.781(c).

(2) If a complaint is accepted by the State Department of Education for direct intervention pursuant to Section 3081(d), the complaint shall be investigated and a written report including findings, conclusions, rationale for conclusions, and corrective action, if necessary, shall be completed within thirty (30) days of receipt of the complaint. This report shall be in English, and when necessary, in the primary language or mode of communication of the complainant, and shall include a notice of the complainant's right to request a review of the State Department of Education's decision by the federal Education Department pursuant to Title 34, Code of Federal Regulations, Section 76.781(c).

(k) Resolution.

(1) The Superintendent of Public Instruction's compliance report shall be sent to the complainant, the public education agency involved, and the appropriate governing board.

(2) If an investigation pursuant to Section 3081(i) indicates a failure to comply with law or regulation, the public education agency and complainant shall be so informed in the compliance report. If corrective action is required, such action shall be designated in the compliance report, and shall include the time-lines for correction and the consequences for continued noncompliance. The State Department of Education retains jurisdiction over the implementation of the corrective action. Records shall be available upon request, pursuant to Government Code Sections 6250 to 6265 and Title 5 California Code of Regulations Sections 50 to 51.

(3) The Department of Education shall monitor the public agencies' compliance with any required corrective action through a follow-up procedure.

(4) If there appears to be a failure or refusal to comply with the law or regulations, and if the noncompliance or refusal to comply cannot be rectified by informal means, compliance shall be effected by the Superintendent and the State Board of Education in the most efficient and expeditious manner authorized by law. Such procedures may include, but are not limited to, proceeding

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TITLE 5**HANDICAPPED CHILDREN**

§ 3082

(Register 88, No. 15—4-9-88)

(p. 105)

in the Superior Court for an appropriate order compelling compliance or proceeding to recover or curtail state funding to the noncompliant local education agency.

(l) No decision to curtail or recover state funding to an education agency shall be made by the Superintendent of Public Instruction or the State Board until:

(1) The Superintendent of Public Instruction or the State Board has determined that compliance cannot be secured by voluntary means.

(2) The public education agency has been notified in writing of its failure to comply and advised of its right to appeal and the basis for the determination of noncompliance.

(3) The expiration of at least thirty (30) days from the mailing or personal service of such notice to the superintendent of the public education agency during which period additional efforts shall be taken by the Superintendent of Public Instruction to enlist the public education agency's compliance with federal or state law or regulations and to take such corrective action as may be required for compliance.

(m) Post-decision proceedings. A public education agency adversely affected by a decision to curtail state funding shall be restored to eligibility for state financial assistance if it brings itself into compliance with federal or state law or regulations and provides such assurance as the Superintendent of Public Instruction or State Board shall require that it will comply with law or regulations.

(n) Complaints against the State Department of Education can be filed with the State Superintendent of Public Instruction.

(o) The report of state appeals and complaints accepted for initial intervention shall be submitted annually to the State Board of Education as an informational item.

NOTE: Authority cited: Sections 56100(a) and (j), Education Code. Reference: Sections 56500.1 and 56500.2, Education Code; and 34 CFR 76.780-783.

HISTORY:

1. Renumbering and amendment of former Section 3081 to Section 3082, and renumbering and amendment of Section 3080 (a) (1)-(n) to Section 3081 filed 3-21-88; operative 4-20-88 (Register 88, No. 15). For prior history, see Registers 86, No. 21; 82, No. 18; and 82, No. 6.

3082. Due Process Hearing Procedures.

(a) A parent or public education agency may initiate a hearing pursuant to Education Code Sections 56500 through 56507 and Title 34, Code of Federal Regulations, Sections 300.506 through 300.514 on any of the matters described in Education Code Section 56501. The hearing shall be conducted by a hearing officer knowledgeable in administrative hearings and under contract with the State Department of Education.

(b) The hearings conducted pursuant to this section shall not be conducted according to the technical rules of evidence and those related to witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

(c) In addition to the rights afforded both parties to the hearing pursuant to Education Code Sections 56500-56507 and Title 34, Code of Federal Regulations, Section 300.514, the parties shall also have the following rights:

(1) To call witnesses, including adverse witnesses, and to cross examine witnesses for the other party.

(2) To compel the attendance of witnesses. The hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party).

(3) Absent compelling circumstances to the contrary, and upon motion to the hearing officer to have witnesses excluded from the hearing.

(d) Hearings shall be conducted in the English language; when the primary language of a party to a hearing is other than English, or other mode of communication, an interpreter shall be provided who is competent as determined by the hearing officer. Cost for an interpreter shall be borne by the State Department of Education.

(e) If either the school district or the parents have an attorney present as an observer, the attorney may watch the proceedings to advise his party at a later date, but the attorney may not present oral argument, written argument or evidence, or consult in any manner in or out of the room, during the due process hearing.

NOTE: Authority cited: Sections 56100(a) and (j), Education Code. Reference: Sections 56500-56507, Education Code; and 34 CFR 300.506-514.

HISTORY:

1. New section filed 12-21-81 as an emergency; effective upon filing (Register 82, No. 6). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-20-82.

2. Certificate of Compliance transmitted to OAL 12-11-81 and filed 4-29-82 (Register 82, No. 18).

3. Renumbering and amendment of Section 3081 to Section 3082 filed 3-21-88; operative 4-20-88 (Register 88, No. 15).

(Next page is 125)