

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 84030, 84040 and 84040.5, as amended by Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207; Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of 1981, Chapters 470, 471, 930 and 1178; Statutes of 1983, Chapter 1206; Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486; Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of 1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300, 58301, 58303, 58304, 58305, 58306, 58307, 58308, 58310, 58311, 58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114

Filed on December 26, 1997

By Santa Monica Community College District,  
Claimant.

No. 97-TC-10, 97-TC-11, 97-TC-12

***Community College District Budget and Financial Reports, Fiscal Management Reports, and Financial and Compliance Audits***


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

***(Adopted on March 28, 2002)***

**STATEMENT OF DECISION**

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 29, 2002.

  
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Paula Higashi, Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 84030, 840.40 and 84040.5, as amended by Statutes of 1977, Chapters 36 and 936; Statutes of 1978, Chapter 207; Statutes of 1979, Chapter 221; Statutes of 1980, Chapter 884; Statutes of 1981, Chapters 470,471, 930 and 1178; Statutes of 1983, Chapter 1206; Statutes of 1984, Chapters 609 and 1282; Statutes of 1986, Chapter 1486; Statutes of 1987, Chapter 1025; Statutes of 1990, Chapter 1372; Statutes of 1994, Chapter 20; California Code of Regulations, Title 5, Sections 58300, 58301, 58303, 58304, 58305, 58306, 58307, 58308, 58310, 58311, 58312, 58314, 58316, 58318, 59100, 59102, 59104, 59106, 59108, 59110, 59112, and 59114

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*(Adopted on' March 28, 2002)*

**STATEMENT OF DECISION**

The Commission on State Mandates (the Commission) heard this test claim on January 24 and February 28, 2002 during regularly scheduled hearings. Keith B. Petersen appeared for claimant Santa Monica Community College District at both hearings. Ramon de la Guardia and Randy Katz appeared on behalf of the Department of Finance at the January hearing. Ramon de la Guardia, Jim Foreman, and Randy Katz appeared on behalf of the Department of Finance at the February hearing. The Commission decided this test claim at the February 28, 2002 hearing,

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

The Commission, by a vote of 4-2, denied this test claim.

## BACKGROUND AND FINDINGS

Claimant, Santa Monica Community College District, submitted three test claims alleging reimbursable state mandated costs for the activities performed by community college districts for periodically preparing and submitting various budget and fiscal management reports to the state, and for engaging in annual financial and compliance audits. The three claims were consolidated due to similarity and overlap, including shared exhibits, responses, and correspondence.

The claims were based on enactments or amendments to Education Code sections 84030, 84040 and 84040.5, and twenty-two sections from California Code of Regulations, title 5, referred to collectively as the test claim legislation. Claimant originally alleged the 1991 California Community Colleges Contracted District Audit Manual and subsequent revisions, as well as the 1993 California Community Colleges Budget and Accounting Manual and subsequent Accounting Advisories all constituted executive orders imposing a reimbursable state mandate. However, at the February 28, 2002 hearing, the claimant withdrew all accounting and audit manuals from the test claim.

Statutes of 1976, chapter 1010 reorganized the Education Code as part of the process of transferring the authority over community college districts from the California Department of Education to the California Community College Board of Governors. Before this reorganization, many of the laws referencing “school districts” were inclusive of K-12 districts, county offices of education, and community college districts. The reorganization often created one code section number for school districts and another for community college districts, substituting the words “community college districts” for “school districts.” The community college district legislation and manuals in this test claim are frequently parallel to those determined by the Commission in earlier school district and county office of education test claims, including CSM-4498/4498A, *Financial and Compliance Audits*; 97-TC-19, *Budget Process, Financial Statements and County Oversight*; and 97-TC-20, *County Office Budget Process and Financial Statements*.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” *In County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>2</sup> *In Carmel*

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<sup>1</sup> Section 6, article XIII B of the California Constitution provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975, ”

<sup>2</sup> *County of Los Angeles, supra*, 43 Cal.3d at 56.

*Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.<sup>3</sup>

The Department of Finance contends that the test claim legislation does not constitute a program within the meaning of article XIII B, section 6 because it does not relate to education. Specifically, the Department of Finance states that:

maintaining books and accounts, operating responsibly within budgetary constraints, and providing budget and fiscal information to various state officials and other interested parties does not carry out or expand the governmental function of providing higher education, nor do the targeted provisions for sound financial management and reporting impose a broader curriculum or other higher level of educational service,

For the following reasons, the Commission finds that the test claim legislation and regulations constitute a program within the meaning of article XIII B, section 6 of the California Constitution. First, the test claim legislation requires community college districts to engage in specific budgetary and audit processes in order to encourage sound fiscal management practices. The test claim legislation imposes unique requirements upon community college districts that do not apply generally to all residents and entities of the state. Thus, the Commission finds that the test claim legislation constitutes a program within the meaning of article XIII B, section 6 of the California Constitution.

The test claim legislation also satisfies the second test that triggers the applicability of article XIII B, section 6 in that it constitutes a program that carries out the governmental function of providing a service to the public. The test claim legislation, Statutes of 1977, chapter 936, added language to Education Code section 84040, as follows:

It is the intent of the Legislature to encourage sound fiscal management practices among community college districts for the most efficient use of public funds for the education of community college students in California by strengthening fiscal accountability at the district, county and state levels,

Thus, the purpose of the test claim legislation is to encourage sound fiscal management practices among community college districts for the most efficient use of public funds ~~FOR~~ the education ~~of~~ *community college students* in California. The courts have held that public education in California is a peculiarly governmental function administered by local agencies as a service to the public.<sup>4</sup> Accordingly, the Commission finds the administration of the community college districts budgetary and audit processes constitutes a “program” and, thus, is subject to article XIII B, section 6 of the California Constitution.<sup>5</sup>

Issue 2: Do the subject statutes and regulations impose a new program or higher level of service within an existing program upon community college districts within the

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<sup>3</sup> *Cannel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal. App.3d 521, 537.

<sup>4</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172 states “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function . . . , administered by local agencies to provide service to the public. ”

<sup>5</sup> *Id.*

meaning of section 6, article XIII B of the California Constitution by requiring new or additional audit, budgetary, financial statement, and related fiscal management activities?

The claimant contends that all of the test claim legislation and executive orders impose new programs or higher levels of service upon community college districts by requiring specific activities related to the administration of community college budgets, audits and fiscal management practices.

The individual issues addressed by this claim are numerous but all meet the test of imposing unique requirements that do not apply generally to all residents and entities in the state. However, under prior law, community college districts were required to engage in budget, fiscal management and audit activities.<sup>6</sup> For this test claim, the analysis for finding a reimbursable state mandate generally hinges on whether the legislation requires a community college district to engage in a new activity or higher level of service than required by prior law.

### *I. Test Claim Statutes:*

At the outset the Commission notes that Education Code sections 84030 and 84040 were in effect well before the enactment of the test claim legislation, but were renumbered or restated in a “newly enacted” code section. The Commission makes a general finding, in accordance with Education Code section 3, that a renumbered or restated statute is not a newly enacted provision. Education Code section 3 provides:

The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restateinents and continuations, and not as new enactments.

The rationale behind Education Code section 3 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force, It operates without interruption where the re-enactment takes effect at the same time.<sup>7</sup>

The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate.

In addition, the Commission finds that prior to the reorganization of the Education Code by Statutes of 1976, chapter 1010, general laws addressed to school districts were inclusive of community colleges. The Donahoe Higher Education Act, Statutes of 1960, chapter 49, declared that “junior colleges shall continue to be part of the public school system of this State” and at that time they remained under the supervision of the State Board of Education. Whenever Statutes of 1976, chapter 1010 renumbered a single code section as two code sections, giving one

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<sup>6</sup> Former (1959) Education Code sections 939, 966, 17199, 17206, 20501, 20504, 20612, 20613, 20614, 20615, 20951, and 21001.

<sup>7</sup> *In re Martin's Estate* (1908) 153 Cal. 225, 229. See also 15 Ops.Cal.Atty.Gen. 49 (1950).

number to school districts, and a second number to community college districts, the Commission finds, in the absence of evidence to the contrary, that the former singular code section was prior law for community college districts as well as for K-12 school districts.<sup>8</sup>

Education Code Section 84030: Accounting System; Requirements for Accounting Manual,

This section provides, in pertinent part, that ““The accounting system including the uniform fund structure used to record the financial affairs of any community college district shall be in accordance with the definitions, instructions, and procedures published in the California Community Colleges Budget and Accounting Manual as approved and furnished by the Board of Governors .”

Statutes of 1976, chapter 1010 renumbered Education Code section 17 199 as Education Code section 41010 for school districts and 84030 for community college districts.<sup>9</sup> Former Education Code section 17 199 was not changed substantively when it was renumbered Education Code section 84030. Education Code section 84030 was amended by Statutes of 1981, chapter 930, which added the text, “including the uniform fund structure,” and substituted “California Community Colleges Budget and Accounting Manual” for “Budget and Accounting Manual, California Community Colleges.”<sup>10</sup>

The California Community Colleges Budget and Accounting Manual, as adopted by the Board of Governors in December 1973 “describes the new budget and accounting system required for local control and state level reporting of 1974-75 community college district budgets.”<sup>11</sup> This manual included account codes for required activities-based revenue and expenditure accounting, which the Commission finds were not substantively different from what is now termed uniform fund accounting.

The Commission finds that community college districts, whether part of the K-12 school district system or as a separately governed entity, were required to follow a standardized accounting system as expressed in a state-published accounting manual under prior law. Therefore, the Commission finds that required use of the budget and accounting definitions, instructions, and

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<sup>8</sup> The 1976 California Legislature Summary Digest describes Statutes of 1976, chapter 1010, as follows: “Education Code: reorganization. The Education Code was last revised in 1959. This bill would repeal the current version of the Education Code and in so doing would provide for the separate grouping of provisions related to: (1) all levels of education in general, (2) education in public elementary schools and high schools, and (3) postsecondary education. This bill would also make numerous technical changes in connection with the reorganization of the code.”

<sup>9</sup> Education Code section 17199, as last amended by Statutes of 1973, chapter 434, was inclusive of school districts and community colleges. This section provided that: “The accounting system used to record the financial affairs of any school district shall be in accordance with the definitions, instructions, and procedures published in the California School Accounting Manual as approved by the State Board of Education and furnished by the Superintendent of Public Instruction. No accounting manual so approved shall expressly or by implication affect the content of any educational program or objective, except as otherwise specifically provided for by this code, The Legislature hereby finds that such content shall be best determined by those involved in the administration of educational programs, including school district governing boards, local administrators, teachers, students, and parents. ”

<sup>10</sup> Statutes of 1990, chapter 1372, section 634 also made minor, non-substantive changes to the statutory language.

<sup>11</sup> Preface, California Community College Budget and Accounting Manual, January 1974.

procedures published in the community college Budget and Accounting Manual as described in Education Code section 84030 does not constitute a new program or higher level of service.

Education Code Section 84040: Strengthening Fiscal Accountability; Requirement for Annual Audit section provides, in part, that “The governing board of each community college district shall provide for an annual audit of all funds, books, and accounts of the district in accordance with regulations of the board of governors. The audit shall be made by certified public accountants licensed by the California Board of Accountancy. In the event the governing board of a community college district fails to provide for an audit, the board of governors shall provide for an audit, and if the board of governors fails or is unable to make satisfactory arrangements for such an audit, the Department of Finance shall make arrangements for the audit. The cost of any audit described above shall be paid from district funds.”

In addition, section 84040 provides that “The board of governors shall adopt’ criteria and standards for periodic assessment of the fiscal condition of community college districts, in the form of regulations regarding the review and improvement of district fiscal conditions as necessary to encourage sound fiscal management practices. . . . The board of governors shall be authorized to reduce or withhold apportionment to districts to pay for the cost of the special trustee, management review, or other extraordinary costs resulting from the district’s fiscal difficulties and to ensure the stabilization of the district’s financial condition.”

Statutes of 1976, chapter 10 10 renumbered Education Code section 17206 as Education Code section 41020 for school districts and 84040 for community college districts.<sup>12</sup> The portion of Education Code section 84040 requiring a district to provide for an annual audit, performed by a CPA at community college district expense, is well established by prior law.<sup>13</sup>

Education Code section 84040 was amended by Statutes of 1977, chapter 36, and Statutes of 1978, chapter 207. When Education Code section 84040 was repealed and reenacted by Statutes of 1990, chapter 1372, the requirement for an annual audit remained intact, but new language was added to describe a requirement that the California Community College Board of Governors adopt regulations regarding the review and improvement of district financial conditions as necessary to encourage sound fiscal management practices. The requirement to develop

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<sup>12</sup> Key language requiring annual audits, performed by a CPA at community college district expense, is found in former Education Code section 17206: “Not later than the first day of May of each fiscal year each county superintendent of schools shall provide for an audit of all funds under his jurisdiction and control and the governing board of each district shall either provide for an audit of the books and accounts of the district or make arrangements with the county superintendent of schools having jurisdiction over the district to provide for such auditing. In the event the governing board of a school district has not provided for an audit of the books and accounts of the district by April 1st, the county superintendent of schools, having jurisdiction over the district, shall provide for the audit. Each audit shall include all funds of the district including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district. The audits shall be made by a certified public accountant or a public accountant, licensed by the State Board of Accountancy, Not later than November 15th, a report of each audit for the preceding fiscal year shall be filed with the county clerk and the county superintendent of schools of the county in which the district is located, the Department of Education and the Department of Finance. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of state funds, to correct any discrepancies revealed by such audit reports under the provisions of Section 41341, ” Community colleges were included in “school districts” prior to the renumbering of former Education Code section 17206.

<sup>13</sup> *Id.*

regulations is a directive to the state, not the local community college districts, and as such does not constitute a reimbursable state mandate. Education Code section 84040 either consists of prior law or directs the Board of Governors to adopt regulations. Amendments to Education Code section 84040 do not impose new duties upon community college districts compared to prior law, therefore, the Commission finds that these changes do not create a new program or higher level of service.

Education Code Section 84040.5: Statements and Information in Audit Reports: Development of Audit Procedures: Costs. The first part of this section provides that “The board of governors, in cooperation with, and upon approval by, the Department of Finance, shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop audit procedures for carrying out the purposes of this section. The Department of Finance may make audits, surveys, and reports which, in the judgment of the department will serve the best interest of the state. A review of existing audit procedures, statements, and other information required to be included in the audit reports shall be conducted periodically by the board of governors, in cooperation with the Department of Finance. Standards shall be updated periodically.”

Education Code section 84040.5, as added by Statutes of 1977, chapter 936, moves text from Education Code section 84040 to the new Education Code section 84040.5. Statutes of 1988, chapter 133 1, and Statutes of 1994, chapter 20, made technical amendments to the law.<sup>14</sup> As described above, Statutes of 1976, chapter 1010 renumbered Education Code section 17206 as Education Code section 84040 for community college districts. It has long been statutorily required that the state prescribe the contents of the annual audit reports and develop audit standards and procedures for districts, Former Education Code section 17206 provided that:

The Department of Finance, with the cooperation of the Department of Education, shall prescribe the statements and other information to be included in the audit reports filed with the state. The Department of Finance may make such audits, surveys and reports, and may develop suggested procedures for carrying out the purposes of this section, as in the judgment of the department will serve the best interests of the state.

Thus, the Commission finds that the initial portion of Education Code section 84040.5 is a rewording of prior law specific now to the California Community College Board of Governors, rather than the Department of Education. Alternatively, this portion of the statute is a directive to the state, not to local community college districts.

The second part of Education Code section 84040.5 provides that “For the audit of community colleges electing to take formal action pursuant to Sections 227 14 and 87488 [to seek credit of additional years of service in order to encourage early retirement of academic employees], the audit standards shall require such information as is prescribed by the chancellor . . . . At the request of Department of Finance, each community college district that elects to take formal action pursuant to Sections 22714 and 87488 shall reimburse the Department of Finance for any related administrative costs incurred by the Department of Finance.”

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<sup>14</sup> The 1988 amendment changed the frequency of the update of standards from “every two years” to “periodically, ” and the 1994 amendments merely added subdivision designations.



The latter part of Education Code section 84040.5 does not require community college districts to engage in any new activities other than those stemming from discretionary activities. The only activities are for audits of “community colleges electing to take formal action”<sup>15</sup> under sections 22714 and 87488 to seek special service credit in order to encourage the early retirement of academic employees. Any further audit and follow-up activities are only required if a district chooses to apply for this special service credit, at the discretion of the district, thus this portion of the statute does not impose mandatory activities, Education Code section 84040.5 does not impose mandatory new activities upon community college districts compared to prior law, thus, the Commission finds that this section does not create a new program or higher level of service.

*IL Test Claim Executive Orders: California Code of Regulations:*

Statutes of 1990, chapter 1372 continued the process of reorganizing and clarifying the laws governing the community college system. For example, the Education Code previously referred to community colleges as “secondary schools,” such as high schools, and as part of the “higher education” system of public universities. This law removed references to community colleges as secondary schools. Statutes of 1990, chapter 1372, section 708, subdivision (a) states:

Prior to January 1, 1991, the Board of Governors or the California Community Colleges shall initially adopt and put into effect regulations which incorporate the text of the following Education provisions that have been repealed or amended by this act. The text of these sections, as they relate to community colleges, may be changed when initially adopted as regulations in accordance with the character of the California Community Colleges as a postsecondary education system . . . The changes shall not alter the requirements, rights, responsibilities, conditions or prescriptions contained in these statutes. Permitted initial changes include grammatical or technical changes, renumbering or reordering sections, removal of outdated terms or references to inapplicable or repealed statutory authorities, and the correction of gender references of the following sections of the Education Code:

Sections 8070, 8092, 17900, 17901, 17902, 17903, 18120, 18122, 71005, 71034, 72208, 72237, 72601, 72602, 72640, 72641, 72650, 74282, 74283, 76160, 76408, 78002, 78004, 78005, 78006, 78007, 78012, 78200.5, 78202, 78203, 78206, 78222, 78243, 78244, 78245, 78246, 78247, 78248, 78272, 78430, 78431, 78441, 78460, 78920, 79000, 79001, 81000, 81005, 81006, 81008, 81802, 81803, 81806, 81809, 81810, 81821.5, 81830, 81831, 81833, 81838, 82364, 84040.3, 84040.7, 84043, 84044, 84045, 84046, 84051, 84052, 84057, 84324, 84325, 84330, 84331, 84332, 84360, 84370, 84371, 84372, 84387, 84500, 84500.1, 84500.5, 84500.6, 84502, 84520, 84521, 84521.5, 84522, 84524.5, 84526, 84527, 84530, 84570, 84571, 84572, 84801, 84810, 84891, 84892, 84893, 84894, 84895, 85000, 85003, 85020, 85021, 85022, 85023, 85024, 85200, and 85210, and the second paragraph of Section 68090 of, the second sentence of Section 78205 of, the first sentence of Section 84041 of, and subdivision (b) of Section 84890. After initial adoption of the Board of Governors regulations specified by this section, all subsequent

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<sup>15</sup> Emphasis added.

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

In addition, Statutes of 1990, chapter 1372, section 708, subdivision (b) states:

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. (Emphasis added.)

In comments on the draft staff analysis, claimant argues that “The statutes were repealed effective January 1, 1991, as a matter of law<sup>[16]</sup> by Chapter 1372/90 and never reenacted as code sections.” Claimant cites Government Code Section 9600, which establishes the effective date for statutes enacted by the Legislature. Claimant confuses the effective date of a statute with its operative date. As discussed in *Estate of Martin* (1983) 150 Cal.App.3d 1, 3-4, the Legislature has the power to control the operative date of a statute, independent of the statute’s effective date:

‘An enactment is a law on its effective date only in the sense that it cannot be changed except by legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law.’<sup>17</sup> Usually the effective and operative dates of a statute are one and the same, but the courts have recognized the power of the Legislature to establish an operative date later than the effective date.

Claimant further argues that the language in Statutes of 1990, chapter 1372, section 708, subdivision (b) has no effect because it “expresses only the Legislative *desire* for everyone to pretend that the Education Code requirements continued in force after the board of governors failed to enact replacement regulations, *because no legally enforceable code or regulations existed in the interregnum.*”<sup>18</sup> The Commission finds that the law of California is well established that “The legislature may provide for a statute to go into effect or become operative absolutely, conditionally, or contingently on the happening of a future<sup>[19]</sup> or uncertain event,<sup>[20]</sup>” and that is exactly what the Legislature did in Statutes of 1990, chapter 1372, section 708, subdivision (b). The Legislature set up an operative date for the repeal of specific Education

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<sup>16</sup> Claimant cites Government Code section 9600.

<sup>17</sup> Court cites *People v. Henderson* (1980) 107 Cal.App.3d 475, 488.

<sup>18</sup> Claimant’s comments dated October 9, 2001, Emphasis in original.

<sup>19</sup> 58 California Jurisprudence Third (1980) Statutes, section 21, cites the following cases as authority: *Hobart v. Supervisors of Butte County* (1860) 17 Cal. 23; *Robinson v. Bidwell* (1863) 22 Cal. 379; *People ex rel. Graves v. McFadden* (1889) 81 Cal. 489; *Busch v. Turner* (1945) 26 Cal.2d 817; *Ogle v. Eckel*(1942) 49 Cal.App.2d 599. “The operation of a statute dependent on a contingency that may occur in the future is postponed until the occurrence of the contingency, ” *Ross v. Board of Retirement of Alameda County Emp. Retirement Ass’n* (1949) 92 Cal.App.2d 188.

<sup>20</sup> 58 California Jurisprudence Third (1980) Statutes, section 21, cites the following cases as authority: *People ex rel. Graves v. McFadden* (1889) 81 Cal. 489; *Housing Authority of County of Los Angeles v. Dockweiler* (1939) 14 Cal.2d 437; *Busch v. Turner* (1945) 26 Cal.2d 817; *Ogle v. Eckel*(1942) 49 Cal.App.2d 599.

Code sections, *contingent* upon the enactment date of corresponding regulations, thus preventing any “gap” in the law.

Accordingly, the Commission finds that Statutes of 1990, chapter 1372, did not make substantive changes to prior law by requiring that California Community Colleges Board of Governors adopt regulations corresponding with selected portions of the Education Code. The affected statutes continued in legal, operative effect until the date that each corresponding regulation was adopted. The fact that certain programs, duties or activities are now expressed in regulatory form rather than statutory is not a change in the *substance of* the law.

The Commission finds that the principle of construing renumbered code sections as restatements and continuations, rather than as a new law, is equally applicable when a law changes form from a statute to regulation or other type of executive order. The California Supreme Court held that “a regulation adopted by a state administrative agency pursuant to a delegation of rulemaking authority by the Legislature has the force and effect of a statute.”<sup>21</sup> In addition, the rules of construction for statutes also govern rules and regulations.<sup>22</sup> Thus, when legal requirements remain in effect in an altered form, the new format is not a new legal enactment’. The Commission finds that only additional, substantive changes to the law creating new duties or activities meet the criteria for finding a reimbursable state mandate. Therefore, the Commission makes an overall finding that any test claim regulations discussed below are prior law, to the extent that they require the same duties and activities found previously in the Education Code.

#### *Budgets and Reports*

Title 5, Section 58300; Requirements to Prepare and File an Annual Statement, Pursuant to this regulation, ““On or before the 15th day of September of each year the governing board of each community college district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding fiscal year and a statement of the estimated total expenses for the district for the current fiscal year.”

Statutes of 1976, chapter 1010, renumbered Education Code section 20501 as 42 100 for K- 12 school districts and 85000 for community college districts. Prior law provided that on or before August 15 of each year the governing board of each school district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding year and a statement of the estimated total expenses for the district for the current fiscal year. Statutes of 198 1, chapter 1178 extended the due date for the reports from August to September in the districts’ favor. As discussed above, Statutes of 1990, chapter 1372, required the transfer of this provision from the Education Code to the California Code of Regulations. None of these amendments impose new activities compared to prior law, therefore, the Commission finds that these changes do not create a new program or higher level of service,

Title 5, section 58301: Proposed Budget: Hearing; Notice; Publication. Pursuant to this regulation, “The governing board of each district shall hold a public hearing on the proposed budget for the ensuing fiscal year in a district facility, or some other place conveniently

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<sup>21</sup> *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401, citing *Zumwalt v. Trustees of Cal. State Colleges* (1973) 33 Cal.App.3d 665, 675; *Alta-Dena Dairy v. County of San Diego* (1969) 271 Cal.App.2d 66, 75; *Rigley v. Board of Retirement* (1968) 260 Cal.App.2d 445, 450.

<sup>22</sup> *California Drive-In Restaurant Ass’n v. Clark* (1943) 22 Cal.2d 287, 292.

accessible to the residents of the district, on or before the 15th day of September but at least three days following availability of the proposed budget for public inspection . . . .”

““Notification of dates and location(s) at which the proposed budget may be inspected by the public and date, time, and location of the public hearing on the proposed budget shall be published by the district in a newspaper of general circulation in the district, at least three days prior to the availability of the proposed budget for public inspection. The cost of the publication shall be a legal proper charge against the district for which the publication is made.”

Statutes of 1976, chapter 1010, renumbered Education Code section 20504 as 42 103 for school districts and 85003 for community college districts. As last amended by Statutes of 1970, chapter 86, Education Code section 20504 required newspaper publication of the budget for the ensuing school year, showing program expenditures, cash balances, and all appropriations from the state as required to be tabulated in sections 42 122 and 42123 for the ensuing and last preceding fiscal year, and the district tax requirement for the school year to which the budget is intended to apply. The publication was also to contain a notice of the public hearing on the proposed budget. The deadline for budget publication was the last week in July of each year, and the hearing was to be held during the first week in August at a place conveniently accessible to the residents of the district. Prior law also required that the district governing board shall not adopt the final budget until after the public hearing.

Prior law required publication of the entire budget in a newspaper of general circulation, plus a notice of the public hearing. Current law requires publication of the notice of public hearing, plus notification of the location and times where the budget is available for public inspection. The Commission finds that the amendments to section 85003 reduced school district activities, as the district no longer has to pay for newspaper publication of the entire budget, but instead now must only provide for a smaller notice and make one copy of the budget available for public inspection before the public hearing. The deadlines for publication and hearing were changed, all of which are later than the deadlines under prior law, allowing the districts additional time to comply with the notice requirements.

Section 85003 was repealed and reenacted by Statutes of 1981, chapter 1178; however, the substance of the statute, describing the requirements for public hearing and publication of the proposed school district budget, remained largely unchanged. Statutes of 1990, chapter 1372 required the transfer of this provision from the Education Code to the California Code of Regulations. The Commission finds that these changes do not create a new program or higher level of service.

Title 5, Section 58303: Contents of Budget Report. Pursuant to this regulation, “The adopted annual financial and budget report<sup>23</sup> of a district shall show, as specified by the Office of the Chancellor, a statement of the proposed expenditures and of the estimated revenues for the ensuing fiscal year, together with a comparison of each item of revenue and expenditure, with

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<sup>23</sup> Statutes of 1976, chapter 1010, renumbered Education Code section 20611 as Education Code section 85020, and provided that the definition of “budget” includes the preliminary budget and the adopted budget of a community college district. Statutes of 1990, chapter 1372 required the transfer of this law from Education Code section 85020 to the California Code of Regulations, title 5, section 58302. Although claimant did not include this regulation in the test claim, note that under prior law the definition of “budget” for the test claim legislation was inclusive of the preliminary and adopted budget.

the actual revenues and expenditures of the fiscal year just completed. The tentative as well as the published annual financial and budget reports may show estimates where actual figures cannot be determined at the time, The budget shall also include the appropriations limit and the total annual appropriations subject to limitation as determined pursuant to Division 9 (commencing with Section 7900) of Title I of the Government Code,”

Statutes of 1976, chapter 1010, renumbered Education Code section 20612<sup>24</sup> as Education Code section 85021. Aside from the final sentence regarding the inclusion of the Gann appropriations limit in the budget, the legal requirements for the contents of the budget report have not changed substantively since the law was enacted in 1974. Statutes of 1987, chapter 1025, added the requirement to include the Gann limit. Calculation of the appropriations limit is required by the Government Code, and is not a subject of this test claim. Inclusion of the appropriations limit in the district budget appears to be critical to accurately report estimated and actual revenues, which is required under prior law. Therefore, the Commission finds that this change does not substantively change the requirement for completion of annual financial and budget reports,

Statutes of 1990, chapter 1372 required the transfer of this law from Education Code section 85021 to the California Code of Regulations. The Commission finds that none of these changes created a new program or higher level of service,

Title 5, Section 58304: Form of Budget Report. Pursuant to this regulation, “Each annual financial and budget report shall be made in the form prescribed by the Office of the Chancellor. Standard forms shall be prepared to show the budgeting items and comparisons required by this article.”

Statutes of 1976, chapter 1010, renumbered Education Code section 20613<sup>25</sup> as 85022. Statutes of 1990, chapter 1372, required the transfer of this law from Education Code section 85022 to the California Code of Regulations. The earlier version of the statute was nearly identical to the current regulation, although Statutes of 1981, chapter 470 deleted a requirement that the form be prepared in quintuplicate, thereby reducing the activities required of community college districts. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58305: Tentative Budget; Filing and Approval of Final Budget. Pursuant to this regulation, in pertinent part, “On or before the first day of July in each year, each district shall adopt a tentative budget and forward an information copy to the appropriate county officer. To the extent that the budget is based on information provided by the county, the budget data should be validated by the appropriate county officer. . . . On or before the 15th day of September, the governing board of each district shall adopt a final budget. On or before the 30th day of September, each district shall submit two copies of its adopted annual financial and budget report to the Chancellor, The district shall also file copies of the report with the appropriate county officers for information and review.”

The requirements for preparation of a tentative community college budget and adoption of a final budget was found in former Education Code section 20614, as added by Statutes of 1974, chapter 754. This section provided that on or before July 1, each community college district

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<sup>24</sup> Added by Statutes of 1974, chapter 754.

<sup>25</sup> Added by Statutes of 1974, chapter 754.

governing board shall file a tentative budget with the county superintendent of schools; on or before July 15, the county superintendent of schools shall examine the budget and make technical corrections and recommendations to insure that the proposed expenditures do not exceed revenues; after receiving the corrections and recommendations, the governing board shall make necessary changes and send the budget to the county auditor and the county superintendent of schools by July 20; by August 8th, the governing board shall adopt and file a final budget with various county officials and the Chancellor of the California Community Colleges.

Statutes of 1976, chapter 10 10, renumbered Education Code section 206 14 as 85023. Statutes of 198 1, chapter 1178 repealed and reenacted Education Code section 85023 in substantially similar form. Statutes of 1990, chapter 1372 required the transfer of this provision from the Education Code to the California Code of Regulations. Prior law required the preparation and filing of a tentative budget with a county officer, validation by a county officer, adoption and filing of copies of the final budget with various state and county officials. Any changes in deadlines are later than in prior law and are in favor of the community college district. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58306: Effect of Neglect or Refusal to Make a Budget. Pursuant to this regulation, “if the governing board of any community college district neglects or refuses to make a budget as prescribed by the Office of the Chancellor . . . the Chancellor may withhold any apportionment of state or local money to the particular district for the current fiscal year until the district makes a proper budget. No penalty shall be imposed upon a district . . . if the Chancellor determines that unique circumstances make it impossible for the district to comply with its duties to adopt a budget, or if there are delays in the adoption of the annual Budget Act.”

Education Code section 206 15, as added by Statutes of 1974, chapter 754, provided that

If the governing board of any community college district neglects or refuses to make a community college district budget as prescribed by the office of the Chancellor of the California Community Colleges, the county superintendent of schools may not make any apportionment of state or county money to the particular community college district for the current community college fiscal year.

Statutes of 1976, chapter 1010, renumbered Education Code section 20615 as 85024. Statutes of 1984, chapter 609, added the sentence allowing the Chancellor to not impose a penalty if unique circumstances prevented the community college district from adopting a budget. Prior law required that the state withhold further funding from a community college district if they fail to make a timely budget. Statutes of 1990, chapter 1372, required the transfer of this law from Education Code section 85024 to regulations. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 58307: District Budget Limitation on Expenditure. Pursuant to this regulation, “Transfers may be made from the reserve for contingencies to [or between] any expenditure classification . . . by written resolution of the board of trustees of a district. A resolution providing for the transfer from the reserve for contingencies to any expenditure classification must be approved by a two-thirds vote of the members of the governing board; a resolution providing for the transfer between expenditure classifications must be approved by a majority of the members of the governing board.”

Statutes of 1976, chapter 1010, renumbered Education Code section 2095 1 as 85200. Prior law provided that “A resolution providing for the transfer from the reserve for contingencies to any expenditure classifications must be approved by a two-thirds vote of the members of the governing board; a resolution providing for the transfer between expenditure classifications must be approved by a majority of the members of the governing board.” Statutes of 1990, chapter 1372, required the transfer of this law from Education Code section 85200 to regulations. The Commission finds that none of these changes created a new program or higher level of service,

Title 5, Section 5 8308 : Appropriation of Excess Funds and Limitations. Pursuant to this regulation, in order to appropriate income from the general reserve in the current fiscal year that is in excess of the current budget, “The governing board of the district shall, by formal action of the board, pass a resolution setting forth the need according to major classification of district expenditures to be met from any portion of the general reserve derived from assured income in excess of the total amount anticipated in the budget.”

Statutes of 1976, chapter 1010, renumbered Education Code section 21001 as 85210. Amendments by Statutes of 1980, chapter 884, and Statutes of 198 1, chapter 930 deleted portions of the earlier version of statute, leaving the statutory language identical to the current regulation. Statutes of 1990, chapter 1372, required the transfer of the law from Education Code section 85210 to regulations. The Commission finds that none of these changes created a new program or higher level of service.

Title 5, Section 583 10: Report on District’s Financial Condition, Pursuant to this regulation, in part, “The chief executive officer or other designee of the governing board of each district shall regularly report in detail to the governing board of the district the district’s financial condition and shall submit quarterly reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board at least once every three months.”

Statutes of 1976, chapter 10 10, renumbered and reenacted former Education Code section 93 9 as Education Code section 35035 for school districts and Education Code section 72413 for community college districts. Under former section 939 the superintendent of each school district, in addition to any other powers and duties granted, was required to submit reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board of the school district at least once every three months during the school year. While Education Code section 72413 remained in operation, the requirement for the superintendent to regularly report in detail the district’s financial condition to the district governing board was also included in Education Code section 84043 by Statutes of 1986, chapter 1486. Education Code section 84043 is one of the sections listed in Statutes of 1990, chapter 1372, section 708, subdivision (a). Therefore the requirement for regular district fiscal condition reports to the governing board continues from former Education Code section 939, renumbered as section 72413, then included in section 84043 by Statutes of 1986, chapter 1486, and finally in Title 5, section 583 10, without a gap in the law. Thus, the Commission finds that the preparation and submission of quarterly financial and budgetary condition reports to the district governing board is not a new program or higher level of service.

The regulation further provides, “The designee shall also prepare a quarterly report on forms provided by the Chancellor. The district shall submit a copy of the certified report to the appropriate county offices and the Chancellor no later than forty-five days following the

completion of each quarter. The certified report shall be reviewed by the district governing board at a regularly scheduled meeting and entered into the minutes of the meeting.”

Department of Finance asserts that these activities are “not a reimbursable state mandate because the districts can use the state report as a component of the district financial report which districts have been required to prepare since well before 1975,” as discussed above. Finance further asserts, “Since the report will be presented at a regularly scheduled board meeting and since minutes are already required to be taken at these meeting? the state requirements are, in all likelihood, already covered when districts comply with these local requirements.” In addition, activities related to adding this report to the agenda of a regular meeting may be reimbursable under *Open Meetings Act* parameters and guidelines.<sup>27</sup>

Title 5, section 583 10 also states, “Upon review and analysis of the report, the Chancellor or [a] designee shall determine if follow-up or intervention is needed. Intervention may be necessary if a district’s financial data indicate a high probability that if trends continue unabated the district will need an emergency apportionment within three years or that the district is not in compliance with the principles of sound fiscal management specified in Section 583 11. Such follow-up or intervention may include, but shall not be limited to, requiring the submission of additional or more frequent reports, requiring the district to respond to specific concerns, and directing the district to prepare and adopt a detailed plan for achieving fiscal stability and an educational plan demonstrating the impact of the fiscal plan on the district’s educational program.”

Regarding this portion of section 583 10, Department of Finance states,

the Chancellor would only require additional information from those districts which are not in compliance with the principles of sound financial management or which have a high probability of needing an emergency apportionment. Thus, no duties or costs are incurred by community college districts except as a result of the districts fiscal instability which results from active decision of the districts. Since the State is not mandated or causing these districts to be in a financially precarious situation, State directed corrected measures or reports cannot be deemed to be mandates within the meaning of Article XIII B, section 6.<sup>28</sup>

The Commission agrees with the foregoing analysis. Therefore, the Commission finds that California Code of Regulations, title 5, section 583 10 does not impose a new program or higher level of service.

Title 5, Section 583 11: Principles for Sound Fiscal Management. This regulation presents an extensive list of principles designed to serve as the “foundation for sound fiscal management in community college districts” - primarily that “each district shall be responsible for the ongoing fiscal stability of the district through the responsible stewardship of available resources, . . . To the extent that the . . . principles repeat or paraphrase mandates already in existence, these

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<sup>26</sup> Citing Education Code section 72121. Former Education Code section 966 required, prior to 1975, that the governing board meetings be open to the public, and that minutes be taken.

<sup>27</sup> *Open Meetings Act* (Stats. 1986, ch. 641) parameters and guidelines allow school districts, including community college districts, to claim reimbursement for increased costs related to preparing and posting an agenda.

<sup>28</sup> Department of Finance’s comments, dated October 19, 2001.



underlying mandates shall continue to be legally binding. Otherwise, these principles, by themselves, shall be applied to the extent that existing state and district funding is available.”

As public funds recipients, school districts have long been required to maintain fiscally sound management practices. This regulation is an enumeration of fiscal management principles and does not require community college districts to engage in any specific *activities* that are not already part of existing mandates. The application of any principles that go beyond existing mandates is explicitly limited to available funding. Thus, adopting any of the listed principles is discretionary, if state funding is not provided for implementation. The Commission finds that California Code of Regulations, title 5, section 583 11 does not impose a new program or higher level of service.

Title 5, Section 583 12: Inadequate Plans by District or Failure to Implement Plans; Authorized Actions by the Chancellor. Pursuant to this regulation, “If the Chancellor determines that the district’s financial and budgetary plans prepared and adopted pursuant to Section 583 10 are inadequate to solve the financial problems, or if the district fails to implement the plans, the Chancellor shall have the authority to take” action, including conducting a comprehensive management review of the district and its educational programs and an audit of the financial condition of the district. The Chancellor may direct the district to amend and readopt the fiscal and educational plans based on the findings of the audits. “If the district fails to adequately implement the readopted fiscal and educational plans, . . . appoint a monitor at district expense for the period of time necessary to achieve the goals of the plans.” The Chancellor may pay all costs incurred in performing the fiscal management services by transferring funding that would otherwise have been apportioned to the community college district under Section B of the State School Fund.

The requirements of California Code of Regulations, title 5, section 583 12 are based upon language in former Education Code section 84044, as added by Statutes of 1986, chapter 1486. Statutes of 1990, chapter 1372, repealed this statute but the substance was transferred to the California Code of Regulations, Education Code section 84040, as repealed and reenacted by Statutes of 1990, chapter 1372, authorizes the state Community College Board of Governors to develop regulations containing procedures for districts that fail to achieve fiscal stability and “ensure the stabilization of the district’s financial condition.” Statutes of 1986, chapter 1486 and Statutes of 1990, chapter 1372 are included in this test claim.

Department of Finance argues that this legislation is not a mandate because the state did not cause the fiscal instability, thus the program stems from elected risky activities on the part of the district. The Commission agrees,

Under this regulation, if the district fails to comply with the state’s fiscal management, the Chancellor may appoint a monitor at district expense for the period necessary to achieve the goals of the plans. However, the assignment and expense of an appointed monitor only arises if the district does not comply with the state’s fiscal management plans. In this case, the district can avoid paying for a monitor by complying with state fiscal management designed to return the district to fiscal solvency. This regulation is not a mandate, because it only arises when the district fails to comply with legal obligations. The Commission finds that California Code of Regulations, title 5, section 583 12 does not impose a new program or higher level of service.

Title 5, Section 583 14: Failure of Procedures to Achieve District Financial Stability; Authorized Actions of Chancellor or Designee. Pursuant to this regulation, if the sections 583 10 and 583 12

procedures fail to achieve district financial stability, the Chancellor or designee shall do any of the following: review and monitor the plans, reports, and other financial material required; require that all actions of the district to implement the fiscal and educational plans be submitted for prior written approval; propose necessary modifications to the plans for the district's achievement of fiscal stability; reduce or withhold any apportionment to the district in any amount he or she deems appropriate; report to various state officials about any corrective action taken by the district pursuant to this section.

The requirements of California Code of Regulations, title 5, section 583 14 are based upon language in former Education Code section 84045, as added by Statutes of 1986, chapter 1486. Statutes of 1990, chapter 1372, repealed this statute but the substance was transferred to regulations. Statutes of 1986, chapter 1486 and Statutes of 1990, chapter 1372 are included in the test claim.

Portions of this regulation are strictly dictates to the State Chancellor, and therefore do not impose a reimbursable state mandate upon community college districts. Regarding the remainder of the regulation, Department of Finance asserts that this regulation does not impose a reimbursable state mandate because "it only arises when the district fails to comply with legal obligations to maintain fiscal stability and with the State's fiscal management plan. Thus, the costs could be eliminated by meeting those obligations."<sup>29</sup> In addition, any modifications "proposed" by the state to the district's fiscal stability plan are proposals, not dictates, and therefore not mandatory. Therefore, the Commission finds that California Code of Regulations, title 5, section 583 14 does not impose a new program or higher level of service.

Title 5, Section 583 16: Appropriation for Emergency Apportionment; Repayment Schedule.

Pursuant to this regulation, in pertinent part, if regulatory procedures "fail to stabilize the financial condition of the district before an emergency apportionment is necessary, the Chancellor may seek an appropriation for an emergency apportionment in an amount necessary to maintain the educational programs of the district . . . , and to preclude a negative ending balance." For each of three following fiscal years, the Controller shall deduct from apportionments paid to a district pursuant to law, at least one-third of the amount of the emergency apportionment, including interest at a rate based on the investment rate of the Pooled Money Investment Account.

The regulation further provides that any district that has received an emergency apportionment may submit a specific request for revision of the repayment schedule to state officials. After consulting with state representatives, the Chancellor may revise the repayment schedule, may forgive the interest payments otherwise compounded as a result of any deferral of payment, and may specify any conditions that he or she determines are necessary to assure the repayment of the emergency apportionment.

Prior law allowed districts to request emergency apportionments and provided a scheme for repayment with interest in former Education Code sections 173 11 to 17329, renumbered by Statutes of 1976, chapter 1010 as Education Code sections 84309 to 843 14 for community college districts. Statutes of 1986, chapter 1486 repealed these sections and renumbered them as

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<sup>29</sup> Department of Finance's comments, dated October 19, 2001.

Education Code section 84046. Statutes of 1990, chapter 1372 repealed Education Code section 84046 and transferred the substance to regulations,

Statutes of 1986, chapter 1486 made one notable change regarding community college emergency apportionments. Prior law required the district to request an emergency apportionment from the state, and thus any administrative activities would follow from discretionary action on the part of the district. Current law places the burden on the state Chancellor to request the emergency apportionment on behalf of the fiscally unstable community college district. Claimant asserts that pursuant to this regulation, community college districts must accept any emergency apportionment in an amount determined by the Chancellor as necessary to maintain the educational programs of the district as specified in the educational plan, and repay the apportionment plus interest in the following three fiscal years.

The Commission finds that accepting a loan from the state under this regulation does not require any reporting or other administrative activities on the part of the community college district. The funds are issued by the state, and repaid by a reduction in future apportionments. Any interest compensates the state for issuing funds to the district in advance of its regular apportionments. The state only offers the emergency apportionment when all other attempts to keep the district fiscally solvent have failed. Thus, the Commission finds that California Code of Regulations, title 5, section 583 16 does not impose a new program or higher level of service.

Title 5, Section 583 18: Requirement for Employee Indemnity Bond. Pursuant to this regulation, “The governing board of every community college district shall require each employee of the district, whose duty it is to handle funds of the district, . . . to be bonded under a suitable bond indemnifying the district against loss.”

Statutes of 1976, chapter 10 10, renumbered Education Code section 17207 as 4102 1 for school districts and 84041 for community college districts. Prior law required that “The governing board of every school district shall require each employee of the district, whose duty it is to handle funds of the district, . . . , to be bonded under a suitable bond indemnifying the district against loss.” Statutes of 1990, chapter 1372 required the transfer of the law from Education Code section 84041 to regulations. The substance of the law has not changed, therefore the Commission finds that the changes in the numbering of the code section and the later transfer of its provisions to regulations did not create a new program or higher level of service.

#### *Audits and Reviews*

Title 5, Section 59100: General Authority of the Chancellor. Pursuant to this regulation, “the Chancellor is authorized as needed to have audits or reviews conducted or to investigate any audit or review citing which indicates that the allocation of state moneys or ‘applicable federal funding may have been in error, and where necessary, to require action to resolve any substantial error.”

The regulation is a directive to the state, not to community college districts. In addition, prior law created authority for the state to have audits of any entity receiving disbursements from the state. Government Code section 12410, as last amended by Statutes of 1968, chapter 449, gives authority to the state Controller to “audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment. Whenever the annual audit “is not adequate, the Controller may make such field or other audit of any claim or disbursement of state money as may be appropriate to such determination.” The fact that this power of review is now

shared with another state' authority, namely the Chancellor, does not impose any new activities upon community college districts to be accountable to the state for their receipt of government funds. Therefore, the Commission finds that California Code of Regulations, title 5, section 59114 does not create a new program or higher level of service.

Title 5, Section 59102: Contracting for Annual Audits. Pursuant to this regulation, "Arrangements for annual audits for any fiscal year as required by Section 84040 of the Education Code shall be made final no later than the May 1 preceding that fiscal year."

Under the prior and current version of Education Code section 84040, a continuous requirement for contracting for an annual audit exists. Although an annual May 1 due date for contracting for the annual audit was not imposed by regulation until Title 5, section 59102 was operative on November 24, 1991, this does not impose a new program or higher level of service because an annual due date does not require additional activities beyond what was required under prior law to provide for an annual audit, performed by a CPA, paid for by district funds. The current regulation provides a more precise explanation of when the final arrangements for the annual audit are to be made. For example, if an audit is for the 2000-01 fiscal year, the audit arrangements must be made no later than May 1, 2000. The specification of a timeframe for contracting for the audit does not impose any new activities upon districts. The basic program is still providing for a timely annual audit by a CPA – this has not changed in comparison to prior law. Thus, the Commission finds that California Code of Regulations, title 5, section 59102 does not impose a new program or higher level of service.

Title 5, Section 59104: Review of Annual Audits. Pursuant to this regulation, community college district governing boards shall review the annual audit report at a public meeting,

Education Code section 84040.3, as added by Statutes of 1978, chapter 207, first added the requirement for the review of the annual audit report at a public meeting of the governing board, Statutes of 1990, chapter 1372 required the transfer of the law from Education Code section 84040.3 to regulations. Department of Finance asserts that all that is required "is an agenda item and discussion at a regularly scheduled meeting of the -district board. There is no mandate here because the District is required to keep the public informed of the fiscal affairs of the district and to hold regular meetings."<sup>30</sup> In addition, associated costs may be reimbursable under *Open Meetings Act* parameters and guidelines.<sup>31</sup> Therefore, the Commission finds that California Code of Regulations, title 5, section 59 104 does not impose a new program or higher level of service,

Title 5, Section 59106: Annual Audit Reports Due Date. Pursuant to this regulation, community college districts shall file a copy of the annual audit report by December 31 with the Board of Governors and Department of Finance, in accordance with Education Code section 84040.5.

Under former Education Code section 84040, in operative effect until January 1, 1991, a filing date for annual audit reports was November 15 for the preceding fiscal year. Although a filing date was omitted from statute or regulation until the operation of Title 5, section 59106 on November 24, 1991, this does not create a new program or higher level of service because an annual due date does not inipose additional activities beyond what was required to file an annual

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<sup>30</sup> Department of Finance's comments, dated October 19, 2001.

<sup>31</sup> *Open Meetings Act* (Stats. 1986, ch. 641) parameters and guidelines allow school districts, including community college districts, to claim reimbursement for increased costs related to preparing and posting an agenda.

audit under the continuous law of current Education Code sections 84040 and 84040.5; Thus, the Commission finds that California Code of Regulations, title 5, section 59106 does not impose a new program or higher level of service.

Title 5, Section 59108: Chancellor's Review of Audit Citings.<sup>32</sup> Pursuant to this regulation, the Chancellor shall review district audit reports. Such review shall determine whether the audit or review reports contain citings that warrant further investigation.

Claimant asserts that this regulation requires that community college districts must respond to any audit review comments made by the Chancellor's Office. The plain language of section 59108 requires the State Chancellor to review district audit reports and determine whether any citings by the auditor require further investigation on the part of the Chancellor. The regulatory language does not require action by local community college districts. The following regulation, section 59110, deals with any community college district response regarding audit citings selected for further investigation. The Commission finds that California Code of Regulations, title 5, section 59108 is a directive to the state Chancellor to review district audit reports, not a directive to community college districts, thus the regulation does not create a new program or higher level of service.

Title 5, Section 59110: District's Right to Respond.<sup>33</sup> Pursuant to this regulation, "a district shall be given the opportunity to present information which might mitigate or refute any audit citing selected by the Chancellor for further investigation."

Claimant asserts that pursuant to section 59110, community college districts must participate and respond to any financial or compliance audit, review or investigation by the Chancellor. The Commission finds that the regulation requires the state Chancellor to allow a community college district to present information in response to any audit citing investigation the state Chancellor undertakes. The plain language of section 59110 allows community college districts to comment on the state Chancellor's audit findings before any further action is taken, but in no way requires a specific response by a district. Therefore, the Commission finds that California Code of Regulations, title 5, section 59110 does not create a new program or higher level of service,

Title 5, Section 59112: Audit Resolution Actions.<sup>34</sup> Pursuant to this regulation, "If, . . . the Chancellor finds that there is a need for corrective action to resolve a citing, the Chancellor may require the district to do one or more of the following: (1) Submit a corrected apportionment claim, (2) Implement procedures to ensure future compliance with the rules and regulations in question, or (3) Report periodically to the Chancellor on the status of actions taken to comply with the rules and regulations in question."

Department of Finance asserts "that the Chancellor is authorized to act as the State's representative to enforce the State's fiscal management plan. It is the district's responsibility to ensure that they comply with legal obligations pursuant to the established regulations. The district can avoid the additional activities and associated costs by complying with the State's

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<sup>32</sup> Regulation operative November 24, 1991.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

fiscal management plan.” Therefore, the Commission finds that California Code of Regulations, title 5, section 59112 does not impose a new program or higher level of service.

Title 5, Section 59114: Apportionment Adjustments. Pursuant to this regulation, “The Board of Governors shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by audit reports.”

Under former Education Code section 84040, operative until January 1, 1991, “The board of governors shall make any adjustments necessary in future apportionments of state funds, to correct any discrepancies revealed by such audit reports.” The corresponding regulation was not operative until November 24, 1991. However, the language requiring the state Board of Governors to make an apportionment adjustment to correct a mistake made the previous year in the disbursement of funds to a community college district does not impose a new activity or duty on community college districts. It provides a mechanism for the state to correct an error in an earlier disbursement of funding. Thus, the Commission finds that California Code of Regulations, title 5, section 59114 does not create a new program or higher level of service,

#### Conclusion

The Commission denies all test claim statutes and regulations because they do not impose a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95 8 14.

March 29, 2002, I served the:

Adopted Statement of Decision  
*Consolidated Community College District Test Claims:*  
97-TC-10, *Budget and Financial Reports*  
97-TC-11, *Fiscal Management Reports*  
97-TC-12, *Financial and Compliance Audits*  
Santa Monica Community College District, Claimant  
Statutes of 1990, Chapter 1372, et al

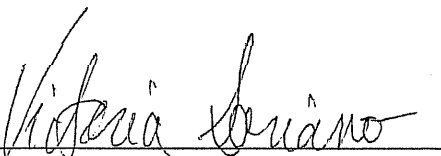
by placing a true copy thereof in an envelope addressed to:

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

*State Agencies and Interested Parties (See attached mailing list);*

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

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 March 29, 2002, at Sacramento, California.

  
VICTORIA SORIANO

# Commission on State Mandates

List Date: 1213011997

Mailing Information

## Mailing List

Claim Number 97-TC-10, 11, 12 Claimant Santa Monica Community College District

Subject Chapter 1372, Statutes of 1990, et al

Issue CCD Budget and Financial Reports, et al

Ms. Harmeet Barkschat,  
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Claim Number

97-TC-10, 11, 12

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Santa Monica Community College District

Subject

Chapter 1372, Statutes of 1990, et al

Issue

CCD Budget and Financial Reports, et al

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Subject Chapter 1372, Statutes of 1990, et al

Issue CCD Budget and Financial Reports, et al

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**Issue** CCD Budget and Financial Reports, et al

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Interested Person

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CCD Budget and Financial Reports, et al

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