

COMMISSION ON STATE MANDATES

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July 25, 2007

Mr. Keith Petersen
SixTen and Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

And Affected State Agencies and Interested Parties (See Enclosed Mail List)

Re: **Draft Staff Analysis and Hearing Date**
Reporting Improper Governmental Activities
Education Code Section 44110
Statutes 2000, Chapter 531, Statutes 2001, Chapter 159,
Statutes 2001, Chapter 416, Statutes 2002, Chapter 81
San Juan Unified School District and Santa Monica Community
College District, Claimants

Dear Mr. Petersen:

The draft staff analysis for the above-named test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **August 15, 2007**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

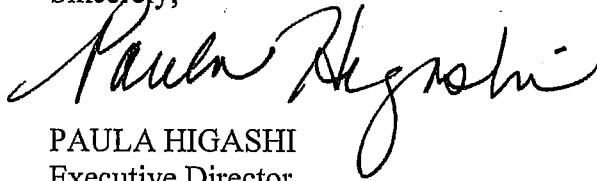
This test claim is tentatively set for hearing on Thursday, **September 26, 2007**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about September 13, 2007. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses

Mr. Keith Petersen
July 25, 2007
Page 2

will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Kenny Louie at (916) 323-3562.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi". The signature is written in black ink and is positioned above the printed name and title.

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

J:mandates/02tc24/correspondence/dsatrans

ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 44110 - 44114, and 87160 - 87164

Statutes 2000, Chapter 531
Statutes 2001, Chapter 159
Statutes 2001, Chapter 416
Statutes 2002, Chapter 81

Reporting Improper Governmental Activities (02-TC-24)
San Juan Unified School District and Santa Monica Community College District, Claimants

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State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
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COMMISSION ON
STATE MANDATES
EXHIBIT A

TEST CLAIM FORM

Claim No. 02-TC-24

Local Agency or School District Submitting Claim

SAN JUAN UNIFIED SCHOOL DISTRICT and SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

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

Claimant Address

San Juan Unified School District
P.O. Box 477
Jarmichael, California 95609-0477

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

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. **Reporting Improper Governmental Activities**

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Section 44110
Education Code Section 44111
Education Code Section 44112
Education Code Section 44113
Education Code Section 44114

Education Code Section 87160
Education Code Section 87161
Education Code Section 87162
Education Code Section 87163
Education Code Section 87164

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

Name and Title of Authorized Representative
Diana Halpenny
General Counsel
San Juan Unified School District

Telephone No.
(916) 971-7110

Signature of Authorized Representative

Date

x *Diana Halpenny*

May 21, 2003

RECEIVED
JUN 05 2003
COMMISSION ON
101 STATE MANDATES

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

SAN JUAN UNIFIED SCHOOL DISTRICT and SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Kelth B. Petersen, President
SixTen and Associates

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

Claimant Address

San Juan Unified School District
P.O. Box 477
Jarmichael, California 95609-0477

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

Representative Organization to be Notified

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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. **Reporting Improper Governmental Activities**

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Section 44110
Education Code Section 44111
Education Code Section 44112
Education Code Section 44113
Education Code Section 44114

Education Code Section 87160
Education Code Section 87161
Education Code Section 87162
Education Code Section 87163
Education Code Section 87164

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

Name and Title of Authorized Representative

Telephone No.

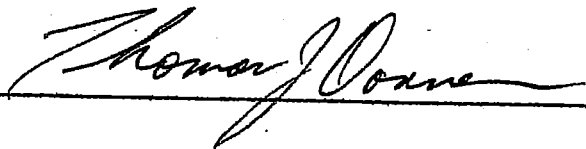
Tom Donner
Executive Vice President - Business and Administration
Santa Monica Community College District

(310) 434-4000

Signature of Authorized Representative

Date

X



May 26, 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 COMMISSION ON STATE MANDATES
10
11 STATE OF CALIFORNIA
12

13 Test Claim of:)

No. CSM _____

14)
15)
16 San Juan Unified School District)

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

17)
18 and)

19)
20)
21 Santa Monica)
22 Community College District)

23)
24 Test Claimants)

Education Code Sections 44110, 44111
44112, 44113, 44114, 87160, 87161,
87162, 87163, 87164

25)
26)
27)
28)
29)
30)
"Reporting Improper Governmental Activities"

PART 1. AUTHORITY FOR THE CLAIM

31 The Commission on State Mandates has the authority pursuant to Government
32 Code section 17551(a) to "...hear and decide upon a claim by a local agency or school
33 district that the local agency or school district is entitled to be reimbursed by the state for
34 costs mandated by the state as required by Section 6 of Article XIII B of the California
35 Constitution." San Juan Unified School District and Santa Monica Community College
36 District are "school districts" as defined in Government Code section 17519.¹

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

"School District" means any school district, community college district, or county

1 PART II. LEGISLATIVE HISTORY OF THE CLAIM

2 This test claim alleges mandated costs subject to reimbursement by the state for
3 school districts, county offices of education and community college districts to establish
4 and implement policies and procedures to comply with the "Reporting by School
5 Employees of Improper Governmental Activities Act" pursuant to Education Code
6 Sections 44110 through 44114 and for community college districts to comply with the
7 "Reporting by Community College Employees of Improper Governmental Activities Act"
8 pursuant to Education Code 87160 through 87164.

9 SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975

10 Prior to January 1, 1975 there was no state statute or executive order in effect
11 which required school districts, county offices of education, or community college
12 districts to establish procedures to protect employee or employee applicant
13 "whistleblowers" or to discipline employees, officers, or administrators who intentionally
14 engaged in acts of reprisal, retaliation, threats, or coercion against an employee or
15 employee applicant for having disclosed improper governmental activity.

16 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

17 Chapter 531, Statutes of 2000, Section 1, added Article 5 to Chapter 1 of Part 25
18 of the Education Code, consisting of Sections 44110 through 44114. Section 44110²

superintendent of schools."

² Education Code Section 44110, added by Chapter 531, Statutes of 2000,
Section 1:

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 requires the article to be known as the Reporting by School Employees of Improper
2 Governmental Activities Act.

3 Section 44111³ states a legislative intent that school employees and other
4 persons disclose improper governmental activities.

5 Section 44112⁴ provides relevant definitions. Subdivision (a) defines an

"This article shall be known and may be referred to as the Reporting by School Employees of Improper Governmental Activities Act."

³ Education Code Section 44111, added by Chapter 531, Statutes of 2000,
Section 1:

"It is the intent of the Legislature that school employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities."

⁴ Education Code Section 44112, added by Chapter 531, Statutes of 2000,
Section 1:

"For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a public school agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

Test Claim of San Juan Unified School District
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1 "employee" as a "public school employee," as defined in subdivision (j) of Section
2 3540.1⁵ of the Government Code. Subdivision (b) defines an "illegal order" as a
3 directive to violate a federal, state, or local law, rule, or regulation or an order to work in
4 conditions that would unreasonably threaten the health or safety of employees or the
5 public. Subdivision (c) defines "improper governmental activity" as an activity
6 undertaken in the performance of official duties that violates a state or federal law or
7 regulation, including, corruption, malfeasance, bribery, theft, fraud, coercion, conversion,
8 malicious prosecution, misuse of government property, willful omission to perform duty
9 or an activity that is economically wasteful or involves gross misconduct, incompetency,
10 or inefficiency. Subdivision (d) defines "person" as any individual, corporation, trust,
11 association, any state or local government, or their agent. Subdivision (e) defines
12 "protected disclosure" as a good faith communication that discloses improper

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code."

⁵ Subdivision (j) of Government Code Section 3540.1 defines "employee" as any person employed by a public school employer, except elected or appointed employees, management employees and confidential employees.

Test Claim of San Juan Unified School District
and Santa Monica Community College District
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1 governmental activity or discloses a remedy to any condition that may significantly
2 threaten the health or safety of employees or the public. Subdivision (f) defines "public
3 school employer" as having the same meaning as in subdivision (k) of Government
4 Code Section 3540.1⁶.

5 Section 44113⁷, subdivision (a), prohibits an employee from using "official
6 authority or influence" to interfere with the right of a person to disclose improper
7 governmental activity to an official agent. Subdivision (b) defines "use of official authority

⁶ Subdivision (k) of Government Code Section 3540.1 defines "public school employer" or "employer" as the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

⁷ Education Code Section 44113, added by Chapter 531, Statutes of 2000,
Section 1:

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law."

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 or influence" as promising any benefit, threatening any reprisal or taking any retaliatory
2 personnel action. Subdivision (c) defines "official agent" as a school administrator,
3 member of the governing board of a school district or county board of education, county
4 superintendent of schools, or the Superintendent of Public Instruction. Subdivision (d)
5 allows that a violator may be liable for civil damages to the offended party. Subdivision
6 (e) qualifies that this section should not be construed to authorize an individual to
7 disclose any information prohibited by law.

8 Section 44114⁸, subdivision (a), provides an employee or applicant may file a

⁸ Education Code Section 44114, added by Chapter 531, Statutes of 2000,
Section 1:

"(a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 written complaint with his or her supervisor, a school administrator, or public school

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order.

If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action."

Test Claim of San Juan Unified School District
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1 employer alleging actual or attempted improper acts as prohibited by Section 44113 and
2 also allows the offended party to file a copy of the written complaint with local law
3 enforcement within 12 months of the most recent subject of complaint. Subdivision (b)
4 defines the criminal penalties for acts prohibited by Section 44113. This conduct shall
5 also be subject to discipline by the public school employer. If no adverse action occurs,
6 local law enforcement may report the activity to the governing board of the school district
7 or the county board of education. Subdivision (c) allows the filing of a civil action and the
8 court may award damages and reasonable attorney's fees. Subdivision (e) requires, in
9 any civil action or administrative proceeding, that the initial burden of proof is on the
10 employee or applicant to prove a prohibited activity was a contributing factor in the
11 alleged retaliation. Thereafter, the burden of proof rests on the supervisor, school
12 administrator, or public school employer to provide clear and convincing evidence that
13 the alleged action would have occurred for legitimate, independent reasons. Failure to
14 do so gives the public school employee a complete affirmative defense.

15 Chapter 531, Statutes of 2000, Section 2, added Article 6 to Chapter 1 of Part 51
16 of the Education Code, consisting of Sections 87160 through 87164. Section 87160⁹
17 requires the article to be known as the Reporting by Community College Employees of

⁹ Education Code Section 87160, added by Chapter 531, Statutes of 2000,
Section 2:

"This article shall be known and may be referred to as the Reporting by
Community College Employees of Improper Governmental Activities Act."

Test Claim of San Juan Unified School District
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Chapter 81/02 Reporting Improper Governmental Activities

1 Improper Governmental Activities Act.

2 Section 87161¹⁰ states a legislative intent that community college employees and
3 other persons disclose improper governmental activities.

4 Section 87162¹¹ provides relevant definitions. Subdivision (a) defines an

¹⁰ Education Code Section 87161, added by Chapter 531, Statutes of 2000,
Section 2:

"It is the intent of the Legislature that community college employees and other
persons disclose, to the extent not expressly prohibited by law, improper governmental
activities."

¹¹ Education Code Section 87162, added by Chapter 531, Statutes of 2000,
Section 2:

"For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of
Section 3540.1 of the Government Code as construed to include community college
employees.

(b) "Illegal order" means any directive to violate or assist in violating a federal,
state, or local law, rule, or regulation or an order to work or cause others to work in
conditions outside of their line of duty that would unreasonably threaten the health or
safety of employees or the public.

(c) "Improper governmental activity" means an activity by a community college or
by an employee that is undertaken in the performance of the employee's official duties,
whether or not that activity is within the scope of his or her employment, and that meets
either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but
not limited to, corruption, malfeasance, bribery, theft of government property,
fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of
government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct,
incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or
local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or
demonstrates an intention to disclose information that may evidence either of the

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 "employee" as a "public school employee," as defined in subdivision (j) of Section 3540.1
2 of the Government Code as construed to include community college employees.

3 Subdivision (b) defines an "illegal order" as a directive to violate a federal, state, or local
4 law, rule, or regulation or an order to work in conditions that would unreasonably
5 threaten the health or safety of employees or the public. Subdivision (c) defines

6 "improper governmental activity" as an activity undertaken in the performance of official
7 duties that violates a state or federal law or regulation, including, corruption,
8 malfeasance, bribery, theft, fraud, coercion, conversion, malicious prosecution, misuse
9 of government property, willful omission to perform duty or an activity that is
10 economically wasteful or involves gross misconduct, incompetency, or inefficiency.

11 Subdivision (d) defines "person" as any individual, corporation, trust, association, any
12 state or local government, or their agent. Subdivision (e) defines "protected disclosure"
13 as a good faith communication that discloses improper governmental activity or
14 discloses a remedy to any condition that may significantly threaten the health or safety
15 of employees or the public. Subdivision (f) defines "public school employer" as having
16 the same meaning as in Government Code Section 3540.1, subdivision (k), which

following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of
employees or the public if the disclosure or intention to disclose was made for the
purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of
Section 3540.1 of the Government Code as construed to include community college
districts."

Test Claim of San Juan Unified School District
and Santa Monica Community College District
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1 includes community college districts.

2 Section 87163¹², subdivision (a), prohibits an employee from using "official
3 authority or influence" to interfere with the right of a person to disclose these matters to
4 an official agent. Subdivision (b) defines "use of official authority or influence" as
5 promising any benefit, threatening any reprisal or taking any retaliatory personnel action.
6 Subdivision (c) defines "official agent" as a community college administrator, member of
7 the governing board of a community college district, or the Chancellor of the California
8 Community Colleges. Subdivision (d) allows that a violator may be liable for civil
9 damages to the offended party. Subdivision (e) qualifies that this section should not be
10 construed to authorize an individual to disclose information if prohibited by law.

¹² Education Code Section 87163, added by Chapter 531, Statutes of 2000,
Section 2:

"(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law."

Test Claim of San Juan Unified School District
and Santa Monica Community College District
Chapter 81/02 Reporting Improper Governmental Activities

1 Section 87164¹³, subdivision (a), provides that an employee or applicant may file

¹³ Education Code Section 87164, added by Chapter 531, Statutes of 2000,
Section 2:

"(a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified

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1 a written complaint with his or her supervisor, a school administrator, or public school
2 employer alleging actual or attempted improper acts as prohibited by Section 87163 and
3 allows the offended party to file a copy of the written complaint with local law
4 enforcement within 12 months of the most recent subject of the complaint. Subdivision
5 (b) defines the criminal penalties for the acts prohibited by Section 87163. This conduct
6 shall also be subject to discipline by the public school employer. If no adverse action
7 occurs, local law enforcement may report the activity to the governing board of the
8 community college district. Subdivision (c) allows the filing of a civil action and the court
9 may award damages and reasonable attorney's fees. Subdivision (e) requires, in any

on the basis of evidence separate and apart from the fact that the person has made a
protected disclosure as defined in subdivision (e) of Section 87162.

(e) In any civil action or administrative proceeding, once it has been
demonstrated by a preponderance of evidence that an activity protected by this article
was a contributing factor in the alleged retaliation against a former, current, or
prospective employee, the burden of proof shall be on the supervisor, school
administrator, or public school employer to demonstrate by clear and convincing
evidence that the alleged action would have occurred for legitimate, independent
reasons even if the employee had not engaged in protected disclosures or refused an
illegal order. If the supervisor, school administrator, or public school employer fails to
meet this burden of proof in an adverse action against the employee in any
administrative review, challenge, or adjudication in which retaliation has been
demonstrated to be a contributing factor, the employee shall have a complete affirmative
defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or
remedies of an employee under any other federal or state law or under an employment
contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a
memorandum of understanding reached pursuant to Chapter 10.7 (commencing with
Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of
understanding shall be controlling without further legislative action."

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1 civil action or administrative proceeding, that the initial burden of proof is on the
2 employee or applicant to prove a prohibited activity was a contributing factor in the
3 alleged retaliation. Thereafter, the burden of proof rests on the supervisor, school
4 administrator, or public school employer to provide clear and convincing evidence that
5 the alleged action would have occurred for legitimate, independent reasons. Failure to
6 do so gives the public school employee a complete affirmative defense.

7 Chapter 159, Statutes of 2001, Section 68, amended Education Code Section
8 44114, effective January 1, 2002, to make technical changes.

9 Chapter 416, Statutes of 2001, Section 1, amended Education Code Section
10 87164¹⁴, effective January 1, 2002, to insert five new subdivisions (c), (d), (e), (f), and

¹⁴ Education Code Section 87164, as amended by Chapter 416, Statutes of 2001,
Section 1, effective January 1, 2002, :

“(c) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

“(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations.

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1
and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective

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1 (g). Subdivision (c) requires the State Personnel Board to initiate a hearing or
2 investigation of a written complaint within 10 working days. Findings shall be completed
3 within 60 workings days and a copy of the findings must be provided to the complaining
4 employee or applicant and the appropriate supervisors, administrator, or employer. The
5 hearing shall be conducted in accordance with Section 18671.2¹⁵ of the Government

employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action."

¹⁵ Government Code Section 18671.2, as amended by Chapter 472, Statutes of 1996, Section 2:

"(a) The total cost to the state of maintaining and operating the hearing office of the board shall be determined by the board, in advance or upon any other basis as it may determine, utilizing information from the state agencies for which services are provided by the hearing office.

(b) The board shall be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement. The board may bill the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies, and employees of the California State University pursuant to Sections 89535 to 89542, inclusive, of the Education Code, and may bill the state departments having responsibility for the overall administration of grant-in-aid programs for the costs incurred in conducting hearings

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1 Code. Subdivision (d) allows the employer to request a hearing before the State
2 Personnel Board to overrule adverse findings. Subdivision (e) requires the State
3 Personnel Board to order appropriate relief if it is determined that a violation has
4 occurred. Subdivision (f) requires that a violation of Section 87163 shall be made in the
5 supervisor's, administrator's, or employer's official personnel records. Former
6 subdivisions (c), (d), (e), (f), and (g) were re-lettered (h), (i), (j), (k), and (l), respectively.

7 Chapter 81, Statutes of 2002, Section 1, amended Education Code Section
8 87164¹⁶, effective January 1, 2003, to split subdivision (c) into subparagraphs (1) and

involving employees not administering their own merit systems pursuant to Chapter 1
(commencing with Section 19800) of Part 2.5. All costs collected by the board pursuant
to this section shall only be used for purposes of maintaining and operating the hearing
office of the board."

¹⁶ Education Code Section 87164, as amended by Chapter 81, Statutes of 2002,
Section 1, effective January 1, 2003:

"(c) (1) The State Personnel Board shall initiate a hearing or investigation of a
written complaint of reprisal or retaliation as prohibited by Section 87163 within 10
working days of its submission.
The executive officer of the State Personnel Board shall complete findings of the
hearing or investigation within 60 working days thereafter and shall provide a copy of the
findings to the complaining employee or applicant for employment with a public school
employer and to the appropriate supervisors, administrator, or employer. This hearing
shall be conducted in accordance with Section 18671.2 of the Government Code, this
part, and the rules of practice and procedure of the State Personnel Board. When the
allegations contained in a complaint of reprisal or retaliation are the same as, or similar
to, those contained in another appeal, the executive officer may consolidate the appeals
into the most appropriate format. In these cases, the time limits described in this
subdivision paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs
associated with hearings of the State Personnel Board conducted pursuant to paragraph

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1 (2). Subparagraph (1) made technical changes. Subparagraph (2) was added to
2 provide that the costs associated with hearings shall not be charged to the Board of
3 Governors but instead to the community college district that employs the complaining
4 employee or applicant.

5 PART III. STATEMENT OF THE CLAIM

6 SECTION 1. COSTS MANDATED BY THE STATE

7 The Statutes and Education Code sections referenced in this test claim result in
8 school districts incurring costs mandated by the state, as defined in Government Code
9 section 17514¹⁷, by creating new state-mandated duties related to the uniquely
10 governmental function of providing public services and these statutes apply to school
11 districts and do not apply generally to all residents and entities in the state.¹⁸

(1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application."

¹⁷ 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.

¹⁸ 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;

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1 The new duties mandated by the state upon school districts, county offices of
2 education and community colleges require state reimbursement of the direct and indirect
3 costs of labor, materials and supplies, data processing services and software,
4 contracted services and consultants, equipment and capital assets, staff and student
5 training and travel to implement the following activities:

6 I) School Districts and County Offices of Education:

- 7 A) Pursuant to the Reporting by School Employees of Improper
8 Governmental Activities Act (Education Code Sections 44110 through
9 44114) to establish policies and procedures, and to periodically update
10 those policies and procedures, to implement the act.
- 11 B) Pursuant to Education Code Section 44114, subdivision (a), to receive, file
12 and maintain written complaints filed by school employees or applicants for
13 employment alleging actual or attempted acts of reprisal, retaliation,
14 threats, coercion or similar improper acts for having disclosed improper
15 governmental activities or for refusing to obey an illegal order.
- 16 C) Pursuant to Education Code Section 44114, subdivision (b), to investigate,
17 or to cooperate with law enforcement investigations of, written complaints

"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."

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1 filed by school employees or applicants for employment alleging actual or
2 attempted acts of reprisal, retaliation, threats, coercion or similar improper
3 acts for having disclosed improper governmental activities or for refusing
4 to obey an illegal order.

5 D) Pursuant to Education Code Section 44114, subdivision (b), to discipline,
6 as may be required by law or the district's collective bargaining agreement,
7 any employee, officer or administrator, who is found to have engaged in
8 actual or attempted acts of reprisal, retaliation, threats, coercion or similar
9 improper acts for having disclosed improper governmental activities or for
10 refusing to obey an illegal order.

11 E) Pursuant to Education Code Section 44114, subdivision (c), to respond,
12 appear and defend in any civil action, directly or derivatively, when named
13 as a party or otherwise required by the collective bargaining agreement,
14 brought by a person alleging an employee or officer of the district has
15 engaged in actual or attempted acts of reprisal, retaliation, threats,
16 coercion or similar improper acts for having made a protected disclosure.

17 F) Pursuant to Education Code Section 44114, subdivision (c), to pay
18 damages, directly or derivatively, including attorney's fees, when ordered
19 by the court based upon the liability of the district, or as otherwise defined
20 by the collective bargaining agreement.

21 II) Community Colleges:

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- 1 A) Pursuant to the Reporting by Community College Employees of Improper
2 Governmental Activities Act (Education Code Sections 87160 through
3 87164) to establish policies and procedures, and to periodically update
4 those policies and procedures, to implement the act.
- 5 B) Pursuant to Education Code Section 87164, subdivision (a), to receive, file
6 and maintain written complaints filed by school employees or applicants for
7 employment alleging actual or attempted acts of reprisal, retaliation,
8 threats, coercion or similar improper acts for having disclosed improper
9 governmental activities or for refusing to obey an illegal order.
- 10 C) Pursuant to Education Code Section 87164, subdivision (b), to investigate,
11 or to cooperate with law enforcement investigations of, written complaints
12 filed by school employees or applicants for employment alleging actual or
13 attempted acts of reprisal, retaliation, threats, coercion or similar improper
14 acts for having disclosed improper governmental activities or for refusing
15 to obey an illegal order.
- 16 D) Pursuant to Education Code Section 87164, subdivision (b), to discipline,
17 as may be required by law or the district's collective bargaining agreement,
18 any employee, officer or administrator, who is found to have engaged in
19 actual or attempted acts of reprisal, retaliation, threats, coercion or similar
20 improper acts for having disclosed improper governmental activities or for
21 refusing to obey an illegal order.

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- 1 E) Pursuant to Education Code Section 87164, subdivision (h), to respond,
2 appear and defend in any civil action, directly or derivatively, when named
3 as a party or otherwise required by the collective bargaining agreement,
4 brought by a person alleging an employee or officer of the district has
5 engaged in actual or attempted acts of reprisal, retaliation, threats,
6 coercion or similar improper acts for having made a protected disclosure.
- 7 F) Pursuant to Education Code Section 87164, subdivision (h), to pay
8 damages, directly or derivatively, including attorney's fees, when ordered
9 by the court based upon the liability of the district, or as otherwise defined
10 by the collective bargaining agreement .
- 11 G) Pursuant to Education Code Section 87164, subdivision (c), for
12 Community College Districts to appear and participate in hearings and
13 investigations initiated by the State Personnel Board when complaints
14 alleging actual or attempted acts of reprisal, retaliation, threats, coercion or
15 similar acts for having made a protected disclosures have been filed with
16 the Board.
- 17 H) Pursuant to Education Code Section 87164, subdivision (d), for
18 Community College Districts to request a hearing before the State
19 Personnel Board when the adverse findings of the hearing officer are
20 incorrect.
- 21 I) Pursuant to Education Code Section 87164, subdivision (e), for

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1 Community College Districts when, after a hearing, the State Personnel
2 Board determined that a violation has occurred, or if no hearing is
3 requested and the findings of the hearing officer conclude improper activity
4 has occurred, to comply with any ordered relief including, but not limited to,
5 reinstatement, backpay, restoration of lost service credit, and the
6 expungement of any adverse records of the employee or employee
7 applicant who was the subject of the acts of misconduct.

8 J) Pursuant to Education Code Section 87164, subdivision (f), for Community
9 College Districts, when the State Personnel Board determines that a
10 supervisor, administrator or employer has violated Section 87163, to cause
11 an entry to that effect to be made in the supervisor's, administrator's or
12 employer's official personnel records.

13 K) Pursuant to Education Code Section 87164, subdivision (c)(2), to
14 reimburse the State Personnel Board for all of the costs associated with its
15 hearings conducted pursuant to subdivision (c)(1).

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

17 None of the Government Code Section 17556¹⁹ statutory exceptions to a finding

¹⁹ 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:

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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.²⁰

(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 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."

²⁰ 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 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

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

5 PART IV. ADDITIONAL CLAIM REQUIREMENTS

6 The following elements of this claim are provided pursuant to Section 1183, Title

7 2, California Code of Regulations:

8 Exhibit 1: Declaration of Diana Halpenny
9 General Counsel
10 San Juan Unified School District
11

12 Declaration of Tom Donner
13 Executive Vice President - Business and Administration
14 Santa Monica Community College District

15
16 Exhibit 2: Copies of Statutes Cited
17 Chapter 81, Statutes of 2002
18 Chapter 416, Statutes of 2001
19 Chapter 159, Statutes of 2001
20 Chapter 531, Statutes of 2000
21
22

23 Exhibit 3: Copies of Code Sections Cited
24 Education Code Section 44110
25 Education Code Section 44111
26 Education Code Section 44112
27 Education Code Section 44113
28 Education Code Section 44114

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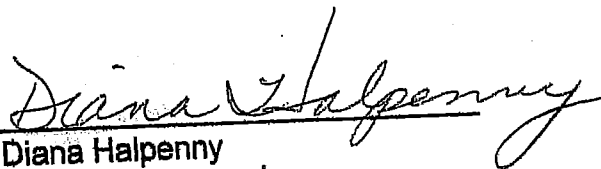
Education Code Section 87160
Education Code Section 87161
Education Code Section 87162
Education Code Section 87163
Education Code Section 87164

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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 May 21, 2003, at Carmichael, California by:

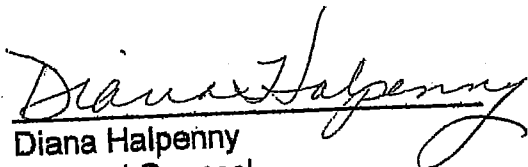


Diana Halpenny
General Counsel
San Juan Unified School District

Voice: (916) 971-7110
Fax: (916) 971-7704

PART VI. APPOINTMENT OF REPRESENTATIVE

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



Diana Halpenny
General Counsel

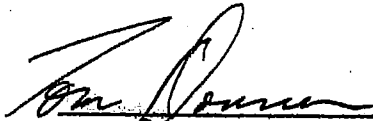
5/21/03
Date

Test Claim of San Juan Unified School District
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Chapter 81702 Reporting Improper Governmental Activities

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 May 26, 2003, at Santa Monica, California by:

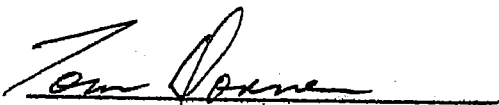


Tom Donner
Executive Vice President
Santa Monica Community College District

Voice: (310) 434-4000
Fax: (310) 434-4386

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



Tom Donner
Executive Vice President

5/26/03
Date

**EXHIBIT 1
DECLARATIONS**

DECLARATION OF DIANA HALPENNY

San Juan Unified School District

Test Claim of San Juan Unified School District
and of Santa Monica Community College District

COSM No. _____

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Sections 44110
Education Code Sections 44111
Education Code Sections 44112
Education Code Sections 44113
Education Code Sections 44114

Education Code Sections 87160
Education Code Sections 87161
Education Code Sections 87162
Education Code Sections 87163
Education Code Sections 87164

Reporting Improper Government Activities

I, Diana Halpenny, General Counsel, San Juan Unified School District, make the following declaration and statement.

In my capacity as General Counsel to San Juan Unified School District, I am responsible for the district's compliance with the reporting of improper governmental activities. I am familiar with the provisions and requirements of the Statutes and Education Code Sections enumerated above.

These Statutes and Education Code sections require the San Juan Unified School District to:

- A) Pursuant to the Reporting by School Employees of Improper

Governmental Activities Act (Education Code Sections 44110 through 44114) to establish policies and procedures, and to periodically update those policies and procedures, to implement the act.

- B) Pursuant to Education Code Section 44114, subdivision (a), to receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- C) Pursuant to Education Code Section 44114, subdivision (b), to investigate or cooperate with law enforcement written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- D) Pursuant to Education Code Section 44114, subdivision (b), to discipline any employee, officer or administrator, as may be required by law or the district's collective bargaining agreement, who is found to have engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- E) Pursuant to Education Code Section 44114, subdivision (c), to respond,

appear and defend in any civil action, directly or derivatively, when named as a party or otherwise required by the collective bargaining agreement, brought by a person alleging an employee or officer of the district has engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having made a protected disclosure.

- F) Pursuant to Education Code Section 44114, subdivision (c), to pay damages, directly or derivatively, including attorney's fees, when ordered by the court based upon the liability of the district, or as otherwise defined by the collective bargaining agreement .

It is estimated that the San Juan School District, to the extent improper activities may be reported, will incur approximately \$1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

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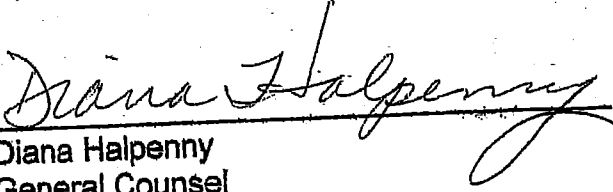
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Declaration of Diana Halpenny
Test Claim: Chapter 81/02 Reporting Improper Governmental Activities

foregoing is true and correct except where stated upon information and belief and where
so stated I declare that I believe them to be true.

EXECUTED this 21 day of May, 2003, at Carmichael, California.


Diana Halpenny
General Counsel
San Juan Unified School District

DECLARATION OF TOM DONNER

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Test Claim of San Juan Unified School District
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COSM No. _____

Chapter 81, Statutes of 2002
Chapter 416, Statutes of 2001
Chapter 159, Statutes of 2001
Chapter 531, Statutes of 2000

Education Code Sections 44110
Education Code Sections 44111
Education Code Sections 44112
Education Code Sections 44113
Education Code Sections 44114

Education Code Sections 87160
Education Code Sections 87161
Education Code Sections 87162
Education Code Sections 87163
Education Code Sections 87164

Reporting Improper Governmental Activities

I, Tom Donner, Executive Vice President - Business and Administration, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President - Business and Administration, I am responsible for the district's compliance with the reporting of improper governmental activities. I am familiar with the provisions and requirements of the Statutes and Education Code Sections enumerated above.

These Statutes and Education Code sections require the Santa Monica Community College District to:

- A) Pursuant to the Reporting by Community College Employees of Improper Governmental Activities Act (Education Code Sections 87160 through 87164) to establish policies and procedures, and to periodically update those policies and procedures, to implement the act.
- B) Pursuant to Education Code Section 87164, subdivision (a), to receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- C) Pursuant to Education Code Section 87164, subdivision (b), to investigate or cooperate with law enforcement written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.
- D) Pursuant to Education Code Section 87164, subdivision (b), to discipline any employee, officer or administrator, as may be required by law or the district's collective bargaining agreement, who is found to have engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order.

- E) Pursuant to Education Code Section 87164, subdivision (h), to respond, appear and defend in any civil action, directly or derivatively, when named as a party or otherwise required by the collective bargaining agreement, brought by a person alleging an employee or officer of the district has engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having made a protected disclosure.
- F) Pursuant to Education Code Section 87164, subdivision (h), to pay damages, directly or derivatively, including attorney's fees, when ordered by the court based upon the liability of the district, or as otherwise defined by the collective bargaining agreement .
- G) Pursuant to Education Code Section 87164, subdivision (c), for Community College Districts to appear and participate in hearings and investigations initiated by the State Personnel Board when complaints alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar acts for having made a protected disclosures have been filed with the Board.
- H) Pursuant to Education Code Section 87164, subdivision (d), for Community College Districts to request a hearing before the State Personnel Board when adverse findings of the hearing officer are incorrect.
- I) Pursuant to Education Code Section 87164, subdivision (e), for

Community College Districts when, after a hearing, the State Personnel Board determined that a violation has occurred, or if no hearing is requested and the findings of the hearing officer conclude improper activity has occurred, to comply with any ordered relief including, but not limited to, reinstatement, backpay, restoration of lost service credit, and the expungement of any adverse records of the employee or employee applicant who was the subject of the acts of misconduct.

- J) Pursuant to Education Code Section 87164, subdivision (f), for Community College Districts, when the State Personnel Board determines that a supervisor, administrator or employer has violated Section 87163, to cause an entry to that effect to be made in the supervisor's, administrator's or employer's official personnel records.
- K) Pursuant to Education Code Section 87164, subdivision (c)(2), to reimburse the State Personnel Board for all of the costs associated with its hearings conducted pursuant to subdivision (c)(1).

It is estimated that the Santa Monica Community College District, to the extent improper activities may be reported, will incur approximately \$1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain

Declaration of Tom Donner

Test Claim: Chapter 81/02 Reporting Improper Governmental Activities

reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 26 day of May, 2003, at Santa Monica, California



Tom Donner
Executive Vice President
Business and Administration
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

~~COLLEGES AND UNIVERSITIES—COMMUNITY COLLEGES—~~
~~REPORTING IMPROPER GOVERNMENTAL ACTIVITIES~~

CHAPTER 81

A.B. No. 2034

AN ACT to amend Section 87164 of the Education Code, relating to community colleges.

[Filed with Secretary of State June 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2034, Horton. Community colleges: Reporting by Community College Employees of Improper Governmental Activities Act.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state.

Existing law, known as the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee may report improper governmental activities or make a protected disclosure to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts. Existing law, known as the Reporting by Community College Employees of Improper Governmental Activities Act, enacts provisions, applicable to community college campuses, that are similar to the California Whistleblower Protection Act, including procedures for the investigation and determination of complaints by the State Personnel Board.

This bill would require the hearings to be conducted in accordance with the statutes governing community colleges and the rules of practice and procedure of the State Personnel Board. The bill would also require that no costs associated with hearings of the State Personnel Board conducted pursuant to a cited provision of the Reporting by Community College Employees of Improper Governmental Activities Act shall be charged to the board of governors. The bill would instead require that all of the costs associated with those hearings shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

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

SECTION 1. Section 87164 of the Education Code is amended to read:

87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the

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

written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c)(1) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code, this part, and the rules of practice and procedure of the State Personnel Board. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant

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

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for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

COLLEGES AND UNIVERSITIES—WHISTLEBLOWERS—
IMPROPER GOVERNMENT ACTIVITIES

CHAPTER 416

A.B. No. 647

AN ACT to amend Section 87164 of the Education Code, relating to whistleblower protection;
[Filed with Secretary of State October 2, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 647, Horton. Whistleblower protection: Reporting by Community College Employees of Improper Governmental Activities Act.

Existing law, the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee may report improper governmental activities or make a protected disclosure to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts. Existing law defines any employee of the California State University as a state employee and the California State University as a state agency for some provisions of this act. Existing law authorizes a California State University employee to file a written complaint with his or her supervisor or manager, or any other designated university officer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure. It is a misdemeanor for any person to intentionally engage in acts of retaliation, reprisal, threats, coercion, or similar acts against an employee of the California State University for having made a protected disclosure under these provisions.

Existing law establishes the Reporting by Community College Employees of Improper Governmental Activities Act, which enacts provisions similar to the California Whistleblower Protection Act, that are applicable to community college campuses.

This bill would amend the Reporting by Community College Employees of Improper Governmental Activities Act to include procedures for the investigation and determination of complaints by the State Personnel Board that are currently contained in the California Whistleblower Protection Act.

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

SECTION 1. Section 87164 of the Education Code is amended to read:

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

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87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be

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

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malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

MAINTENANCE OF CODES

CHAPTER 159

S.B. No. 662

AN ACT to amend Sections 27, 113, 130, 144, 350, 1647.11, 2570.6, 2570.8, 2570.19, 2995, 3059, 3364, 3408, 4059, 4312, 4980.80, 4980.90, 4996.6, 5111, 5536, 6403, 6716, 6730.2, 6756, 7092, 7583.11, 8027, 8773.4, 10187.2, and 21702 of the Business and Professions Code, to amend Sections 1748.10, 1748.11, 1810.21, 2954.4, 2954.5, and 3097 of, and to amend and renumber Section 1834.8 of, the Civil Code, to amend Sections 403.020, 645.1, 674, and 699.510 of the Code of Civil Procedure, to amend Sections 9323, 9331, and 9408 of the Commercial Code, to amend Sections 2200, 6810, 17540.3, 25102, 25103, and 25120 of the Corporations Code, to amend Sections 313, 406, 426, 427, 11700, 17071.46, 17210, 17317, 17610.5, 22660, 22950, 25933, 33126.1, 37252, 37252.2, 37619, 41329.1, 42239, 44114, 45023.1, 48664, 52054, 52270, 52485, 54749, 56045, 56845, 69432.7, 69434.5, 69437.6, 69439, 69613.1, 87164, and 92901 of, and to amend and renumber Sections 45005.25 and 45005.30 of, the Education Code, to amend Sections 1405, 8040, 9118, and 15375 of the Elections Code, to amend Section 17504 of the Family Code, to amend Sections 761.5, 4827, 16024, 16501, and 18586 of the Financial Code, to amend Sections 1506, 2921, and 8276.3 of the Fish and Game Code, to amend Sections 492, 6046, and 75131 of the Food and Agricultural Code, to amend Sections 3543.4, 3562.2, 3583.5, 6254, 6516.6, 6599.2, 7074, 18935, 20028, 20300, 20392, 21006, 21547.7, 30064.1, 31461.3, 31681.55, 31835.02, 38773.6, 55720, 65584, 65585.1, and 75059.1 of the Government Code, to amend Sections 444.21, 1358.11, 11836, 11877.2, 17922, 25358.6.1, 39619.6, 104170, 105112, 111656.5, 111656.13, 114145, 123111, and 124900 of, to amend and renumber Section 104320 of, and to amend and renumber the heading of Article 10.5 (commencing with Section 1999.801) of Chapter 2.2 of Division 2 of, the Health and Safety Code, to amend Sections 789.8, 1215.1, 1871, 1872.83, 10123.135, 10178.3, 10192.11, 10231.2, 10236, 10506.5, 11621.2, 11784, 11786, 11787, and 12698 of the Insurance Code, to amend Sections 90.5, 129, 230.1, 4455, and 4609 of the Labor Code, to amend Section 1048 of the Military and Veterans Code, to amend Sections 272, 417.2, 646.94, and 3058.65 of the Penal Code, to amend Sections 1813 and 16062 of the Probate Code, to amend Sections 10129 and 20209.7 of the Public Contract Code, to amend Sections 5090.51, 14581, 36710, and 42923 of the Public Resources Code, to amend Sections 383.5, 2881.2, 7943, 9608, 9610, and 12702.5 of, and to amend and renumber Section 399.15 of, the Public Utilities Code, to amend Sections 75.11, 75.21, 97.3, 214, 23622.8, 23646, 44006, and 45153 of the Revenue and Taxation Code, to amend Section 1110 of the Unemployment Insurance Code, to amend Section 4000.37 of the Vehicle Code, to amend Sections 1789.5, 4098.1, 5614, 8102, 10082, 14005.28, 14005.35, 14008.6, 14087.32, and 14105.26 of the Welfare and Institutions Code, and to amend Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), Section 1 of Chapter 352 of the Statutes of 2000, Section 1 of Chapter 661 of the Statutes of 2000, Section 2 of Chapter 693 of the Statutes of 2000, Sections 5 and 6 of the Naval Training Center San

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

1427

SEC. 68. Section 441.14 of the Education Code is amended to read:

441.14. (a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 441.13 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer * * * and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 441.13 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 441.12.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

(e) The meetings of the Bipartisan California Commission on Internet Political Practices shall be open and public. The commission members shall receive one hundred dollars (\$100) per diem for each day of attendance at a meeting of the commission, not to exceed 10 meetings.

(f) The Bipartisan California Commission on Internet Political Practices shall report its findings and recommendations to the Legislature not later than December 1, 2001. The commission shall cease to exist on January 1, 2002.

SEC. 207. Section 3 of Chapter 975 of the Statutes of 2000 is amended to read:

Sec. 3. The sum of two hundred twenty thousand dollars (\$220,000) is hereby appropriated from the General Fund to the Controller for allocation to the Bipartisan California Commission on Internet Political Practices to defray the costs of the commission in conducting the study and preparing the report required by this act.

SEC. 208. Any section of any act enacted by the Legislature during the 2001 calendar year that takes effect on or before January 1, 2002, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of 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 that is enacted by the Legislature during the 2001 calendar year and takes effect on or before January 1, 2002, 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—PUBLIC SCHOOL
EMPLOYEES—WRITTEN COMPLAINTS

CHAPTER 531

A.B. No. 2472

AN ACT to add Article 5 (commencing with Section 44110) to Chapter 1 of Part 25 of, and to add Article 6 (commencing with Section 87160) to Chapter 1 of Part 51 of, the Education Code, relating to public school employees.

[Filed with Secretary of State September 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2472, Romero. Public school employees: disclosure of improper governmental activities.

Under the California Whistleblower Protection Act, the State Auditor is authorized to conduct an investigative audit upon receiving confirmation that an employee or state agency, as defined, has engaged in an improper governmental activity. The act prohibits an employee from using his or her official authority or influence to intimidate, threaten, coerce, or command any person in order to interfere with that person's right to make a disclosure under the act. The act protects employees who, among other things, make disclosures to anyone of information that may evidence an improper governmental activity, refusal to obey an illegal order, or any condition that may significantly threaten the health or safety of employees or the public if the disclosure is made for the purpose of remedying the condition.

The act also provides that a state employee who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts because he or she has made a protected disclosure under the act, may also file a copy of the written complaint with the State Personnel Board, as specified. Any person who engages in the above-specified acts is guilty of a misdemeanor and subject to a \$10,000 fine, and is also subject to civil liability, as specified, except for any action or inaction that is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

This bill would enact the Reporting by School Employees of Improper Governmental Activities Act and the Reporting by Community College Employees of Improper Governmental Activities Act which would enact provisions similar to the California Whistleblower Protection Act applicable to employees of any public school employer, as defined, and would add provisions by which a public school employee is authorized to file a written complaint with the local law enforcement agency, as specified, alleging acts or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts. By expanding the scope of an existing crime, the bill would create a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Article 5 (commencing with Section 44110) is added to Chapter 1 of Part 25 of the Education Code, to read:

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

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Article 5. Reporting by School Employees of Improper Governmental Activities

44110. This article shall be known and may be referred to as the Reporting by School Employees of Improper Governmental Activities Act.

44111. It is the intent of the Legislature that school employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

44112. For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a public school agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code.

44113. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

44114. (a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or

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

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the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

SEC. 2. Article 6 (commencing with Section 87160) is added to Chapter 1 of Part 51 of the Education Code, to read:

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

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Article 6. Reporting by Community College Employees
of Improper Governmental Activities

87160. This article shall be known and may be referred to as the Reporting by Community College Employees of Improper Governmental Activities Act.

87161. It is the intent of the Legislature that community college employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

87162. For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code as construed to include community college employees.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a community college or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code as construed to include community college districts.

87163. (a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

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

87164. (a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

SEC. 3. Nothing in this act is intended to supersede or limit the application of the privilege of subdivision (b) of Section 47 of the Civil Code to informants and proceedings conducted pursuant to Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1

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

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of Title 2 of the Government Code, as confirmed in *Braun v. Bureau of State Audits* (1998) 67 Cal.App.4th 1382.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

EDUCATION CODE

§ 44110. Short title

This article shall be known and may be referred to as the 'Reporting by School Employees of Improper Governmental Activities Act.

(Added by Stats.2000, c. 531 (A.B.2472), § 1.)

§ 44111. Legislative intent

It is the intent of the Legislature that school employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

(Added by Stats.2000, c. 531 (A.B.2472), § 1.)

§ 44112. Definitions

For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a public school agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code.

(Added by Stats.2000, c. 531 (A.B.2472), § 1.)

§ 44113. Use or attempt to use official authority or influence to interfere with protected disclosures; prohibitions; civil liability

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a school administrator, member of the governing board of a school district or county board of education, county superintendent of schools, or the Superintendent of Public Instruction.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

(Added by Stats.2000, c. 531 (A.B.2472), § 1.)

EDUCATION CODE

§ 44114. Written complaints; filing with local law enforcement agency; penalties; other rights and remedies

(a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer * * * and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (a) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

(Added by Stats.2000, c. 581 (A.B.2472), § 1. Amended by Stats.2001, c. 159 (S.B.662), § 68.)

§ 87160. Short title

EDUCATION CODE

This article shall be known and may be referred to as the Reporting by Community College Employees of Improper Governmental Activities Act.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

§ 87161. Legislative intent

It is the intent of the Legislature that community college employees and other persons disclose, to the extent not expressly prohibited by law, improper governmental activities.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

§ 87162. Definitions.

For the purposes of this article, the following terms have the following meanings:

(a) "Employee" means a public school employee as defined in subdivision (j) of Section 3540.1 of the Government Code as construed to include community college employees.

(b) "Illegal order" means any directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(c) "Improper governmental activity" means an activity by a community college or by an employee that is undertaken in the performance of the employee's official duties, whether or not that activity is within the scope of his or her employment, and that meets either of the following descriptions:

(1) The activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty.

(2) The activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

(d) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(e) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose information that may evidence either of the following:

(1) An improper governmental activity.

(2) Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

(f) "Public school employer" has the same meaning as in subdivision (k) of Section 3540.1 of the Government Code as construed to include community college districts.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

EDUCATION CODE

§ 87163. Use or attempt to use official authority or influence to interfere with protected disclosures; prohibitions; civil liability

(a) An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to an official agent matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer or conferring any benefit; affecting or threatening to affect any reprisal; or taking, directing others to take, recommending, processing, or approving any personnel action, including, but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) For the purpose of subdivision (a), "official agent" includes a community college administrator, member of the governing board of a community college district, or the Chancellor of the California Community Colleges.

(d) An employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(e) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

(Added by Stats.2000, c. 531 (A.B.2472), § 2.)

§ 87164. Written complaints; filing with local law enforcement agency; penalties; other rights and remedies

(a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c)(1) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code, this part, and the rules of practice and procedure of the State Personnel Board. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

(g) In order for the Governor and the Legislature to determine the need to continue or modify personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by employees, the State Personnel Board, by June 30 of each year, shall submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment

EDUCATION CODE

with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 8540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

(Amended by Stats.2002, c. 81 (A.B.2084), § 1.)

STATE OF CALIFORNIA

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95814-8511
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**RECEIVED**

March 11, 2004

MAR 16 2004

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

**COMMISSION ON
STATE MANDATES**

Re: Test Claim: Reporting Improper Governmental Activities, 02-TC-24

Dear Ms. Higashi:

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

- Do the provisions [Ed. Code, §§ 87160, 87161, 87162, 87163 and 87164] impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

Education Code section 87160

Enacted in 2000 (Stats. 2000, ch. 531, § 2 (AB 2472)), this code section requires the new article (article 6 of chapter 1 of part 51 of division 7 of title 3 of the Education Code) to be referred to as the "Reporting by Community College Employees of Improper Governmental Activities Act" (the Act) and does not, standing alone, impose a new program or higher level of service on community college districts ("districts"). However, this code section is part of the statutory scheme discussed below.

Education Code section 87161

Enacted in 2000 (Stats. 2000, ch. 531, § 2 (AB 2472)), this code section states the legislative intent of the article and does not, standing alone, impose a new program or higher level of service on the districts. However, this legislative intent concerns the statutory scheme discussed below.

Education Code section 87162

Enacted in 2000 (Stats. 2000, ch. 531, § 2 (AB 2472)), this code section contains the operative definitions applicable to article 6 of chapter 1 of Part 51 of division 7 of title 3 of the Education Code, and does not, standing alone, impose a new program or higher level of service on the districts. However, the definitions contained in section 87162 are an integral part of the statutory scheme discussed below, and also confirm that community college districts are specifically covered by the requirements of the article.

Education Code section 87163

Enacted in 2000 (Stats. 2000, ch. 531, § 2 (AB 2472)), this code section sets forth conditions under which the direct or indirect actions of district employees would violate or interfere with the right of a person to disclose matters within the scope of the article to an official agent, and thus incur liability for civil damages. (Ed. Code, § 87163(a), (b) and (d).) Thus this code section, standing alone, does not impose a new program or higher level of service, but it is an integral part of the statutory scheme discussed below.

Education Code section 87164Overview

The requirements of Education Code section 87164 overlap in part with several "whistleblower" statutes under which districts and their employees were covered prior to the passage of the Act. All of the violations of law defined in Education Code section 87162(c), and by implication, section 87162(b), were previously prohibited by the statutes discussed below.

- The Whistleblower Protection Act enacted in 1999 ("WPA"; Stats. 1999, ch. 156, § 1 (AB 1412); Gov. Code, §§ 9149.20-9149.23), covers district employees in its definition of "employee" (Gov. Code, § 9149.22(b)), protects district employees that report improper governmental activity, as defined,¹ to legislative committees, and allows for civil damages against district employees who violate or interfere with an employee's right to make such disclosures (Gov. Code, § 9149.23(a)). There have been no gaps in the requirements contained in the WPA. Nancy Patton of the Commission has confirmed that no test claims were filed with regard to this statutory enactment.
- The Local Government Disclosure of Information Act enacted in 1986 ("LGDIA"; Stats. 1986, ch. 353, § 7; Gov. Code, §§ 53296-53299) protects district employees or applicants for employment who file complaints with the districts with regard to "evidence regarding gross mismanagement or a significant waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety." (Gov. Code, § 53296(c).) The LGDIA covers districts in its definition of "local agency." (Gov. Code, § 53296(a).) The LGDIA allows for

¹ Government Code section 9149.22(c) provides that: "Improper governmental activity" means any activity by a governmental agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency."

civil damages, punitive damages, and attorneys' fees, and also imposes criminal penalties against employees who violate its provisions. (Gov. Code, § 53298.5(a) and (b).) There have been no gaps in the requirements contained in the LGDIA. Nancy Patton of the Commission has confirmed that no test claims were filed with regard to this statutory enactment.

- Labor Code sections 1101, et seq. contain whistleblower statutes ("Labor Code"; Lab. Code, § 1102.5, enacted in 1984 (Stats. 1984, ch. 1083, § 1)) applicable to employees of state and local governmental entities and private-sector employees, and is specifically applicable to employees of the districts (see Lab. Code, § 1106, enacted in 1992 (Stats. 1992, ch. 1230, § 1 (AB 3486))). The Labor Code whistleblower statutes are statutes of general application, laws which, to implement a state policy, do not impose "unique requirements on local governments and . . . apply generally to all residents and entities in the state" and thus do not impose a new program or higher level of service upon the districts. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57.) These statutes protect employees that disclose information to a government or law enforcement agency "where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or violation or noncompliance with a state or federal regulation," allow for criminal penalties against employers and individual employees (Lab. Code, § 1103), make employers responsible for the actions of their employees (Lab. Code, § 1104), and allow civil suits for damages against employers (Lab. Code, § 1105). The appellate court has ruled that these statutes also protect government employees that disclose such information within the agency where they are employed, rather than to an outside government or law enforcement agency. (*Gardenhire v. Housing Authority of the City of Los Angeles* (2000) 85 Cal.App.4th 236, 243.) There have been no gaps in the whistleblower requirements contained in the Labor Code.

According to a Senate Judiciary Committee report regarding its August 8, 2000, hearing on AB 2472, the bill implementing the Act, and the Legislative Counsel's Digest in the chaptered legislation, there was legislative intent that the provisions of the California Whistleblower Protection Act, formerly known as the Reporting of Improper Governmental Activities Act (Gov. Code, §§ 8547-8547.12; enacted by Stats. 1993, ch. 12, § 8 (SB 37) [historically derived from former Gov. Code, § 10540, et seq., enacted by Stats. 1981, ch. 1168, and Stats. 1979, ch. 584]) apply to school districts and community college district employees. The California Whistleblower Protection Act applies to state employees, gubernatorial appointees and officeholders, employees of the University of California, and employees of the California State University.

The Test Claim

The District's test claim, in II (A)-(K) (at pp. 21-23) and in the Declaration of Tom Donner (at pp. 2-4), claims state mandated costs as follows:

A) "Pursuant to [the Act] to establish policies and procedures, and to periodically update those policies and procedures, to implement the act." There is no express requirement in the Act for districts to establish policies and procedures or to update the same. Prior to the passage of the Act, districts may have had policies in place pursuant to the LGDIA, which makes reference to the filing of complaints pursuant to "locally adopted administrative procedures" but does not require them. (Gov. Code, § 53297(c).) Indeed, the LGDIA offers an alternate process for filing complaints in situations where there are no local administrative procedures in place. (Gov. Code, § 53297(c).) Thus it does not appear that the Act mandates a new program or higher level of service upon the districts with regard to establishing and updating policies and procedures.

B) "Pursuant to [Ed. Code, § 87164(a)], to receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper acts or for having disclosed improper governmental activities or for refusing to obey an illegal order." Prior to the passage of the Act, districts were required to receive, file and maintain written complaints filed by district employees or applicants for employment under the LGDIA. (Gov. Code, § 53297.) In addition, the Labor Code permits employees to disclose violations of Labor Code section 1102.5 to the districts. (*Gardenhire, supra*, 85 Cal.App.4th 236, 243.) As the requirements of the LGDIA and the Labor Code are similar to the requirements of the Act, it appears that, with regard to the requirement to "receive, file and maintain written complaints," the impact upon the districts would be minimal. Thus it does not appear that the Act mandates a new program or higher level of service upon the districts in this regard.

C) "Pursuant to [Ed. Code, § 87164(b)] to investigate, or to cooperate with law enforcement investigations of, written complaints. . . ." The LGDIA, which was in effect prior to the passage of the Act, imposes criminal penalties similar to those contained in the Act. (Gov. Code, § 53298.5(a).) Additionally, the whistleblower provisions in the Labor Code impose criminal penalties (Lab. Code, § 1103), and mention criminal prosecutions regarding the same (Lab. Code, § 1104). The districts lack enforcement jurisdiction with regard to criminal violations of the Act. In the event that a local law enforcement agency chooses to investigate criminal violation of the Act, Government Code section 17556 states:

"the commission shall not find costs mandated by the state . . . if: . . .

(g) The statute creates a new crime or infraction . . . *but only for the portion of the statute relating directly to the enforcement of the crime or infraction.*" (Gov. Code, § 17556(g), emphasis added.)

It appears that cooperation with law enforcement investigations regarding criminal violations of the Act is not considered to be a cost mandated by the state. Education Code section 87164(b) does not require the districts to conduct civil investigations. The only entity expressly required to conduct civil investigations pursuant to the Act is the State Personnel Board (SPB). (Ed. Code, § 87164(c)(1).) Thus it does not appear that the Act mandates a new program or higher level of service upon the districts in this regard.

D) "Pursuant to [Ed. Code, § 87164(b)], to discipline, as may be required by law or the district's collective bargaining agreement, any employee, officer or administrator, who is found to have engaged in actual or attempted acts" in violation of the Act. The Act expressly requires employee discipline. However, districts were under an express duty to discipline employees under the LGDIA prior to the passage of the Act. (Gov. Code, § 53298.5(a).) The disclosure of information pursuant to Labor Code sections 1101 et seq. could potentially result in the imposition of discipline, although there is no express requirement for discipline within that statutory scheme. As the requirements of the LGDIA and the Labor Code are similar to the requirements of the Act, we believe that, with regard to the requirements for employee discipline, the impact upon the districts would be minimal. Thus it does not appear that the Act mandates a new program or higher level of service upon the districts.

E) "Pursuant to [Ed. Code, § 87164(h)], to respond, appear and defend in any civil action, directly or derivatively, when named as a party or otherwise required by the collective bargaining agreement, brought by a person alleging an employee or officer of the district" has violated the Act. Prior to the passage of the Act, districts were subject to defend in civil actions brought against their employees under virtually all of the provisions of the Act through the LGDIA (Gov. Code, § 53298.5(b)), the WPA (Gov. Code, § 9149.23), and the Labor Code (Lab. Code, §§ 1104, 1105). Having to defend in civil actions brought pursuant to the Act does not appear to mandate a new program or higher level of service upon the districts. There is also a question as to whether this claim is ripe for review, as the districts have not indicated that they have been required to defend in civil actions brought pursuant to the Act.

F) "Pursuant to [Ed. Code, § 87164(h)], to pay damages, directly or derivatively, including attorney's fees, when ordered by the court based upon the liability of the district, or as otherwise defined by the collective bargaining agreement." Prior to the passage of the Act, districts were subject to general damages, punitive damages, and attorneys' fees in civil actions under the LGDIA (Gov. Code, § 53298.5(b)), and for civil damages under the WPA (Gov. Code, § 9149.23) and the Labor Code (Lab. Code, § 1105). It does not appear that having to pay court-ordered damages and attorneys' fees under the Act, based upon the liability of the districts in civil actions, mandates a new program or higher level of service upon the districts. There is also a question as to whether this claim is ripe for review, as the districts have not indicated that they have been required to pay damages, directly or derivatively, including attorneys' fees, in civil actions brought pursuant to the Act. With regard to attorneys' fees brought pursuant to the private attorney general statute, the appellate court ruled that, "It was not until the County was ordered to pay and paid those fees that the County could apply for reimbursement under Government Code section 17500 et seq." (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 346.)

G) "Pursuant to [Ed. Code, § 87164(c)], for [districts] to appear and participate in hearings and investigations initiated by the State Personnel Board when complaints alleging [violations of the Act] have been filed with the State Personnel Board." Prior to 2001 amendments to the Act (Stats. 2001, ch. 416, § 1 (AB 647)), there were no requirements for State Personnel Board ("SPB") hearings and investigations regarding whistleblower complaints, and thus no requirement that districts appear and participate in the same. It appears that the Act mandates a

new program or higher level of service upon the districts with regard to appearing and participating in hearings and investigations initiated by the SPB.

H) "Pursuant to [Ed. Code, § 87164(d), for [districts] to request a hearing before the State Personnel Board when the adverse findings of the hearing officer are incorrect." Prior to 2001 amendments to the Act (Stats. 2001, ch. 416, § 1 (AB 647)), there were no requirements for SPB hearings and the issuance of findings adverse to the districts regarding whistleblower complaints. It appears that the Act mandates a new program or higher level of service upon the districts with regard to their responses to adverse findings issued by the SPB.

I) "Pursuant to [Ed. Code, § 87164(e)], for [districts] . . . to comply with any ordered relief [by the SPB] including, but not limited to, reinstatement, backpay, restoration of lost service credit, and the expungement of any adverse records of the employee or employee applicant who was the subject of the acts of misconduct." Prior to 2001 amendments to the Act (Stats. 2001, ch. 416, § 1 (AB 647)), there were no requirements for SPB hearings and orders thereupon regarding whistleblower complaints, and thus no requirement for districts to comply with the same. It appears that the Act mandates a new program or higher level of service upon the districts with regard to compliance with relief ordered by the SPB.

J) "Pursuant to [Ed. Code, § 87164(f), for [districts], when the State Personnel Board determines that a supervisor, administrator or employer has violated Section 87163, to cause an entry to that effect to be made in the supervisor's, administrator's or employer's official personnel records." Prior to 2001 amendments to the Act (Stats. 2001, ch. 416, § 1 (AB 647)), there was no requirement for SPB hearings and orders thereon regarding whistleblower complaints, and thus no requirement that districts make entries in personnel files regarding the same. It appears that the Act mandates a new program or higher level of service upon the districts with regard to complying with findings of violations of the law by the SPB.

K) "Pursuant to [Ed. Code, § 87164(c)(2)], to reimburse the State Personnel Board for all of the costs associated with its hearings conducted pursuant to subdivision (c)(1)." Prior to 2001 amendments to the Act (Stats. 2001, ch. 416, § 1 (AB 647)), there was no requirement for SPB hearings regarding whistleblower complaints, and thus no requirement that districts bear costs regarding the same. There was legislative intent that the SPB's total hearing costs would fall upon the districts with the passage of the 2001 amendments,² although the law in this regard was far from clear. The law was clarified by amendments made in 2002 (Stats. 2002, ch. 81, § 1 (AB 2034)) to make it clear that, notwithstanding the language of Government Code section 18671.2,

² This confusion is due to the fact that, as amended by AB 647, Government Code section 87164(c) stated that the SPB hearings were to be "conducted in accordance with Section 18671.2 of the Government Code." Section 18671.2 provides that the SPB can bill the total cost of hearings held with regard to state employees upon the state agency employer. District employees are not state employees, and are employees of the local districts. (Ed. Code, § 70902(b)(4).) It appears that the Legislature, however, intended that the tie-in with 18671.2 would allow the college districts to be billed for the costs of such hearings. The Senate Rules Committee, Office of Senate Floor Analyses, 3rd reading floor analysis of the August 27, 2001, regarding amendments to the bill (which added the reference to section 18671.2) stated an intent that the college districts be billed: "Senate Floor Amendments of 8/27/01 clarify that (1) the existing provisions that allow the State Personnel Board (SPB) to bill state agencies for hearings conducted on whistleblower cases will also apply to community colleges for whistleblower hearings that may be conducted pursuant to this bill. . . ." (*Id.*, at pp. 1-2.)

Paula Higashi

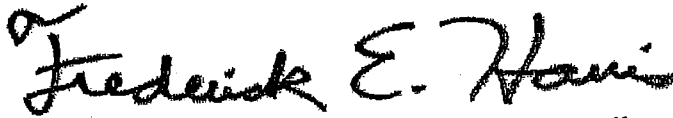
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March 11, 2004

no costs associated with hearings pursuant to the Act should be charged to the Board of Governors of the California Community Colleges, and that these costs must fall upon the districts. (Gov. Code, § 87164(c)(2).) This clarification codified the legislative intent of the Senate floor amendments of August 27, 2001, made before the passage of the prior version of the law. Thus it appears that the Act mandates a new program or higher level of service upon the districts through the enactment of AB 647 in 2001, and the subsequent clarification contained in AB 2034 in 2002.

There have been no monies allocated to community colleges nor the Chancellor's Office for reporting improper governmental activities.

Sincerely,

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

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

SixTen and Associates

Mandate Reimbursement Services

EXHIBIT C

KEITH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

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April 2, 2004

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

RECEIVED

APR 05 2004

COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-24
San Juan Unified School District and
Santa Monica Community College District
Reporting Improper Governmental Activities

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11, 2004¹, to which I now respond on behalf of the test claimants.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, 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 or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response (such as, "Nancy Patton of the Commission has confirmed that...") since CCC has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

¹ Although dated March 11, 2004, the document was e-mailed to my office on March 16, 2004, along with comments for 13 other test claims.

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be included in the Staff's analysis.

B. The Reporting by Community College Employees of Improper Governmental Activities Act is not a Law of General Application

At page 3 of its comments, CCC refers to Labor Code sections 1101, et seq., and concludes "The Labor Code whistleblower statutes are statutes of general application, laws which, to implement a state policy, do not impose 'unique requirements on local governments and ... apply generally to all residents and entities in the state' and thus do not impose a new program or higher level of service upon the districts." CCC cites County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56-57 as its authority.

CCC errs because the test must be applied to the test claim legislation, i.e., the "Reporting by Community College Employees of Improper Government Activities Act" (hereinafter "CC-RIGA") (Education Code Sections 87160, et seq.) and not to the Labor Code whistleblower statutes. An analysis of the CC-RIGA will show why it is not a law which applies generally to all residents and entities in the state.

- (1) Under CC-RIGA, an "employee" is limited to community college employees (Education Code Section 87162(a)), whereas,

Under the Labor Code whistleblower statutes, "employee" includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California." (Labor Code Section 1106)

- (2) Under CC-RIGA, the protected reports include reports of "improper governmental

activity," defined as an activity that meets either of the following descriptions: (1) the activity violates a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) the activity is economically wasteful or involves gross misconduct, incompetency, or inefficiency (Education Code Section 87162(c)), whereas,

Under the Labor Code whistleblower statutes, the protected reports only include reports of a violation of a state or federal statute, or violation or noncompliance with a state or federal rule or regulation. (Labor Code Section 1102.1(a))

- (3) Under CC-RIGA, a "protected disclosure" means a good faith communication that discloses, or demonstrates an intention to disclose, information that may evidence either of the following: (1) an improper governmental activity (see above), or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition (Education Code Section 87162(e)), whereas,

Under the Labor Code whistleblower statutes, the protected reports only include reports of a violation of state or federal statute, or violation or noncompliance with a state or federal rule or regulation. (Labor Code Section 1102.1(a))

- (4) Under CC-RIGA, an employee may not directly or indirectly use or attempt to use official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose (Education Code Section 87163(a)), whereas,

Under the Labor Code whistleblower statutes, an employer may not "retaliate." (Labor Code Section 1102.5(d)). The Labor Code does not define "retaliate," but a public employer would not use "official authority or influence."

- (5) Under CC-RIGA, a person who violates the Act is not only subject to a fine and imprisonment, he shall also be subject to discipline by the public school employer (Education Code Section 87164(b)), whereas,

Under the Labor Code whistleblower statutes, an employer is only subject to fine and imprisonment. (Labor Code Section 1103) He/she/it is not subject to discipline because he/she/it is not a public school employee.

- (6) Under CC-RIGA, the public school employer and employee are subject to proceedings by the State Personnel Board (Education Code Section 87164, subdivisions (c)(d)(e) and (f)),² whereas,

Under the Labor Code whistleblower statutes, employers and employees are not subject to proceedings by the State Personnel Board.

- (7) Under CC-RIGA, punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious (Education Code Section 87164(h)), whereas,

There is no such provision under the Labor Code whistleblower statutes. Arguably, one could point out that under Civil Code Section 3294, subdivision (a), punitive damages might be awarded upon a showing of malice, but the burden of proof under section 3294(a) is by "clear and convincing evidence." Under CC-RIGA, only a "preponderance of evidence" is required to shift the burden of proof to the supervisor, school administrator, or public school employer. (Education Code Section 87164(j))

- (8) Under CC-RIGA, the injured party is also entitled to reasonable attorney's fees (Education Code Section 87164(h)), whereas,

There is no such provision under the Labor Code whistleblower statutes.

The above comparison shows clearly that CC-RIGA is not a law which applies equally to all residents and entities in the state.

The decision in County of Los Angeles v. State of California (*supra*) was further relied upon and explained in City of Sacramento v. State of California (1990) 50 Cal.3d 51. (hereinafter "Sacramento II") There, the Supreme Court explained its County of Los Angeles decision:

"Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies 'indistinguishable

² At pages 5-6, CCC concurs that these sections contain new programs or higher levels of service. CCC did not consider these additional duties as also making them "unique requirements".

in this respect from private employers.” (Opinion, at pages 66-67)

The above comparison of CC-RIGA with the Labor Code whistleblower statutes shows that community colleges, in compliance with CC-RIGA, are, in fact, “distinguishable from private employers” when complying with the Labor Code whistleblower statutes.

C. CC-RIGA is a New Program

CCC's “overview” at pages 2-3 provides an extensive review of the Whistleblower Protection Act enacted in 1999, the Local Government Disclosure of Information Act enacted in 1986, and the Labor Code whistleblower statutes as amended in 1984. The comments imply that these pre-existing programs prevent the test claim legislation, enacted in 2000, from being “new” programs.

To make sure that there is no question as to this argument, a district may seek subvention for costs imposed by legislation after January 1, 1975, but reimbursement is limited to costs incurred after July 1, 1980. Government Code Section 17514; Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1581 All of the statutes referenced by CCC are post 1975. They would be subject to reimbursement if alleged and found to be a mandate.

D. Education Code Section 17556(g) Does Not Bar a Finding That the Test Claim Legislation Creates a New Mandate.

Education Code Section 87162, subdivision (b), states, *inter alia*, that a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. CCC concludes that this provision is subject to subdivision (g) of Government Code Section 17556 and does not, therefore, appear to be a new program or higher level of service upon districts in this regard.

Government Code Section 17556, subdivision (g) provides:

“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:...

(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.”

Nothing in the test claim, or in the activities alleged therein, claims any reimbursement for that portion of the statute relating directly to the enforcement of the crime or infraction. Therefore, the comment of CCC is without merit.

E. A "Minimum Cost" Argument is Improper

At page 5 of its comments, CCC concurs that the test claim legislation requires employee discipline, but supposes that the impact upon districts would be minimal. CCC concludes that it would therefore not appear to mandate a new program or higher level of service upon the districts.

A "minimum cost" argument is not found in Government Code Section 17556. In addition, the supposition that costs would be minimal is not supported by any acceptable evidence in the record. Finally, the determination of the existence of a mandate requires the determination of total costs involved in the test claim legislation, and not just the costs of any particular component.

F. "Ripe for Review" Arguments are Irrelevant for Test Claim Determinations

Twice, the comments of CCC argue that there is a question as to whether the claim is "ripe for review." The first occasion, at page 5, relates to the requirement to appear and defend; the second, also at page 5, relates to responding to damages. The basis for the argument is that the test claimants have not indicated that they have already been required to appear and defend, or respond to damages. This argument is irrelevant for test claim determinations.

There is no statutory or regulatory requirement that a test claimant must actually have experienced every element of a test claim. This is why the declaration of Tom Donner of Santa Monica Community College District declares:

"It is estimated that the Santa Monica Community College District, to the extent improper activities may be reported, will incur approximately \$1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state...to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement." (Declaration of Tom Donner dated May 26, 2003, pages 4-5, emphasis supplied)

A test claimant acts in a representative capacity for every school district or community college district in the state. Any one district may experience a test claim activity one

year, but may not in the next.

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 or belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Reporting Improper Governmental Activities 02-TC-24
CLAIMANT: San Juan Unified School District and
Santa Monica Community College 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 April 2, 2004, addressed as follows:

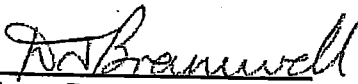
Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

- | | |
|---|--|
| <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:
<u> (Describe)</u></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 4/2/04, at San Diego, California.


Diane Bramwell
Diane Bramwell

Commission on State Mandates

Original List Date: 6/18/2003 Mailing Information: Other
Last Updated: 6/19/2003
List Print Date: 09/09/2003
Claim Number: 02-TC-24
Issue: Reporting Improper Governmental Activities

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Jill Bowers

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Sacramento, CA 95814

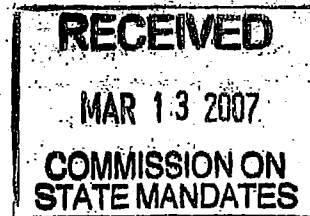
Tel: (916) 323-1948

Fax: (916) 324-5567



March 9, 2007

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



Dear Ms. Higashi:

The Department of Finance has reviewed the test claim submitted June 5, 2003 by the San Juan Unified School District (claimant) asking the Commission to determine whether specified costs incurred under various sections of the Education Code are reimbursable state mandated costs (Claim No. CSM-02-TC-24 "Reporting Improper Governmental Activities").

Before addressing the individual activities specified in the test claim statutes we note that Sections 1102.5-1106 of the Labor Code already protect employees who disclose information of unlawful activity to a government or law enforcement agency, allow for criminal penalties, and hold employers liable. Specifically, Section 1106 of the Labor Code states "For purposes of Sections 1102.5, 1102.6, 1102.7, 1102.8, 1104, and 1105, "employee" includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California." In addition, subdivision (f) of Section 1102.5 also includes penalties against an employer that is a corporation or a limited liability company. The pre-existing Labor Code sections are laws of general application, applying to both the private sector, and local and state government. Further:

- Section 1104 of the Labor Code specifically states that "In all prosecutions under this chapter, the employer is responsible for the acts of his managers, officers, agents, and employees." Thus, since the Labor Code is pre-existing law of general application, any activity related to complying with or enforcing the provisions of the test claim statutes, Education Code Sections 44110-44114 and 87154-87164, would not be new to LEAs and community college districts, and thus the state is not obligated to reimburse them.
- The Local Government Disclosure of Information Act enacted in 1986 ((LGDI); Gov. Code, §§ 53296-53299) protects, from reprisal action, district employees or applicants for employment who file complaints of "gross mismanagement or significant waste of funds, an abuse of authority, or a substantial and specific danger to public health safety" with districts and holds any local officer, manager or supervisor individually liable. Furthermore, the LGDIA states that, "...any local officer, manager, or supervisor who has been found by a court to have violated the provisions of Section 53298 ... shall be individually liable for damages in an action brought against him or her by the injured employee. Section 53298.5(b) places no requirement or liability upon the district for its employee's court

ordered damages and thus Section 53298.5(b) does not impose a reimbursable state mandate.

- The Whistleblower Protection Act enacted in 1999 ((WPA); Gov. Code, §§ 1949.20-1949.23), protects district employees that report improper governmental activity, as defined, to legislative committees, and allows for civil damages against district employees who violate or interfere with an employee's right to make such disclosures. These sections clearly state that while the offending employee may be liable in an action for civil damages, the employer is not obligated to pay its employee's judgments. Any payment by the employer on behalf of the employee would be a voluntary action by the LEA and not a reimbursable state mandate.
- Subdivision (g) of Section 44114 and subdivision (l) of Section 87164 of the Education Code state that if any of the provisions of the Reporting by School Employees of Improper Governmental Activities Act ("Act") are in conflict with provisions of the public school employer's collective bargaining agreement, the terms of the collective bargaining agreement supersede the Act. Since LEAs enter into these collective bargaining agreements voluntarily, any resulting costs incurred by the district for activities which exceed those required by the Education Code would be voluntary and are not reimbursable mandates.

In summary, since the employee protections provided for in the test claim statutes are the same as the laws of general application included in Labor Code Sections 1102.5-1106, the test claim statutes do not establish a new program or impose a higher level of service. Further, these Education Code Sections duplicate prior law establishing the LGDIA and the WPA and do not create new duties for LEAs. Therefore the whole of this test claim is not a reimbursable mandate. However, we will address the individual claim activities below:

Commencing with page 19 of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- 1) Pursuant to Education Code Sections 44110 – 44114 and 87154-87164, "to establish policies and procedures, and to periodically update those policies and procedures, to implement the act."

Finance response:

The specific language of Education Code Sections 44110 – 44114 and 87154-87164 does not require school and community college districts to establish or update any policies and procedures to implement the Act. In addition, while Education Code Sections 44110 – 44114 apply specifically to public school employers, none of the requirements is a new requirement for LEAs. Labor Code Sections 1102.5 – 1106 protect employees who disclose information of unlawful activity to a government or law enforcement agency, allow for criminal penalties, and hold employers liable. The Labor Code statutes are laws of general application, applying to both the private sector and local and state government. Thus, since the test claim does not impose a higher level of service and the activities cited are not new to LEAs as they were required by existing law, this is not a reimbursable mandate. Further, none of the activities cited here would be new since the Education Code Sections are consistent with prior law establishing the LGDIA and WPA.

- 2) Pursuant to Education Code Section 44114, subdivision (a) and Section 87164 (a), "to receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or for refusing to obey an illegal order."

Finance response:

The specific language of Education Code Section 44114, subdivision (a) and Section 87164 (a) does not require a local education agency or community college district to complete any of the above claimed activities. The language states that any employee that has filed a complaint with his or her supervisor, a school administrator, or the public school employer, may also file a copy of the complaint with the local law enforcement agency. Therefore, this Section does not impose a new program or higher level of service upon an LEA or community college district and is not a state-reimbursable activity.

- 3) Pursuant to Education Code Section 44114, subdivision (b) and Section 87164, subdivision (b):

- "to investigate, or to cooperate with law enforcement investigations of, written complaints filed by school employees..."
- "to discipline, as may be required by law or the district's collective bargaining agreement, any employee, officer or administrator, who is found to have engaged in actual or attempted acts..."

Finance response:

The specific language of subdivision (b) of Education Code Section 44114 and Section 87164, subdivision (b) does not make any reference to investigating or cooperating with law enforcement, nor does the specific language of the Section place any requirement for discipline upon LEAs or community college districts. The language states that a person who intentionally engages in prohibited acts is subject to local law enforcement penalties of a fine of \$10,000 and imprisonment for up to one year. In addition to the penalties enforceable by local law enforcement, the Section states that "Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer." This is not a mandated activity, only an authorization for the LEA and community college districts to discipline the employee. That authority is evidenced by the next sentence of this Section which states, "If no adverse action is instituted by the public school employer...the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or the county board of education..." Further, the Section does not make any reference to the scope or magnitude of any discipline the LEA may choose to implement. It is likely that any discipline would be consistent with the LEA's collective bargaining agreement. Since LEAs enter into these agreements voluntarily, any resulting activities are not reimbursable mandates.

- 4) Pursuant to Education Code Section 44114, subdivision (c):

- "to respond, appear, and defend in any civil action..." and
- "to pay damages, directly or derivatively, including attorney's fees, when ordered by the court..."

Finance response:

Both Labor Code Section 1102.6 and Education Code Section 44114 specifically state that in a civil action or administrative proceeding, once it has been demonstrated that a prohibited activity was an action against an employee, it becomes the employer's burden of proof to demonstrate that the action would have occurred regardless of the employee's participation in protected whistleblower activities. Thus, since the plain language of the test claim statutes does not require LEAs to participate in any civil action against their employee and the pre-existing Labor Code applies to both public and private employers, participating in any civil action is not a new activity, is voluntary for LEAs and is therefore not reimbursable.

Labor Code Section 1105 states that the injured employee may recover damages from his or her employer. Since the Education Code mirrors the pre-existing Labor Code Section and the Labor Code applies to both public and private employers, the test claim statute imposes no new activity or requirements on LEAs and is therefore not reimbursable. Education Code Section 44114 allows the injured employee to recover damages from the individual who participated in prohibited activities. Furthermore, Government Code Sections 53296-53299 under the LGDIA and 1949.20-1949.23 under the WPA, which protect district employees or applicants for employment who report improper governmental activities, allow for civil damages against district employees who violate or interfere with an employee's right to make such disclosures. These sections do not place any requirement upon the LEA itself, but only upon its employee who has violated the law. Therefore, they do not constitute a new program or higher level of service for the district. Any decision the LEA makes to pay the resulting damages for its employee is a voluntary action and is therefore not reimbursable.

Community College Specific Requirements

- 5) Pursuant to Education Code 87164, subdivision (c)(1), "The State Personnel Board shall initiate a hearing or investigation of a written complaint or reprisal as prohibited by [the Act] within 10 working days of its submission. This hearing will be conducted in accordance with...the rules of practice and procedure of the State Personnel Board."

Finance response:

The specific language of Education Code Section 87164 does not require community college districts to complete any of the above claimed activities. There are no requirements within the statute for community college districts to appear and participate in these hearings. This is not a mandated activity. The decision to appear at these hearings is voluntary. This Section does not impose a new program or higher level of service on Community College districts and is not a state-reimbursable activity.

- 6) Pursuant to Education Code 87164, subdivision (c)(2), "no costs associated with the hearings of the State Personnel Board...shall be charged to the board of governors. Instead all the costs associated with hearings...shall be charged directly to the community college district."

Finance response:

The specific language of Education Code Section 87164, subdivision (c)(2) requires a reimbursement of costs associated with the hearings of the State Personnel Board. This language does not require community college districts to undertake any new programs or provide a higher level of services. The payment of costs alone is not a state-reimbursable activity.

- 7) Pursuant to Education Code 87164, subdivision (d), if the findings of the State Personnel Board set forth [violations of the Act] [the community college districts] may request a hearing before the State Personnel Board regarding the findings.

Finance response:

The specific language of Education Code Section 87164, subdivision (d) does not require community college districts to complete any of the above claimed activities. The operative language of the Section only provides community college districts with the option of participating in hearings set forth by the State Personnel Board. This is not a mandated activity. The decision to appear at these hearings is voluntary. This Section does not impose a new program or higher level of service on community college districts and is not a state-reimbursable activity.

- 8) Pursuant to Education Code 87164, subdivision (e), if the State Personnel Board determines a violation of the Act, the board may order any appropriate relief.

The specific language of Education Code Section 87164, subdivision (e) does not impose any clear duties on community college districts. There is no indication of exactly what relief community college districts will be required to do in these situations. If these determinations only involve payment of monetary costs, these do not constitute a new program or higher level of service and thus is not a state-reimbursable activity.

- 9) Pursuant to Education Code 87164, subdivision (f), whenever the State Personnel Board determines that there was a violation of the Act, it shall cause an entry to be made in the relevant personnel files.

The specific language of Education Code 87164, subdivision (f) does not impose any clear duty on community college districts. It is unclear what community college districts are required to do when the State Personnel Board "causes" an entry to be made to official personnel records. If this merely is a cost related to the hearings, this Section does not impose a new program or higher level of service on community college districts and therefore is not a state-reimbursable activity.

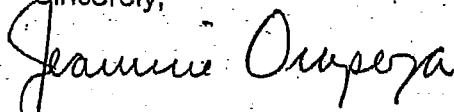
As the result of our review, we have concluded for the above mentioned reasons, that the test claim statutes do not create any reimbursable mandated activities for LEAs or community college districts.

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 June 5, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

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 June 5, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Sara Swan, Principal Program Budget Analyst or Thomas Todd, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



JEANNIE OROPEZA
Program Budget Manager

Attachments

Attachment A

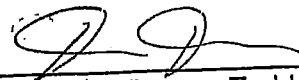
DECLARATION OF THOMAS TODD
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-24

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true

3-9-07

at Sacramento, CA



Thomas Todd

PROOF OF SERVICE

Test Claim Name: Reporting Improper Governmental Activities
Test Claim Number: 02-TC-24

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 915 L Street, 7th Floor, Sacramento, CA 95814.

On March 9, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

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

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates

Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8

Department of Education
School Business Services
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Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

E-8

State Board of Education
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721 Capitol Mall, Room 532
Sacramento, CA 95814

California Teachers Association
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2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

San Juan Unified School District
3738 Walnut Ave.
Carmichael, CA 95609-0477

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 at Sacramento, California.



Mui Phung



CALIFORNIA STATE PERSONNEL BOARD

801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov

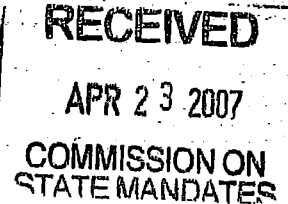
EXHIBIT E



Telephone: (916) 653-1403
Facsimile: (916) 653-4256
TDD: (916) 653-1498

April 20, 2007

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



Re: Notice of Complete Test Claim Filing and Schedule for Comments – *Reporting Improper Governmental Activities*; 02-TC-24; response of the State Personnel Board

Dear Ms. Higashi:

The State Personnel Board (SPB) is in receipt of your correspondence, dated March 22, 2007, wherein the Commission on State Mandates (CSM) requested that the SPB provide the CSM with certain specified information related to whistleblower retaliation complaints filed with the SPB by community college employees, or applicants for community college employment, pursuant to the provisions of Education Code section 87164. In accordance with that request, the following information is provided:

- (1) On a per year basis, beginning in January 1, 2001, the number of cases that the SPB has received under Education Code section 87164, subdivision (c).

Response:

2001 – 0 complaints were filed with the SPB. (Government Code section 87164 did not authorize community college employees, or applicants for community college employment, to file complaints with the SPB during 2001.)

2002 – Two (2) complaints were filed with the SPB.

2003 – Two (2) complaints were filed with the SPB.

2004 – Three (3) complaints were filed with the SPB.

2005 – One (1) complaint was filed with the SPB.

2006 – Three (3) complaints were filed with the SPB.

2007 – To date, one (1) complaint has been filed with the SPB.

April 20, 2007

Page 2 of 2

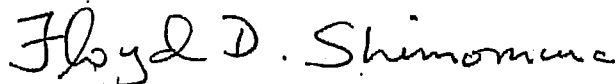
- (2) Beginning in January 1, 2002, the cost charged to community college districts pursuant to Education Code section 87164, subdivision (c)(2).

Response:

To date, the SPB has charged the community college districts \$4,860.91 for all whistleblower retaliation complaints filed by community college employees, or applicants for community college employment, that it has processed. The three cases from 2006 are, however, still in the hearing process.

Please do not hesitate to contact the SPB if the CSM requires additional information on this matter in the future.

Sincerely,



FLOYD D. SHIMOMURA
Executive Officer

Hearing Date: September 27, 2007
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ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 44110 - 44114, and 87160 - 87164

Statutes 2000, Chapter 531

Statutes 2001, Chapter 159

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

Reporting Improper Governmental Activities (02-TC-24)
 San Juan Unified School District and Santa Monica Community College District, Claimants

EXECUTIVE SUMMARY

Background

This test claim addresses the procedures used to protect kindergarten through 12th grade (K-12) and community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

In these circumstances, the test claim statutes, allow K-12 and community college employees or applicants for employment to file a complaint with local law enforcement agencies. Supervisors, administrators, or employers that have been found to have engaged in retaliatory or coercive activities are subject to civil and criminal liabilities, and punitive damages. Community college employees and applicants for employment are provided the additional protection of being allowed to file their complaint with the State Personnel Board (SPB), which then must conduct a hearing or investigation to investigate and remedy these complaints.

Claimants contend that the test claim statutes impose new requirements on K-12 school districts and community college districts resulting in increased costs. These new requirements include: (1) establishing policies and procedures; (2) receiving, filing, and maintaining written complaints; (3) investigating or cooperating with law enforcement investigations; (4) disciplining employees, officers, or administrators found to have engaged in retaliatory activities; (5) responding, appearing and defending in any civil action; and (6) paying any court ordered damages. In addition, claimants assert that the test claim statutes impose activities on community college districts associated with an SPB hearing or investigation initiated by a community college employee or applicant for employment. As a result, claimants assert the test claim statutes constitute a reimbursable state-mandated program within the meaning of article XIII B, section of the California Constitution.

The California Community Colleges, Chancellor's Office (Chancellor's Office) asserts that claimants are possibly entitled to reimbursement for activities associated with the SPB hearings and orders made in the course of those hearings, because prior to the enactment of the test claim statutes there was no requirement for an SPB hearing in community college whistleblower cases.

The Department of Finance (Finance) argues that the test claim statutes do not constitute a reimbursable state-mandated program for the following reasons: (1) the language of the test claim statutes do not require the activities claimed; (2) the activities do not constitute a new program or higher level of service, as they were required by existing law; and (3) collective bargaining agreements are entered into voluntarily, and therefore, "any resulting costs incurred by the district for activities which exceed those required by the Education Code would be voluntary and are not reimbursable."

Staff Findings

Staff finds that the plain language of Education Code sections 44110 – 44114 does not mandate any activities upon K-12 school districts. Thus, Education Code sections 44110 – 44114 do not impose any state mandated activities upon K-12 school districts subject to article XIII B, section 6 of the California Constitution.

Staff also finds that under *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, Education Code section 87160 – 87164, as it applies to *employees* of a community college district, does not impose state-mandated activities upon community college districts. It is the community college district's underlying decision during collective bargaining which triggers any requirements Education Code section 87164 may impose with respect to the "whistleblower" cases of a district employee.

However, in regard to *applicants* for employment of community college districts, who are not currently employed by the district, Education Code section 87164, does impose reimbursable state-mandated programs upon community college districts relating to the State Personnel Board hearings required by Education Code section 87164.

Conclusion

Staff concludes that Education Code section 87164, subdivisions (c)(1), (c)(2), and (f), as amended by Statutes 2001, chapter 416, and Statutes 2002, Chapter 81, constitutes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities when a new applicant for employment files a whistleblower complaint with the State Personnel Board:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board. This includes serving the applicant for employment and the SPB with a written response to the applicant's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code § 87164, subd. (c)(1))
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by a new applicant for employment (Ed. Code § 87164, subd. (c)(2))
- Beginning January 1, 2002, make an entry into the official personnel record of a supervisor, community college administrator, or public school employer, who is found by the State Personnel Board to have violated Education Code section 87163 (Ed. Code § 87164, subd. (f)).

Staff further concludes that Education Code sections 44110 – 44114, as added and amended by Statutes 2000, chapter 531, and Statutes 2001, chapter 159 do not impose any state-mandated activities upon K-12 school districts and, thus, are not subject to article XIII B, section 6 of the California Constitution. In addition, Education Code sections 87160 – 87164, as added and amended by Statutes 2000, chapter 531, Statutes 2001, chapter 159, Statutes 2001, chapter 416, and Statutes 2002, Chapter 81, as applicable to community college employees, do not impose any state-mandated activities upon community college districts and, thus, are not subject to article XIII B, section 6 of the California Constitution.

Any other test claim statute and allegation not specifically approved above, do not impose a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

STAFF ANALYSIS

Claimants

San Juan Unified School District and Santa Monica Community College District

Chronology

06/05/03 Claimants, San Juan Unified School District and Santa Monica Community College District, file test claim with the Commission on State Mandates (Commission)

06/19/03 Commission staff issues completeness letter and requests comments

07/08/03 The California Community Colleges, Chancellor's Office (Chancellor's Office) and the Department of Finance (Finance) request extensions of time for comments

07/08/03 Commission staff grants extension of time for comments to August 18, 2003

09/08/03 The Attorney General, on behalf of Finance, requests an extension of time for comments

09/09/03 Commission staff grants extension of time for comments to October 8, 2003

10/23/03 The Attorney General, on behalf of Finance, requests an extension of time for comments

10/24/03 Commission staff grants extension of time for comments to December 18, 2003

10/31/03 Finance requests an extension of time for comments

11/07/03 Commission staff grants extension of time for comments to February 7, 2004

02/18/04 Finance requests an extension of time for comments

02/18/04 Commission staff grants extension of time for comments to May 18, 2004

03/16/04 The Chancellor's Office files comments to the test claim

04/05/04 Claimants file response to comments by the Chancellor's Office

06/14/04 Finance requests an extension of time for comments

06/14/04 Commission staff grants extension of time for comments to August 9, 2004

09/09/04 Finance requests an extension of time for comments

09/14/04 Commission staff grants extension of time for comments to December 9, 2004

09/24/04 The Attorney General requests to be removed from the test claim mailing list

12/24/04	Finance requests an extension of time for comments
12/28/04	Commission staff grants extension of time for comments to March 9, 2005
03/15/05	Finance requests an extension of time for comments
03/17/05	Commission staff grants extension of time for comments to June 9, 2005
10/03/05	Commission staff grants extension of time for comments to December 1, 2005
02/03/06	Finance requests an extension of time for comments
02/07/06	Commission staff grants extension of time for comments to April 3, 2006
03/13/07	Finance files comments to the test claim
03/22/07	Commission staff issues request for comments from the State Personnel Board by April 23, 2007 and extension of time for comments to May 23, 2007
04/23/07	The State Personnel Board files comments to the test claim
07/24/07	Commission staff issues draft staff analysis

Background

This test claim addresses the procedures used to protect kindergarten through 12th grade (K-12) and community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

Test Claim Statutes

The legislative intent behind the test claim statutes, Education Code sections 44110 – 44114 and 87160 – 87164, as added and amended in 2000, 2001, and 2002, is for K-12 and community college employees¹ and applicants for employment to disclose improper governmental activities. The test claim statutes define “improper governmental activities” as activities by an employee in the performance of the employee’s official duties, whether within the scope of the employee’s duties or not, that violates state or federal law or regulation, or that is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.²

The Legislature enacted Statutes 2000, chapter 531, adding Education Code sections 44110 – 44114 and 87160 – 87164, which adopted and adapted existing “whistleblower protection” laws to apply to school districts. K-12 and community college employees are prohibited from using

¹ Education Code section 44112, subdivision (a), defines employee as “any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.” Education Code section 87162, subdivision (a) construes this definition to include community college employees.

² Education Code sections 44112, subdivisions (c)(1) and (2), and 87162, subdivisions (c)(1) and (2).

official authority to influence, intimidate, threaten, or coerce any person³ for the purpose of interfering with the right of that person to disclose improper governmental activities.⁴ A K-12 or community college employee or applicant for employment that files a written complaint with his/her supervisor, school administrator, or employer alleging acts of reprisal, retaliation, threats, or coercion for refusing to obey an illegal order or for disclosing improper governmental activities, may also file a complaint with local law enforcement within 12 months of the most recent act of reprisal that is the subject of the complaint.⁵ A person who intentionally engages in acts of reprisal, retaliation, threats, or coercion is subject to the criminal penalties of a fine up to \$10,000 and imprisonment for a period of no more than one year.⁶ An employee, officer, or administrator who engages in acts of reprisal, retaliation, threats, or coercion is also subject to discipline by his/her employer.⁷

In addition to criminal and administrative sanctions, a person who engages in acts of reprisal, threats, or coercion, is liable for civil damages in an action brought against him/her.⁸ A court may also order punitive damages and reasonable attorney's fees.⁹ Statutes 2000, chapter 531, also provides a shift in the burden of proof in any civil action or administrative proceeding brought by an employee or applicant for employment against an employer for violation of the statute. Specifically, once an employee or applicant for employment has demonstrated by a preponderance of the evidence that the employee's disclosure of an employer's improper governmental activity was a contributing factor in the alleged retaliatory actions against the employee or applicant for employment, the employer has the burden of proof to demonstrate by clear and convincing evidence that the alleged retaliatory actions would have occurred for legitimate reasons independent of the employee or applicant for employment's disclosure.¹⁰ In addition, Education Code sections 44114 and 87164 provide that if the provisions of the code sections are in conflict with the terms of a memorandum of understanding (MOU) between the school district and its employees, the terms of the MOU are controlling.¹¹

³ Education Code sections 44113, subdivision (d), and 87163, subdivision (d), define "person" as "any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing."

⁴ Education Code sections 44113 and 87163.

⁵ Education Code sections 44114, subdivision (a) and 87164, subdivision (a), as added by Statutes 2000, chapter 531.

⁶ Education Code sections 44114, subdivisions (b), and 87164, subdivisions (b), as added by Statutes 2000, chapter 531.

⁷ *Ibid.*

⁸ Education Code sections 44114, subdivisions (c), and 87164, subdivisions (c), as added by Statutes 2000, chapter 531.

⁹ *Ibid.*

¹⁰ Education Code sections 44114, subdivision (e), and 87164, subdivision (e), as added by Statutes 2000, chapter 531.

¹¹ Education Code sections 44114, subdivision (g), and 87164, subdivision (g), as added by Statutes 2000, chapter 531.

Statutes 2001, chapter 159, sections 68 and 84, made technical changes to Education Code sections 44114(b) and 87164(b), respectively. After the enactment of Statutes 2001, chapter 159, section 68, no further changes were made to Education Code sections 44110 – 44110.

Statutes 2001, chapter 416, section 1, amended Education Code section 87164 to add the requirement that the State Personnel Board (SPB) initiate an informal hearing or investigation within 10 working days of the submission of a community college employee or applicant for employment's written complaint of reprisal or retaliation. If the SPB's investigation or formal hearing's findings set forth acts of alleged misconduct by the accused supervisor, administrator, or employer, the supervisor, administrator, or employer may request a hearing regarding the SPB's findings.¹² If after the hearing the SPB determines that the alleged misconduct did occur, or no hearing is requested, the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, and expungement of any adverse records of the employee who was subjected to the alleged acts of misconduct.¹³ In addition, if the SPB finds that a community college supervisor, administrator, or employer has engaged in misconduct, it shall cause an entry to be made in his/her official personnel record to that effect.¹⁴ Education Code section 87164, subdivision (c) also provides that the hearing shall be conducted in accordance with Government Code section 18671.2, which provides that the SPB shall be reimbursed for all costs associated with the hearing, and that the SPB may charge "the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies."

Education Code section 87164 was amended again by Statutes 2002, chapter 81, section 1, to specify which entity will be responsible for the financial costs of the SPB hearings. Education Code section 87164, subdivision (c)(2) provides that all costs of the SPB hearings shall be charged directly to the community college district that employs the complaining employee or with whom the complaining applicant for employment has filed his or her employment application.¹⁵

Prior Law

Prior law provides public and private employees and applicants for employment, who disclose violations of statutes and regulations, or gross misconduct by an employer or potential employer, with many of the same protections provided by the test claim statutes.¹⁶ These protections, however, are provided in a piecemeal manner, and therefore, certain protections were available to some types of employees and not to others. For example, Labor Code section 1101 et seq. provides most of the test claim statutes' protections from retaliation for disclosing violations of state or federal statute, rule or regulation, to all employees (public and private) but not applicants for employment. Government Code section 53296 et seq. provides "whistleblower" protection to

¹² Education Code section 87164, subdivision (d), as added by Statutes 2001, chapter 416.

¹³ Education Code section 87164, subdivision (e), as added by Statutes 2001, chapter 416.

¹⁴ Education Code section 87164, subdivision (f), as added by Statutes 2001, chapter 416.

¹⁵ Education Code section 87164, subdivision (c)(2), as added by Statutes 2002, chapter 81, section 1.

¹⁶ Labor Code sections 1101 et seq., Government Code section 53296 et seq., Government Code section 8547 et seq., and Government Code section 9149.20 et seq.

both employees and applicants; however, the protection does not include a shift in the burden of proof during civil actions or administrative proceedings.

Claimant's Position

The claimants, San Juan Unified School District and Santa Monica Community College District, contend that the test claim statutes constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and seek reimbursement to implement Education Code sections 44110 – 44114 and 87160 – 87164.

The claimants state that prior to January 1, 1975, there were no state statutes or executive orders in effect which required school districts to establish procedures to protect employees or applicants for employment or to discipline employees, officers, or administrators who intentionally engaged in acts of reprisal, retaliation, threats, or coercion against an employee or applicant for employment who disclosed improper governmental activities. However, after the enactment of the test claim statutes (beginning with Statutes 2000, chapter 531) the claimants were required to establish procedures to protect employees or applicants for employment and to discipline employees, officers, or administrators who intentionally engaged in acts of misconduct.

The claimants assert that meeting the new requirements of Education Code sections 44110 – 44114 and 87160 – 87164 as added and amended by the test claim statutes, required increased costs to implement the following activities:

K-12 School Districts and Community College Districts

- establish policies and procedures to implement Education Code sections 44110 – 44114 and 87160 – 87164, and to periodically update those policies and procedures;
- receive, file and maintain written complaints filed by school employees or applicants for employment alleging actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts for having disclosed improper governmental activities or refusing to obey an illegal order (pursuant to Ed. Code, §§ 44114, subd. (a) and 87164, subd. (a));
- investigate or to cooperate with law enforcement investigations of written complaints (pursuant to Ed. Code §§ 44114, subd. (b) and 87164, subd. (b));
- discipline, as may be required by law or the district's MOU, any employee, officer or administrator who is found to have engaged in actual or attempted acts of reprisal, retaliation, threats, coercion or similar improper acts against an employee or applicant for employment who refused to obey an illegal order or who has disclosed improper governmental activities (pursuant to Ed. Code §§ 44114, subd. (b) and 87164, subd. (b));
- respond, appear, and defend in any civil action, directly or derivatively, when named as a party or otherwise required by the MOU, brought by an employee or applicant for employment alleging improper acts (pursuant to Ed. Code §§ 44114, subd. (c) and 87164, subd. (h)); and
- pay damages, directly or derivatively, including attorney's fees, when ordered by the court based upon the liability of the district, or as otherwise defined by the MOU (pursuant to Ed. Code §§ 44114, subd. (c) and 87164, subd. (h)).

Community College Districts

- appear and participate in hearings and investigations initiated by the SPB (pursuant to Ed. Code § 87164, sub. (c));
- request a hearing before the SPB when the adverse findings of the SPB hearing officer are incorrect (pursuant to Ed. Code § 87164, subd. (d));
- “comply with any ordered relief [by the SPB] including, but not limited to, reinstatement, backpay, restoration of lost service credit, and the expungement of any adverse records of the employee or [applicant for employment] who was the subject of the acts of misconduct”¹⁷ (pursuant to Ed. Code § 87164, subd. (e));
- cause an entry into the supervisor’s, administrator’s, or employer’s official personnel record when the SPB has determined he or she has engaged in acts of misconduct (pursuant to Ed. Code § 87164, subd. (f)); and
- reimburse the SPB for all of the costs associated with its hearings (pursuant to Ed. Code § 87164, subd. (c)(2)).

California Community Colleges, Chancellor’s Office Position (Chancellor’s Office)

The Chancellor’s Office asserts that community college districts are not entitled to reimbursement for the majority of activities that the claimants have associated with Education Code section 87164, as added and amended by the test claim statutes.

The Chancellor’s Office argues that establishing policies and procedures to implement the act and periodically updating those policies and procedures; investigating or cooperating with law enforcement investigations of written complaints; and responding, appearing, and defending in civil actions are not mandated by the language of the test claim statutes.

In addition, the Chancellor’s Office contends that receiving, filing and maintaining written complaints filed by school employees or applicants for employment; disciplining any employee, officer, or administrator who is found to have engaged in or attempted acts of misconduct; responding, appearing, and defending in civil actions; and paying damages are not new activities as compared to Government Code section 53296 et seq., Labor Code section 1102.5, and other “whistleblower” protection laws.

The Chancellor’s Office further asserts that “with regard to the requirements for employee discipline, the impact upon the districts would be minimal.”¹⁸ Additionally, in regard to litigation costs, including payment of damages, the Chancellor’s Office contends that there is a “question as to whether this claim is ripe for review, as the districts have not indicated that they have been required to defend in civil actions brought pursuant to the Act.”¹⁹

¹⁷ Exhibit A, Test claim, p. 23.

¹⁸ Exhibit B, California Community Colleges – Chancellor’s Office comments, dated March 11, 2004, p. 5.

¹⁹ *Ibid.*

The Chancellor's Office does, however, indicate that the claimants may be entitled to reimbursement for the following activities the claimants have associated with Education Code section 87164, as added and amended by the test claim statutes:

- appearing and participating in hearings and investigations initiated by the SPB when complaints alleging violations of Education Code sections 87160 – 87164 have been filed;
- requesting a hearing before the SPB when the adverse findings of the hearing officer are incorrect;
- complying with any ordered relief by the SPB;
- causing an entry into the violating employees' record when the SPB has determined that the employee has violated Education Code sections 87160 – 87164; and
- reimbursing the SPB for all costs associated with its hearings.

The Chancellor's Office states that Education Code sections 87160 – 87164 appear to mandate a new program or higher level of service upon the claimants in regard to these activities because prior to the enactment of Statutes 2001, Chapter 416, there were no requirements for SPB hearings and orders regarding whistleblower complaints, and therefore no requirement to do the above activities.

Department of Finance's Position

The Department of Finance (Finance) filed comments dated March 9, 2007, disagreeing with the claimants' test claim allegations. Finance asserts that "the whole of this test claim is not a reimbursable mandate."²⁰ Finance contends that the language of the test claim statutes do not require the activities the claimants have alleged under Education Code sections 44110 – 44114 and 87160 – 87164. Also, Finance argues that the protections provided by Education Code sections 44110 – 44114 and 87160 – 87164 are the same as those provided by pre-existing whistleblower protection laws applicable to the claimants, and therefore, the requirements do not constitute a new program or higher level of service.

Finance acknowledges that Education Code section 87164, subdivision (c)(2) requires all costs associated with an SPB hearing to be charged to the community college district that employs the complaining employee or considered employing the applicant for employment. However, Finance contends that the language of Education Code section 87164, subdivision (c)(2) does not require community college districts to undertake any new programs or provide a higher level of service, and that costs alone do not constitute a reimbursable state mandate.

In addition, Finance notes that collective bargaining agreements (MOUs) are entered into voluntarily and that Education Code sections 44114, subdivision (g), and 87164, subdivision (l), provide that if any of the provisions of Education Code sections 44110 – 44114 and 87160 – 87164 are in conflict with provisions of the school districts' MOU, the terms of the MOU supersede the Education Code sections. Therefore, "any resulting costs incurred by the districts for activities which exceed those required by the Education Code would be voluntary and are not reimbursable."²¹

²⁰ Exhibit D, Department of Finance comments, dated March 9, 2007, p. 2.

²¹ *Ibid.*

As a result, Finance argues that the test claim statutes do not constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²² recognizes the state constitutional restrictions on the powers of local government to tax and spend.²³ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²⁴ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁵ In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²⁶

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁷ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

²² California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

²³ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁶ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar, supra*, 44 Cal.3d 830, 835).

legislation.²⁸ A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”²⁹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.³⁰

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 6.³¹ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³²

Issue 1: Do Education Code sections 44110-44114, and 87160-87164 constitute a state-mandated program subject to article XIII B, section 6 of the California Constitution?

In order for a test claim statute to impose a reimbursable state-mandated program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimants to perform a task, then article XIII B, section 6, does not apply.

In addition, the California Supreme Court held in *Kern High School Dist.* that when analyzing state mandate claims, the Commission must look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.³³ The court also held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion; where “‘certain and severe ... penalties’, such as ‘double ... taxation’ and other ‘draconian’ consequences,”³⁴ would result if the local entity did not comply with the program.

Do Education Code Sections 44110 – 44114 Impose State Mandated Activities on K-12 School Districts?

Education Code sections 44110 – 44113 set forth the short title, legislative intent, definitions, and prohibited activities of the code sections. Education Code section 44113 prohibits an

²⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

³⁰ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

³¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³² *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

³⁴ *Id.* at p. 751, quoting *City of Sacramento*, *supra*, 50 Cal.3d at p. 74.

employee from using or attempting to use "official authority or influence"³⁵ for the purpose of intimidating, threatening, coercing, commanding any person, or attempting to do so, for the purpose of interfering with the right of that person to disclose to an official agent improper governmental activities.

Education Code section 44114, which claimants cite as the code section requiring most of the claimed activities for K-12 school districts, sets forth the procedures used to protect employees and applicants for employment of a K-12 school district, who allege actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Education Code section 44113 for having disclosed improper governmental activities or for refusing to obey an illegal order. Therefore, the discussion of this section will focus on Education Code section 44114. Education Code section 44114 provides:

(a) A public school employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a school administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 44113 for having disclosed improper governmental activities³⁶ or for refusing to obey an illegal order³⁷ may also file a copy of the written complaint with the local law enforcement agency together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person³⁸ who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. Any public school employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no

³⁵ Education Code section 44113, subdivision (b) defines the use of "official authority or influence" as including promising to confer or conferring any benefit; affecting or threatening to affect any reprisal, or taking personnel action.

³⁶ Education Code section 44112, subdivision (c)(1) and (c)(2), defines "improper governmental activities" as an activity by a public school agency or employee that violates a state or federal law or regulation, or that is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

³⁷ Education Code section 44112, subdivision (b), defines "illegal order" as any directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or to work or cause others to work in conditions that would unreasonably threaten the health or safety of employees or the public.

³⁸ Education Code section 44112, subdivision (d), defines "person" as including any state or local government, or any agency or instrumentality of the state or local government.

adverse action is instituted by the public school employer and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a public school employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency.

(d) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to a public school employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 44112.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective public school employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the public school employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the public school employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the public school employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of a public school employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the

memorandum of understanding shall be controlling without further legislative action.

For the reasons below, staff finds that the plain language of Education Code section 44114 does not impose any state-mandated activities upon school districts.

Claimants assert that Education Code section 44114, subdivision (a), mandates K-12 school districts to receive, file, and maintain written complaints filed by school employees or applicants for employment. However, the plain language of the code section only confers a right upon employees or applicants for employment. Specifically, the subdivision (a) sets forth the right that complaining employees have to file a complaint with the local law enforcement agency. There is no requirement in Education Code section 44114, subdivision (a) that K-12 school districts engage in any activity.

Claimants also assert that Education Code section 44114, subdivision (b), mandates K-12 school districts to investigate or cooperate with law enforcement investigations of written complaints. In addition, claimants contend that subdivision (b) requires K-12 school districts to discipline an employee in violation of the code sections. The plain language of Education Code section 44114, subdivision (b), however, does not mandate these activities. The plain language of subdivision (b) provides K-12 employers with the option of disciplining an employee in violation of the code sections. Although an employee in violation of subdivision (b) "shall be subject to discipline," a district's discretion to discipline that employee is evidenced by the following language of subdivision (b):

If no adverse action is instituted by the [K-12] employer and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 44113 occurred, the local law enforcement agency may report the nature and details of the activity to the governing board of the school district or county board of education, as appropriate.

The language "if no adverse action is taken ..." indicates that there is a possibility that K-12 employers will not discipline an employee in violation of Education Code section 44113, and therefore, disciplinary action against an employee is not mandated by the state.

Claimants argue that Education Code section 44114, subdivision (c) requires K-12 school districts to respond, appear, and defend in civil actions brought by an employee alleging retaliation after disclosing improper governmental activities. Claimants also argue that subdivision (c) requires the payment of damages as ordered by the court in the civil action. The plain language of Education Code section 44114, subdivision (c), however, does not mandate these activities upon public school districts. Rather, subdivision (c) merely describes the liabilities that "a person who intentionally engages in acts of reprisal" faces in a civil action for voluntarily engaging in prohibited activities (i.e. acts of reprisal). In addition, the plain language of the Education Code section 44114, subdivision (c), does not require claimants to dispute a claim, and therefore, does not require claimants to incur litigation costs and potential damages against the claimants. As a result, the plain language of Education Code sections 44114, subdivision (c), does not impose any state-mandated activities upon claimants.

The plain language of Education Code section 44114, subdivision (e), shifts the burden of proof in a civil action or administrative proceeding from an employee or applicant for employment to

the employer when the employee or applicant has demonstrated by a preponderance of evidence that the employee or applicant's whistleblowing was a contributing factor in the employer's retaliatory actions. Staff finds that subdivision (e) does not require public school districts to dispute a claim brought by an employee or applicant for employment, and therefore, K-12 school districts are not required to incur litigation costs. Thus, Education Code section 44114, subdivision (e) does not impose any state-mandated activities upon claimants.

The plain language of Education Code section 44114, subdivision (f), merely limits the affect Education Code sections 44110 – 44114. As a result, subdivision (f) does not impose any state-mandated activities upon claimants.

Moreover, in regard to employees of K-12 school districts, Education Code section 44114, subdivision (g), provides that if a K-12 school district's memorandum of understanding (MOU) contains provisions that conflict with the rights provided in Education Code section 44114, the MOU prevails. Specifically, subdivision (g) states the following:

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

Pursuant to Education Code section 44114, subdivision (g), claimants are not legally required to respond to the rights given to employees³⁹ by Education Code section 44114. Rather, K-12 school districts and their employees can opt out of the terms of Education Code section 44114 by entering into a MOU and negotiating their own terms for "whistleblower" cases. Thus, in regard to employees, it is not a mandate by the state, but rather claimants' underlying voluntary decision to enter into a MOU that triggers any K-12 school district response to whistleblower cases.

Pursuant to the above discussion, staff finds that the plain language of Education Code sections 44110 – 44114 does not impose any state-mandated activities upon K-12 school districts, and thus, these statutes are not subject to article XIII B section 6 of the California Constitution.

Do Education Code Sections 87160 – 87164 Impose State-Mandated Activities on Community College Districts?

Education Code sections 87160 – 87163 set forth the short title, legislative intent, definitions, and prohibited activities of the code sections. Education Code section 87163 prohibits an employee from using or attempting to use "official authority or influence"⁴⁰ for the purpose of intimidating, threatening, coercing, commanding any person, or attempting to do so, for the purpose of interfering with the right of that person to disclose to an official agent improper governmental activities.

³⁹ Subdivision (g) of Education Code section 44114 has no effect on the rights given to new applicants for employment under Education code section 44114, because an MOU reached pursuant to Government Code section 3540 et seq. is an agreement between school districts and *employees* of those districts.

⁴⁰ Education Code section 87163, subdivision (b) defines the use of "official authority or influence" as including promising to confer or conferring any benefit; affecting or threatening to affect any reprisal, or taking personnel action.

Education Code section 87164, which claimants cite as the code section requiring most of the claimed activities for community college districts, sets forth the procedures used to protect community college employees and applicants for employment, who allege actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Education Code section 87163 for having disclosed improper governmental activities or for refusing to obey an illegal order. Therefore, the discussion of this section will focus on Education Code section 87164. Education Code section 87164 currently provides in relevant part:⁴¹

(a) An employee or applicant for employment with a public school employer who files a written complaint with his or her supervisor, a community college administrator, or the public school employer alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 87163 for having disclosed improper governmental activities⁴² or for refusing to obey an illegal order⁴³ may also file a copy of the written complaint with the local law enforcement agency, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the local law enforcement agency shall be filed within 12 months of the most recent act of reprisal that is the subject of the complaint.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163, the local law enforcement agency may report the nature and details of the activity to the governing board of the community college district.

(c) (1) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working

⁴¹ Omitted Education Code section 87164, subdivision (g), which provides that the SPB must submit an annual report to the Governor and Legislature regarding complaints filed, hearings held, and legal actions taken, such that the Governor and Legislature may determine the need to continue or modify whistleblower protections.

⁴² Education Code section 87162, defines "improper governmental activities" as an activity by a public school agency or employee that violates a state or federal law or regulation, or that is economically wasteful or involves gross misconduct, incompetency, or inefficiency.

⁴³ Education Code section 87162, defines "illegal order" as any directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or to work or cause others to work in conditions that would unreasonably threaten the health or safety of employees or the public.

days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code,⁴⁴ this part, and the rules of practice and procedure of the State Personnel Board. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this paragraph shall not apply.

(2) Notwithstanding Section 18671.2 of the Government Code, no costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged to the board of governors. Instead, all of the costs associated with hearings of the State Personnel Board conducted pursuant to paragraph (1) shall be charged directly to the community college district that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application.

(d) If the findings of the executive officer of the State Personnel Board set forth acts of alleged misconduct by the supervisor, community college administrator, or public school employer, the supervisor, administrator, or employer may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's usual rules governing appeals, hearings, investigations, and disciplinary proceedings.

(e) If, after the hearing, the State Personnel Board determines that a violation of Section 87163 occurred, or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred, the board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit if appropriate, and the expungement of any adverse records of the employee or applicant for employment with a public school employer who was the subject of the alleged acts of misconduct prohibited by Section 87163.

(f) Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

...

⁴⁴ Government Code section 18671.2 provides that the SPB shall be reimbursed for the entire costs of hearings and may bill the appropriate "state agencies" for the costs incurred in conducting hearings involving employees of those state agencies. Due to the fact that community college districts are not "state agencies," Statutes 2002, chapter 81, added subdivision (c)(2) to clarify that community college districts would be charged the costs associated with the SPB hearings.

(h) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, an action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the local law enforcement agency. Nothing in this subdivision requires an injured party to file a complaint with the State Personnel Board prior to seeking relief for damages in a court of law.

(i) This section is not intended to prevent a public school employer, school administrator, or supervisor from taking, failing to take, directing others to take, recommending, or approving a personnel action with respect to an employee or applicant for employment with a public school employer if the public school employer, school administrator, or supervisor reasonably believes an action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure as defined in subdivision (e) of Section 87162.

(j) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, school administrator, or public school employer to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, school administrator, or public school employer fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(k) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under an employment contract or collective bargaining agreement.

(l) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action.

Whistleblower Cases of Community College District Employees

In *Kern High School Dist.*,⁴⁵ the court found that requirements imposed on a claimant due to the claimant's participation in an underlying voluntary program do not constitute a reimbursable state mandate. Here, subdivision (l) of Education Code section 87164 provides that if a community college district's MOU contains provisions that conflict with the rights provided in Education Code section 87164, the MOU prevails. As a result, claimants are not legally compelled to respond to the rights given to employees⁴⁶ by Education Code section 87164. Rather, community college districts and their employees can opt out of the terms of Education Code section 87164 by entering into a MOU and negotiating their own terms in "whistleblower" cases. Thus, in regard to employees of community college districts, it is the community college district's voluntary decision to comply with Education Code section 87164 and any requirements it may impose with respect to the "whistleblower" cases of a district employee.

In addition, community college districts are not "practically" compelled to comply with Education Code section 87164 with respect to district employees. As noted above, the court in *Kern High School Dist.* left open the possibility of practical compulsion in circumstances in which a claimant faced the imposition of certain and severe penalties such as double taxation and other "draconian consequences." Here, there is no evidence in the record to suggest that community college districts will face any certain and severe penalties or "draconian consequences" for not complying with Education Code section 87164 and instead bargaining alternative procedures with employees regarding "whistleblower" cases. Thus, community college districts have not, as a practical matter, been compelled to comply with Education Code section 87164 with respect to the "whistleblower" cases of a community college district employee.

Therefore, under *Kern High School Dist.*, Education Code section 87164, as it applies to employees, does not impose a reimbursable state mandate upon community college districts under article XIII B, section 6 of the California Constitution. As a result, the remaining discussion will focus on Education Code section 87164 only as applicable to new applicants⁴⁷ for employment with community college districts.

Whistleblower Cases of Community College District Applicants for Employment

Education Code section 87164, subdivisions (a), (b), (h), (j), and (k) substantively mirror Education Code section 44114, subdivisions (a) – (c), (e), and (f). Thus, like Education Code section 44114, the plain language of Education Code sections 87164, subdivisions (a), (b), (h), (j), and (k) does not impose any state-mandated activities upon community college districts.

⁴⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742-743.

⁴⁶ Subdivision (l) of Education Code section 87164 has no effect on the rights given to new applicants for employment under Education code section 87164, because an MOU reached pursuant to Government Code section 3540 et seq. is an agreement between school districts and employees of those districts.

⁴⁷ "New applicant" is distinguished from a current employee with a community college district who is applying for a new position within that same district. These current employee applicants would have an existing MOU in place due to their current employment with the district, and therefore, are also excluded from the following discussion.

However, unlike Education Code section 44114, section 87164 provides community college district applicants for employment with the ability to submit complaints to the SPB, after which the SPB is required to initiate an informal hearing or investigation of the complaint within 10 working days. Education Code section 87164, subdivisions (c) – (f), set forth the procedures and available administrative actions of the SPB hearing or investigation.

Education Code section 87164, subdivision (c), as amended in 2001 (Stats. 2001, ch. 416) and effective January 1, 2002, provided in relevant part:

The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code.

Claimants contend that Education Code section 87164, subdivision (c) requires claimants to appear and participate in hearings and investigations initiated by the SPB. However, the plain language of subdivision (c) only indicates that the SPB shall initiate a hearing or investigation of a community college applicant for employment's complaint of reprisal. Government Code section 18671.2, which subdivision (c) incorporates by reference, requires that the SPB be reimbursed for the entire cost of the hearing. Thus, the plain language of Education Code section 87164, subdivision (c), does not impose a state-mandate upon community college districts to appear and participate in SPB hearings or investigations.⁴⁸

Education Code section 87164 was amended again in 2002, replacing subdivision (c) with subdivisions (c)(1) and (c)(2). These amendments were effective January 1, 2003. Education Code section 87164, subdivision (c)(1), adds to subdivision (c) the language that the hearing shall be conducted in accordance with "the rules of practice and procedure of the State Personnel Board." The rules of practice and procedure are set forth by California Code of Regulations, title 2, sections 56-57.4, which implement whistleblower laws, including Education Code sections 87160 – 87164. The SPB regulations provide that community college districts are required to cooperate fully with the SPB executive officer or investigator during an investigation or be subject to disciplinary action for impeding the investigation.⁴⁹ The regulations provide that investigators shall have authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause witness depositions pursuant to

⁴⁸ Staff notes that effective August 14, 2002, the SPB adopted California Code of Regulations, title 2, sections 56-57.4, to implement whistleblower laws, including Education Code sections 87160 – 87164. However, these regulations have not been pled by claimants. Staff, therefore, makes no independent findings on the regulations.

⁴⁹ Exhibit F, California Code of Regulations, title 2, section 56.3 Register 2006, No. 10 (March 10, 2006).

Government Code section 18671.⁵⁰ If the SPB initiates an informal hearing, rather than an investigation, each named respondent to the complaint is required to serve on the complaining applicant and file with the SPB a written response to the complaint addressing the allegations contained in the complaint. During the informal hearing the administrative law judge (ALJ) conducting the hearing shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the hearing, and otherwise conduct the hearing in a manner and to the degree he or she deems appropriate.⁵¹ As a result, Education Code section 87164, subdivision (c)(1), as added by Statutes 2002, chapter 81, imposes a state-mandate upon community college districts, beginning on January 1, 2003, to fully comply with the rules of practice and procedure of the State Personnel Board. This includes serving the applicant and the SPB with a written response to the complaint addressing the allegations contained therein for hearings, and responding to investigations or attending hearings, and producing documents during investigations or hearings.

Claimants further contend that Education Code section 87164, subdivision (c), as amended in 2001, requires community college districts to reimburse the SPB for all of the costs associated with its hearings. Education Code section 87164, subdivision (c), provides that the hearing shall be conducted in accordance with Government Code section 18671.2, which states that the SPB “may bill appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies.”⁵² Construing Education Code section 87164, subdivision (c), in light of the language of Government Code section 18671.2 leads to absurd results due to the fact that community college districts are not state agencies,⁵³ thus rendering the portion of subdivision (c) that incorporates Government Code section 18671.2 meaningless. Courts have held that “the literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in the light of the statute’s legislative history, appear from its provisions considered as a whole.”⁵⁴ The legislative history of Statutes 2001, chapter 416 (Assem. Bill (AB) No. 647) indicates that it was the Legislature’s intent to “clarify that...the existing provisions that allow the [SPB] to bill state agencies for hearings conducted on whistleblower cases will also apply to community colleges for whistleblower hearings that may be conducted pursuant to this bill...”⁵⁵ Government Code section 18671.2 makes no mention of “applicants for employment,” and the remaining language of Education Code section 87164,

⁵⁰ *Ibid.* Staff notes that Government Code section 18678 provides that a failure to appear and testify or to produce books or papers pursuant to a SPB subpoena issued pursuant to SPB regulations constitutes a misdemeanor.

⁵¹ Exhibit F, California Code of Regulations, title 2, section 56.4 Register 2006, No. 10 (March 10, 2006).

⁵² Exhibit F, Government Code section 18671.2, subdivision (b). (Emphasis added.)

⁵³ Education Code sections 70900 – 70902, establishes the postsecondary education system consisting of community college districts and provides that, to the maximum extent permissible, local authority and control in the administration of the California Community Colleges be maintained.

⁵⁴ *Silver v. Brown* (1966) 63 Cal.2d 841, 846.

⁵⁵ Exhibit F, Senate Rules Committee, Office of Senate Floor Analysis, 3d reading analysis of Assembly Bill 647 (2001-2002 Reg. Sess.) as amended August 27, 2001.

subdivision (c), does not address applicants for employment either. As a result, Education Code section 87164, subdivision (c), requires community college districts to pay for all costs of SPB hearings resulting only from a complaint brought by an *employee* of the community college district. However, as discussed above, under *Kern High School Dist.*, Education Code section 87164, as it applies to employees, does not impose a reimbursable state mandate upon community college districts. The requirements of Education Code section 87164, including the requirement to pay for all costs associated with a SPB hearing initiated by a claim filed by an employee, are only triggered by a community college district's voluntary decision to enter into an MOU with its employees that does not conflict with the terms of Education Code section 87164. Thus, Education Code section 87164, subdivision (c), as amended in 2001, does not impose any state-mandated activities upon community college districts.

In 2002, Education Code section 87164 was amended to add subdivision (c)(2), which specifically provides that, "Notwithstanding Section 18671.2 of the Government Code ... all of the costs associated with hearings of the State Personnel Board ... shall be charged directly to the community college district with whom the complaining applicant for employment has filed his or her employment application." Thus, staff finds that pursuant to the plain language of Education Code section 87164, subdivision (c)(2), effective January 1, 2003, a community college district is required to pay for all costs associated with a SPB hearing as a result of a complaints filed by an applicant for employment with that community college district.

Claimants also contend that Education Code section 87164, subdivision (d) requires community college districts to request a hearing before the SPB when the adverse findings of the hearing officer are incorrect. However, the plain language of subdivision (d) only authorizes a community college district to request a hearing after the SPB has issued its findings from the investigation or informal hearing. As a result, Education Code section 87164, subdivision (d), does not impose any state-mandated activities upon community college districts.

Education Code section 87164, subdivision (e), grants the SPB the authority to order "any appropriate relief" upon a finding that a violation of Education Code section 87163 has occurred and provides examples of "appropriate relief" for an applicant for employment.⁵⁶ Thus, the plain language of Education Code section 87164, subdivision (e), does not impose any state-mandated activities upon community college districts.

In 2001, subdivision (f) was added to Education Code section 87164. Effective January 1, 2002, subdivision (f) provides:

Whenever the State Personnel Board determines that a supervisor, community college administrator, or public school employer has violated Section 87163, it shall cause an entry to that effect to be made in the supervisor's, community college administrator's, or public school employer's official personnel records.

⁵⁶ Education Code section 87163 prohibits the use of official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to said acts for the purpose of interfering with the right a an employee or applicant for employment to disclose improper governmental activities or conditions that may significantly threaten the health or safety of employees or the public.

It is unclear from the language of subdivision (f) how the SPB “shall cause an entry” to be made into the official personnel records kept by a community college district. Courts have held that when an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the courts and will be followed if not clearly erroneous.⁵⁷ The SPB regulations provide that in cases where the SPB finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the SPB shall order the community college district to place a copy of the SPB decision in that individual’s official personnel file.⁵⁸ Thus, Education Code section 87164, subdivision (f) imposes a state-mandate upon community college districts to make an entry into a community college administrator, supervisor, or public school employer’s official personnel file indicating the SPB’s finding of misconduct.

As a result, staff finds that Education Code section 87164, subdivisions (a), (b), (d), (e), (h), (j) do not impose any state-mandated activities upon community college districts. However, staff finds that Education Code section 87164, subdivisions (c)(1), (c)(2), and (f), impose the following state-mandated activities upon community college districts when a new applicant for employment files a complaint with the SPB:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board. This includes serving the applicant for employment and the SPB with a written response to the applicant’s complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code § 87164, subd. (c)(1))
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by a new applicant for employment (Ed. Code § 87164, subd. (c)(2))
- Beginning January 1, 2002, make an entry into the official personnel record of a supervisor, community college administrator, or public school employer, who is found by the State Personnel Board to have violated Education Code section 87163 (Ed. Code § 87164, subd. (f)).

Do the State-Mandated Activities in Education Code Section 87164 Constitute a “Program” Subject to Article XIII B, section 6 of the California Constitution?

In addition to being state-mandated, the test claim statutes and regulation must also constitute a “program” in order to be subject to article XIII B, section 6 of the California Constitution.

The California Supreme Court, in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, defined the word “program” within the meaning of article XIII B, section 6 as a program 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

⁵⁷ *Giles v. Horn, supra*, 100 Cal.App.4th 206, 220.

⁵⁸ Exhibit F, California Code of Regulations, title 2, section 56.6, Register 2006, No. 10 (March 10, 2006).

apply to all residents and entities in the state.⁵⁹ The court has held that only one of these findings is necessary.⁶⁰

Here, the state-mandated activities identified above impose unique requirements on community college districts that do not apply to all residents and entities in the state, in order to implement a state policy. Education Code section 87161, indicates a state policy that community college employees and applicants for employment disclose improper governmental activities. In order to implement this policy, the test claim statute imposed the identified state-mandated activities, which are unique and do not apply to all residents and entities in the state. Thus, the identified mandated activities constitute a "program" subject to article XIII B, section 6 of the California Constitution.

Do the State-Mandated Activities in Education Code Section 87164 Constitute a New Program or Higher Level of Service?

The courts have held that legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.⁶¹ To make this determination, the requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.⁶²

Prior to the enactment of Statutes 2001, chapter 416, there was no requirement for the SPB to initiate a hearing or investigation into allegations of reprisal against an applicant for employment who disclosed improper governmental information, and therefore no requirement for community college districts to comply with the activities required by Education Code section 87164, subdivisions (c)(1), (c)(2) and (f). Therefore, the requirements to fully comply with the rules of practice and procedure of the SPB, to reimburse the SPB for all costs associated with the hearings or investigations, and to make an entry into the official personnel record of a supervisor, community college administrator, or public school employer, who is found by the SPB to have violated Education Code section 87163, are new in comparison to the pre-existing scheme.

In addition, these activities were intended to provide an enhanced level of service to the public. Education Code sections 87160 – 87164 encourage "employees and other persons [to] disclose...improper governmental activities"⁶³ by, among other things, providing a SPB hearing as a forum to hear complaints of acts of reprisal taken against an applicant for employment for disclosing improper governmental activity. A protected disclosure under the code sections include activities that violate state or federal law, that are economically wasteful or involves gross misconduct, incompetency, or inefficiency, or that may significantly threaten the health or safety of employees or the public.⁶⁴ Thus, requiring participation in a SPB hearing and

⁵⁹ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

⁶⁰ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.Ap.3d 521, 537.

⁶¹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

⁶² *Ibid.*

⁶³ Education Code section 87161.

⁶⁴ Education Code section 87162, subdivisions (c) and (e).

reimbursement of the SPB for all costs associated with the hearing provides an enhanced service to the public by aiding disclosure of illegal, wasteful, or harmful activities.

Therefore, staff finds that Education Code section 87164, subdivisions (c)(1), (c)(2), and (f), constitute a new program or higher level of service, as they relate to new applicants for employment.

Issue 2: Does Education Code section 87164, subdivisions (c)(1), (c)(2) and (f), impose “costs mandated by the state” on community college districts within the meaning of article XIII B, section 6, and Government Code section 17514?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.⁶⁵ Government Code section 17514 defines “cost mandated by the state” as follows:

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

Santa Monica Community College District, co-claimant, estimated that it “will incur approximately \$1,000, or more, annually, in staffing and other costs in excess of any funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002”⁶⁶ to implement all duties alleged by the claimants to be mandated by the state.

In addition, the SPB has provided evidence of amounts charged to community college districts in the SPB comments, dated April 20, 2007. The SPB indicates that during the period between 2002 and 2007, 12 whistleblower complaints were filed with the SPB by community college district employees and/or applicants for employment. The SPB also indicates that as of April 20, 2007, community college districts have been charged \$4,860.91 since 2002. This amount includes hearings for both community college employees and applicants for employment.

Thus, staff finds that the record supports the finding of costs mandated by the state and that none of the exceptions in Government Code section 17556 apply to deny this claim. As a result, staff finds that Education Code section 87164, subdivisions (c)(1), (c)(2), and (f) impose costs mandated by the state on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities when a new applicant for employment files a complaint with the SPB:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board. This includes serving the applicant for employment and the SPB with a written response to the applicant’s complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code § 87164, subd. (c)(1))

⁶⁵ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

⁶⁶ Exhibit A, Test Claim, Exhibit 1, Declaration of Tom Donner, p. 4.

- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by a new applicant for employment (Ed. Code § 87164, subd. (c)(2))
- Beginning January 1, 2002, make an entry into the official personnel record of a supervisor, community college administrator, or public school employer, who is found by the State Personnel Board to have violated Education Code section 87163 (Ed. Code § 87164, subd. (f)).

Conclusion

Staff concludes that Education Code section 87164, subdivisions (c)(1), (c)(2), and (f), as amended by Statutes 2001, chapter 416, and Statutes 2002, Chapter 81, constitutes a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities when a new applicant for employment files a whistleblower complaint with the State Personnel Board:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board. This includes serving the applicant for employment and the SPB with a written response to the applicant's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code § 87164, subd. (c)(1))
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by a new applicant for employment (Ed. Code § 87164, subd. (c)(2))
- Beginning January 1, 2002, make an entry into the official personnel record of a supervisor, community college administrator, or public school employer, who is found by the State Personnel Board to have violated Education Code section 87163 (Ed. Code § 87164, subd. (f)).

Staff further concludes that Education Code sections 44110 – 44114, as added and amended by Statutes 2000, chapter 531, and Statutes 2001, chapter 159 do not impose any state-mandated activities upon K-12 school districts and, thus, are not subject to article XIII B, section 6 of the California Constitution. In addition, Education Code sections 87160 – 87164, as added and amended by Statutes 2000, chapter 531, Statutes 2001, chapter 159, Statutes 2001, chapter 416, and Statutes 2002, Chapter 81, as applicable to community college employees, do not impose any state-mandated activities upon community college districts and, thus, are not subject to article XIII B, section 6 of the California Constitution.

Any other test claim statute and allegation not specifically approved above, do not impose a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this staff analysis and partially approve this test claim.

West's Ann. Cal. Gov. Code § 18678

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness
 Government Code (Refs & Annos)
 Title 2. Government of the State of California
 Division 5. Personnel (Refs & Annos)
 Part 2. State Civil Service (Refs & Annos)
 Chapter 2. Administration (Refs & Annos)
 Article 2. Investigations and Hearings (Refs & Annos)

→ § 18678. Disobedience of subpoena

Any person served with a subpoena to appear and testify or to produce books or papers issued in the course of any such investigation or hearing who disobeys or neglects to obey such subpoena is guilty of a misdemeanor.

CREDIT(S)

(Added by Stats.1945, c. 123, p. 546, § 1.)

HISTORICAL AND STATUTORY NOTES

1995 Main Volume

Derivation: Stats.1937, c. 753, p. 2090, § 42.

LIBRARY REFERENCES

1995 Main Volume

Administrative Law and Procedure 357.
 Westlaw Topic No. 15A.
C.J.S. Public Administrative Law and Procedure § 82.

West's Ann. Cal. Gov. Code § 18678, CA GOVT § 18678

Current through Ch. 42 of 2007 Reg.Sess. urgency legislation

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END OF DOCUMENT

West's Ann.Cal.Gov.Code § 18671.2

C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness

Government Code (Refs & Annos)

Title 2. Government of the State of California

Division 5. Personnel (Refs & Annos)

Part 2. State Civil Service (Refs & Annos)

▣ Chapter 2. Administration (Refs & Annos)

▣ Article 2. Investigations and Hearings (Refs & Annos)

→ § 18671.2. Costs of hearing office; billings and reimbursements

(a) The total cost to the state of maintaining and operating the hearing office of the board shall be determined by the board, in advance or upon any other basis as it may determine, utilizing information from the state agencies for which services are provided by the hearing office.

(b) The board shall be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement. The board may bill the appropriate state agencies for the costs incurred in conducting hearings involving employees of those state agencies, and employees of the California State University pursuant to Sections 89535 to 89542, inclusive, of the Education Code, and may bill the state departments having responsibility for the overall administration of grant-in-aid programs for the costs incurred in conducting hearings involving employees not administering their own merit systems pursuant to Chapter 1 (commencing with Section 19800) of Part 2.5. All costs collected by the board pursuant to this section shall only be used for purposes of maintaining and operating the hearing office of the board.

CREDIT(S)

(Added by Stats.1994, c. 814 (S.B.846), § 1. Amended by Stats.1996, c. 472 (A.B.2528), § 2.)

West's Ann. Cal. Gov. Code § 18671.2, CA GOVT § 18671.2

Current through Ch. 10 of 2007 Reg.Sess. urgency legislation

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END OF DOCUMENT

(b) Under the General Merit System Process, the executive officer shall either (1) present recommended decisions to the board or (2) make decisions subject to appeal to the board.

NOTE: Authority: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 53 to sections 51.1 and 53 filed 4-26-90; operative 5-26-90 (Register 90, No. 22). For prior history, see Register 87, No. 48.
2. Change without regulatory effect amending subsection (a) filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 53.1. Merit Issue Complaints.

(a) Merit issue complaints are complaints that the State Civil Service Act or board regulation or policy has been violated by a state agency. Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in board regulations. Each state agency shall establish and publicize to its employees its process for addressing merit issue complaints. That process shall include provisions for informing employees of their right to appeal the state agency's decision on the merit issue complaint to the board. Failure of a state agency to respond to a merit issue complaint within 90 days of the date of complaint shall be deemed a denial of the complaint authority and shall release the appellant to file an appeal directly with the board. An appeal of a merit issue complaint shall be filed within 30 days of the state agency's denial of the complaint.

NOTE: Authority: Section 18701, Government Code. Reference: Section 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.

HISTORY

1. New section filed 4-26-90; operative 5-26-90 (Register 90, No. 22).
2. Change without regulatory effect amending subsection (a) filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 53.2. Reasonable Accommodation Appeals.

Requests for reasonable accommodation are requests from qualified disabled individuals for accommodation to known physical or mental limitations. These requests may be made concerning securing, retaining or advancing in employment in State service. Appointing authorities shall respond to such requests within 20 days of receipt. Appointing authorities shall respond in writing and inform complainants of their right of appeal to the board, within 30 days of receipt of the department's response. Failure to respond to a request within 20 days shall be deemed a denial of the request by the appointing authority and shall release the complainant to file an appeal directly with the board. Such filing shall be done within 30 days of the exhaustion of the 20-day period.

NOTE: Authority: Section 18701, Government Code. Reference: Section 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.

HISTORY

1. New section filed 4-26-90; operative 5-26-90 (Register 90, No. 22).

§ 54. Discrimination Complaint Process.

Any person who believes that he or she has been discriminated against in state employment in violation of part II, chapter 10, article 2 of the Government Code, the Federal Age Discrimination in Employment Act of 1978, or Governor's Executive Order B-54-79, shall have the opportunity to file a complaint with the board. Complaints filed with the board shall follow the provisions of article 4 and the specific provisions of Sections 54.1 and 54.2. All issues arising under these regulations, if not resolved under the process prescribed hereunder or by Sections 53.1 or 53.2, shall be decided by the board, if the complainant so requests.

NOTE: Authority: Section 18701, Government Code. Reference: Section 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.

HISTORY

1. Repealer and section filed 4-26-90; operative 5-26-90 (Register 90, No. 22). For prior history, see Register 87, No. 48.
2. Change without regulatory effect amending section filed 9-16-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 39).

§ 54.2. Discrimination Complaint Standards for Appointing Powers.

Each appointing power discrimination complaint review shall:

(a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions shall include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination.

(b) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure.

(c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons, and that the employee will be informed of all rights at each step of the process, including the right of appeal to the board or to file with the appropriate state or federal agency or court having jurisdiction.

NOTE: Authority: Section 18701, Government Code. Reference: Section 18675, Government Code.

HISTORY

1. Renumbering and amendment of former section 54.2 to section 54.2 filed 4-26-90; operative 5-26-90 (Register 90, No. 22). For prior history, see Register 86, No. 28.

§ 55. Hearing Officer.

HISTORY

1. Repealer filed 4-26-90; operative 5-26-90 (Register 90, No. 22).

§ 56. Whistleblower Retaliation Complaint Process.

(a) Any state employee or applicant for state employment, or any employee or applicant for employment with a California Community College, who believes that he or she has been retaliated against in employment for having reported improper governmental activity, as that phrase is defined in Government Code Section 8547.2(b), or Education Code Section 87162(c), or for having refused to obey an illegal order or directive, as defined in Government Code Section 8547.2(e), or Education Code Section 87162(b), may file a complaint and/or appeal with the State Personnel Board in accordance with the provisions set forth in Sections 56.1-56.8. For purposes of complaints filed by community college employees or applicants for community college employment, the local community college district shall be deemed the "appointing power."

(b) For purposes of Sections 56-56.8, the term "Board" is defined as the five-member State Personnel Board, as appointed by the Governor. The term "Executive Officer" is defined as the Executive Officer of the State Personnel Board, as appointed by the Board. The State Personnel Board shall hereinafter be referred to as the SPB.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 87162 and 87164, Education Code; and Sections 8547.2, 8547.8 and 19683, Government Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33). For prior history see Register 90, No. 22.
2. Amendment of section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.1. Requirements for Filing Whistleblower Retaliation Complaint with the State Personnel Board.

An individual desiring to file a complaint of retaliation with the SPB must adhere to the following requirements:

(a) Prior to filing his or her complaint with the SPB, the complainant shall comply with all other filing requirements, if applicable, set forth in Government Code Section 19683.

(b) The complaint shall be filed with and received by the SPB within one year of the most recent alleged act of reprisal. The complaining party shall submit an original complaint and copy of all attachments, and

enough copies of the complaint and attachments for the SPB to serve each entity and person alleged to have engaged in retaliatory conduct and against whom damages and/or disciplinary action is sought.

(c) All complaints shall be in writing.

(d) Each complaint shall clearly identify the protected activity engaged in by the complainant, the specific act(s) of reprisal or retaliation alleged to have occurred, and the names and business address of the individual(s) and entities alleged to have committed the retaliatory act(s). Each complaint shall specify the relief and/or remedies sought against each entity or individual, including any compensatory damages sought.

(e) If adverse action is sought against any individually named respondent, pursuant to the provisions of Government Code Section 19574, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

(f) Each complaint shall include a sworn statement, under penalty of perjury, that the contents of the written complaint are true and correct.

(g) Each complaint shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The complainant shall submit a separate document with the complaint stating the reasons for good cause.

(h) The above procedures do not apply in those cases where an appellant raises retaliation as an affirmative defense when appealing a notice of adverse action, pursuant to Government Code Sections 19575 or 19590, when appealing a notice of rejection during probation, pursuant to Government Code Section 19175, when appealing a notice of medical action, pursuant to Government Code Section 19253.5, when appealing a notice of non-punitive action, pursuant to Government Code Section 19585, or when appealing a notice of career executive assignment termination pursuant to Government Code Section 19889.2. Neither the remedies nor the relief available to a complaining party pursuant to the provisions of Government Code Sections 8547.8 or 19683, shall, however, be available to a party who raises whistleblower retaliation as either an affirmative defense or as a separate cause of action in any other SPB hearing, unless that party has first complied with all filing requirements set forth in Section 56.1.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 19175, 19253.5, 19572, 19583.5, 19585, 19683 and 19889.2, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.2. Acceptance of Whistleblower Complaint.

(a) Within 10 working days of receipt of the complaint, the SPB shall determine whether it has jurisdiction over the complaint and whether the complainant meets the filing requirements set forth in Section 56.1. The SPB shall also determine whether the complainant has complied with all other requirements for filing a retaliation complaint, as set forth in Government Code Sections 8547-8547.12 and 19683 and/or Education Code Sections 87160-87164.

(b) If the SPB determines that the complaint does not meet all filing requirements, it shall notify the complaining party in writing that the complaint has not been accepted and the reason(s) for that determination. The complaining party may thereafter be permitted to file an amended complaint within 10 working days of service of the notice of non-acceptance of the complaint.

(c) Unless time is extended by the complaining party in writing, the Executive Officer shall, within 10 working days of receipt of the complaint or amended complaint, notify the complaining party of a decision to either:

(1) dismiss the complaint for failure to meet jurisdictional or filing requirements; or

(2) refer the case for investigation in accordance with the provisions of Section 56.3; or

(3) schedule the case for an informal hearing before an administrative law judge, in accordance with the provisions of Section 56.4.

(d) In accordance with the provisions of Penal Code Section 6129, the SPB shall be entitled to defer review of a complaint filed by an employee of the Department of Corrections and Rehabilitation in those cases where the employee has filed a similar complaint with the Office of the Inspector General.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 87160-87164, Education Code; Sections 8547-8547.2, 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19683 and 19590, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.3. Cases Referred to Investigation.

(a) If the Executive Officer assigns a complaint for investigation, the Executive Officer or the assigned investigator(s) shall conduct the investigation in the manner and to the degree they deem appropriate, and shall have full authority to question witnesses, inspect documents, and visit state facilities in furtherance of their investigations. All state agencies and employees shall cooperate fully with the investigators, or be subject to disciplinary action for impeding the investigation. The investigators, pursuant to the provisions of Government Code Section 18671, shall have authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, in order to ensure a fair and expeditious investigation.

(b) The Executive Officer shall issue findings regarding the allegations contained in the complaint and a recommended remedy, if any, based on the investigation, in accordance with the provisions of Section 56.5.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19582, 19583.5 and 19683, Government Code; Section 6129, Penal Code; and Section 2016 et seq., Civil Procedure Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.4. Cases Referred to Informal Hearing Before an ALJ.

(a) For those complaints assigned to an informal hearing before an administrative law judge, the SPB shall serve notice of the informal hearing on all parties to the complaint a minimum of 30 calendar days prior to the scheduled hearing date. Service on each respondent shall be made at the respondent's business address. The notice shall:

(1) include a complete copy of the complaint with all attachments, and a copy of the statutes and rules governing the informal hearing; and

(2) require each named respondent to serve on the complainant and file with the SPB, at least 10 calendar days prior to the informal hearing, a written response to the complaint, signed under penalty of perjury, specifically addressing the allegations contained in the complaint.

(b) The informal hearing shall be conducted in conformance with those procedures set forth in Government Code Section 11445.10 *et seq.*, and may in the discretion of the administrative law judge, include such supplemental proceedings as ordered by the administrative law judge, and as permitted by Section 11445.10 *et seq.*, to ensure that the case is heard in a fair and expeditious manner. The administrative law judge shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the hearing, and otherwise conduct the hearing in the manner and to the degree he or she deems appropriate. The informal hearing and any supplemental proceedings shall be recorded by the administrative law judge. All parties shall, upon request and payment of applicable reproduction costs, be provided with a transcript or a copy of the recording of the informal hearing.

(c) Following the informal hearing and any supplemental proceedings, the administrative law judge shall issue findings for consideration by the Executive Officer regarding the allegations contained in the complaint, together with all recommended relief, if any, proposed to remedy any retaliatory conduct.

(d) The Executive Officer shall have the discretion to adopt the administrative law judge's findings and recommended remedies in their entirety; modify the administrative law judge's findings and recommended remedies; or reject the administrative law judge's findings and recommended remedies, and:

- (1) issue independent findings after reviewing the complete record; or
- (2) remand the case back to the administrative law judge for further proceedings.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 11513, 18670, 18671, 18672, 18675, 19572, 19574, 19575, 19582, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.5. Findings of the Executive Officer.

(a) The Executive Officer shall issue a Notice of Findings within 60 working days of the date the SPB accepts the complaint pursuant to Section 56.2(c), unless the complaining party agrees, in writing, to extend the period for issuing the findings, or unless the time period is otherwise tolled.

(b) In those cases where the Executive Officer concludes that the allegations of retaliation were not proven by a preponderance of the evidence, the Executive Officer shall issue a Notice of Findings dismissing the complaint. The Notice of Findings shall notify the complainant that his or her administrative remedies have been exhausted and that the complainant may file a civil complaint with the superior court pursuant to Government Code Section 8547.8(c).

(c) In those cases where the Executive Officer concludes that the complainant proved one or more of the allegations of retaliation by a preponderance of the evidence, the Notice of Findings shall identify the allegations deemed substantiated, and the named respondents deemed to have engaged in retaliatory acts toward the complainant. If the Notice of Findings concludes that any individual manager, supervisor, or other employee engaged in improper retaliatory acts, the Notice of Findings shall include the legal causes for disciplinary action under Government Code Section 19572 and the appropriate disciplinary action to be taken against any individual found to have engaged in retaliatory conduct.

(d) The Notice of Findings shall inform any respondent found to have engaged in retaliatory acts of his or her right to request a hearing regarding the Notice of Findings. Any such request shall be filed with the SPB, and served on all other parties within 30 calendar days of the issuance of the Notice of Findings. Upon receipt of a timely request for hearing, the

Board shall, at its discretion, schedule a hearing before the Board, or an evidentiary hearing before an administrative law judge, regarding the findings of the Executive Officer. The hearing shall be conducted in accordance with the SPB's rules governing the conduct of evidentiary hearings. If a timely request for hearing is not filed with the SPB, the Notice of Findings shall be deemed the Board's final decision in the case.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671.1, 18675, 19572, 19574, 19575, 19582, 19590 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section heading, repealer and new section and amendment of NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.6. Disciplinary Action for Proven Retaliatory Acts.

(a) In those cases where the Board issues a final decision that finds that a manager, supervisor, or other state civil service employee has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 calendar days of the issuance of the Board's order and to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 calendar days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(1) In accordance with the provisions of Penal Code Section 6129, subsection (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 calendar days, unless the Board determines that a lesser penalty is warranted. In those instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.

(b) In those cases where the Board issues a final decision that finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 calendar days of the issuance of the Board's order and to also, within 40 calendar days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(c) Any decision, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(d) For purposes of this Section, the Board's decision is deemed to be final after:

- (1) a request for hearing pursuant to Section 56.5(d) has not been timely filed with the Board; or
- (2) 30 calendar days has elapsed from the date that the Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or
- (3) a decision has been issued by the Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).

2. Amendment of section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.7. Consolidation with Other Hearings.

(a) The SPB or the assigned administrative law judge shall possess the requisite discretion to direct that separate, reasonably related cases be consolidated into a single hearing. Whenever two or more cases are consolidated, the assigned administrative law judge shall permit the parties a reasonable opportunity to conduct discovery prior to the first scheduled hearing date, if the discovery provisions set forth in Section 57 *et seq.* are negatively impacted by the consolidation.

(b) In those cases where one or more individually named respondents have been joined in the consolidated hearing, the administrative law judge may, in his or her discretion, make such orders as may appear just in order to prevent any named respondent from being embarrassed, delayed, or put to undue expense, and may order separate hearings or make such other order as the interests of justice may require.

(c) In those cases where an appeal from adverse action, rejection during probationary period, medical action, or non-punitive action is consolidated with a whistleblower retaliation complaint, and the whistleblower retaliation complaint identifies specifically named individuals against whom damages or adverse action is sought pursuant to the provisions of Section 56.1(d) and (e), each individually named respondent shall have the right to participate in the consolidated hearing in such a manner as to reasonably defend him or herself against the allegations contained in the whistleblower retaliation complaint. These rights shall include, but not be limited to:

(1) to be represented by a representative of his or her own choosing during the consolidated hearing;

(2) to present a defense on his or her own behalf concerning the allegations and issues raised in the whistleblower retaliation complaint, separate and apart from any defense presented by the appointing power or any other named respondent;

(3) to conduct pre-hearing discovery concerning allegations and issues raised in the whistleblower retaliation complaint;

(4) to examine and cross examine witnesses concerning allegations and issues raised in the whistleblower retaliation complaint;

(5) to introduce and challenge the introduction of evidence concerning allegations and issues raised in the whistleblower retaliation complaint; and

(6) to present oral and/or written argument to the decision-maker concerning allegations and issues raised in the whistleblower retaliation complaint.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Sections 8547.8, 11513, 18670, 18671, 18672, 18675, 19175, 19253.5, 19575, 19582, 19585, 19590 and 19683, Government Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).

2. Amendment of section and NOTE filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 56.8. Evidentiary Hearing Procedures and Representation by the Executive Officer.

(a) The hearing conducted pursuant to Section 56.5(d), shall be conducted in accordance with the SPB's rules of practice and procedure for the conduct of hearings before the Board, or evidentiary hearings before an administrative law judge. Any proposed decision issued by an administrative law judge after an evidentiary hearing shall be subject to review by the Board.

(b) The administrative law judge assigned to conduct the evidentiary hearing shall not be the same administrative law judge who conducted the informal investigative hearing in the case, unless all parties to the action

request, in writing, that the same administrative law judge be assigned to conduct the evidentiary hearing.

(c) The discovery procedures set forth in Section 57 *et seq.*, shall be applicable to those evidentiary hearings conducted pursuant to this Section.

(d) The Executive Officer, or his or her designee, shall have the authority, in his or her discretion, to prosecute the complaint and present evidence regarding his or her findings during a hearing before the Board, and/or during an evidentiary hearing before an administrative law judge. The Executive Officer, or his or her designee, shall have the discretion to present the case in the manner he or she deems to be appropriate, including, but not limited to, the issues to be presented, the evidence to be presented, and the witnesses, if any, to be questioned.

(1) The complaining party shall be permitted to be represented by a representative of his or her own choosing during any hearing before either the Board, and/or an administrative law judge, and shall be permitted to raise relevant issues, present relevant evidence, and question witnesses regarding relevant matters during those hearings where witness testimony is permitted.

(2) In those cases where the Executive Officer, or his or her designee prosecutes a case during an evidentiary hearing before an administrative law judge, the case shall be assigned to an administrative law judge from the Office of Administrative Hearings.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19590 and 19683, Government Code; and Section 6129, Penal Code.

HISTORY

1. New section filed 8-14-2002; operative 8-14-2002 pursuant to Government Code section 18214 (Register 2002, No. 33).

2. Repealer and new section filed 3-8-2006; operative 3-8-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 10).

§ 57.1. Discovery in Evidentiary Hearings Before the Board or a Board Administrative Law Judge.

(a) An employee who is served with a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19574 or 19590 shall be entitled to conduct discovery in accordance with the provisions of Government Code Sections 19574.1 and 19574.2. In those cases where an employee raises an affirmative defense alleging discrimination or retaliation when filing an answer to a Notice of Adverse Action pursuant to the provisions of Government Code Sections 19575 or 19590, or in those cases where an employee raises an affirmative defense of retaliation or discrimination during the course of a hearing before the Board or an administrative law judge regarding an appeal from adverse action, the appointing power or any other named respondent shall be entitled to conduct discovery regarding any such affirmative defense in accordance with the provisions of Sections 57.2-57.4.

(b) Any party to any other type of action scheduled for hearing before the Board and/or a Board administrative law judge, including but not limited to, rejections during probationary period (Government Code Section 19173), discrimination complaints (Government Code Section 19702), appeals from denial of reasonable accommodation (Government Code Section 19702), whistleblower retaliation complaints (Education Code Section 87164, Government Code Sections 8547.8 and 19683); appeals from non-punitive action (Government Code Section 19585), appeals from medical action (Government Code Section 19253.5), appeals from Career Executive Assignment termination (Government Code Section 19889.2), and appeals from constructive medical termination, shall be entitled to conduct discovery in accordance with the provisions of Sections 57.2-57.4.

(c) The discovery provisions set forth in Sections 57.2-57.4 shall not apply to those cases scheduled for hearing or review by the Executive Officer or a Board hearing officer, to informal hearings conducted by Board administrative law judges pursuant to Government Code Section 11445.10 *et seq.*, to those cases assigned to hearing before a Board ad-

administrative law judge pursuant to the provisions of Section 52(b), to appeals from termination of Limited Term employees pursuant to Section 282, to appeals from termination of a Limited Examination and Appointment Program appointment pursuant to Section 547.57, or to any other appeal or complaint excluded from the formal evidentiary hearing process pursuant to statute or regulation.

(d) The time frames for service of process set forth in Sections 57.2-57.4 shall apply in those circumstances where service is made or attempted by mail, and service shall not be deemed effective on the date of mailing. Instead, service by mail shall be deemed effective only upon such time as the document being served is either actually received by the person or entity being served, or is legally presumed to have been delivered pursuant to the provisions of Code of Civil Procedure Section 1013, whichever date occurs first.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 18670, 18671, 18672, 18672.1, 18673, 18675, 19173, 19175, 19253.5, 19574, 19574.1, 19574.2, 19575, 19585, 19590, 19683, 19700-19706 and 19889.2, Government Code; and Section 1013, Code of Civil Procedure.

HISTORY

1. New section filed 8-12-2002; operative 8-12-2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Change without regulatory effect amending section filed 11-26-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 48).
3. Amendment of section heading, repealer and new section and amendment of NOTE filed 2-28-2006; operative 2-28-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 57.2. Request for Discovery; Statements; Writings; Investigative Reports; Witness List.

(a) Each party to an appeal or complaint listed in Section 57.1(a) or (b) and scheduled for a hearing is entitled to serve a request for discovery on any other named party to the complaint or appeal as allowed by subdivisions (c)-(e), and Government Code Section 18673. All requests for discovery shall be served on the responding party no later than 40 calendar days prior to the initial hearing date, except upon a petition and showing of good cause by the party seeking discovery, and a finding by the administrative law judge, in his or her sole discretion, that such additional or late requests for discovery should be permitted in the furtherance of justice. For purposes of this Section, the term "party" is defined as the person, or appointing power filing the appeal or complaint, any named respondent, and their designated legal representatives.

(b) Each party to the appeal or complaint is entitled to request and receive from any other party to the appeal or complaint the names and home or business addresses of percipient witnesses to the event(s) in question, to the extent known to the other party and of individuals who may be called as witnesses during the course of the hearing, except to the extent that disclosure of the address is prohibited by law. The responding party may, in his or her discretion, provide either the home or business address of the witness, except to the extent that disclosure of the address is prohibited by law.

(c) Each party to the appeal or complaint is entitled to inspect and make a copy of any of the following non-privileged materials in the possession, custody, or control of any other party to the appeal or complaint:

(1) Statements, as that term is defined in Evidence Code Section 225, of witnesses proposed to be called as witnesses during the hearing by the party and of other persons having personal knowledge of the act, omission, event, decision, condition, or policy which are the basis for the appeal. The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently amend this list if it intends to call additional witnesses not previously disclosed;

(2) All writings, as that term is defined in Evidence Code Section 250, that the responding party proposes to enter into evidence. The responding party shall, upon a showing of good cause and subject to the discretion

of the administrative law judge, subsequently provide the requesting party with additional writings that it proposes to enter into evidence;

(3) Any other writing or thing that is relevant to the appeal or complaint; and

(4) Investigative reports made by or on behalf of any party to the appeal or complaint pertaining to the subject matter of the proceeding, to the extent that these reports: (A) contain the names and home or business addresses of witnesses or other persons having personal knowledge of the facts, omissions or events which are the basis for the proceeding, unless disclosure of the address is prohibited by law, or (B) reflect matters perceived by the investigator in the course of his or her investigation, or (C) contain or include by attachment any statement or writing described in (A) to (C), inclusive, or summary thereof.

(d) All parties receiving a request for discovery shall produce the information requested, or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis for the non-production, within 15 calendar days of receipt of the discovery request.

(e) Not less than 10 calendar days prior to the first scheduled hearing date on the merits, each party shall notify the other parties in writing of the identity and current business address of each expert witness to be presented as a witness at the hearing, and a brief narrative statement of the qualifications of such witnesses and the general substance of the testimony which the expert is expected to provide. At the same time, the parties shall also exchange all written reports prepared by each expert witness. The administrative law judge may permit a party to call an expert witness not included on the list upon a showing of good cause.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Sections 225 and 250, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

HISTORY

1. New section filed 8-12-2002; operative 8-12-2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 2-28-2006; operative 2-28-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 57.3. Petition to Compel Discovery.

(a) A party may serve and file with the administrative law judge a petition to compel discovery, naming as responding party any party who has refused or failed to provide discovery as required by Section 57.2. A copy of the petition shall be served on the responding party on the same date the petition is filed with the administrative law judge.

(b) The petition shall state facts showing the responding party failed or refused to comply with Section 57.2, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that Section, that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made, and the grounds of the responding party's refusal so far as known to the moving party.

(c)(1) The petition shall be served upon the responding party and filed with the administrative law judge within 14 days after the responding party first evidenced his or her failure or refusal to comply with Section 57.2 or within 30 calendar days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 20 calendar days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any party.

(2) The responding parties shall have a right to file a written answer to the petition. Any answer shall be filed with the administrative law

judge and served on the petitioner within 10 calendar days of service of the petition.

(3)(A) Unless otherwise stipulated by the parties and as provided by this Section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 15 calendar days after the filing of the petition. Nothing in this Section shall preclude the administrative law judge from determining that an evidentiary hearing on the underlying matter shall be conducted prior to the issuance of a decision on the petition. The administrative law judge shall serve a copy of the order upon the parties by mail and/or by facsimile transmission.

(B) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(d) Any party aggrieved by the decision of the administrative law judge concerning a petition to compel the production of evidence or to compel the attendance of a witness may, within 30 calendar days of the service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief.

(e) The administrative law judge may, upon his or her own motion, or upon the motion of one or more parties to the action and upon a showing of good cause, exercise his or her discretion to continue the initial hearing date in order to resolve any contested discovery issues.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

HISTORY

1. New section filed 8-12-2002; operative 8-12-2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 2-28-2006; operative 2-28-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 57.4: Petition to Quash or for Protective Order.

(a) Any party claiming that a request for discovery pursuant to Section 57.2 is improper under that section or is otherwise privileged or exempt from discovery, may object to its terms by serving and filing with the administrative law judge and the party requesting the disputed discovery, a petition to quash or for a protective order. The petition shall state: (1) a description of the matters sought to be discovered; (2) the reason(s) why the matter is not discoverable under Section 57.2, or is otherwise privileged or exempt from discovery; and (3) that a reasonable and good faith attempt has been made to contact the requesting party and resolve the matter informally.

(b)(1) The petition shall be served upon the party seeking discovery and filed with the administrative law judge within 10 calendar days after the moving party was served with the discovery request, or within another time provided by stipulation, whichever period is longer. No petition may be filed after the applicable time period has expired except upon petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reason(s) for the petition, the diligence or lack of diligence of the petitioning party, whether the granting of the petition will delay commencement of the hearing on the date set, and the possible prejudice of the action to any party.

(2) The party requesting discovery shall have a right to file a written answer to the petition with the administrative law judge and served on the petitioner within 5 calendar days of the service of the petition to quash and/or for a protective order.

(3)(A) Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response and issue a decision granting or denying the petition within 20 calendar days after the filing of the petition.

(B) The administrative law judge shall have the discretion to continue any evidentiary hearing or to conduct the hearing prior to the issuance of a decision on the petition.

(C) Where the matter sought to be discovered is in the possession, custody, or control of the responding party and the responding party asserts that the matter is not a discoverable matter under Section 57.2, or is privileged or otherwise exempt from disclosure, the administrative law judge may order lodged with him or her matters that are provided in Section 915(b) of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(c) A ruling of the administrative law judge concerning a petition to quash or for a protective order is subject to review in the same manner and to the same extent as the Board's final decision in the proceeding. Any party aggrieved by the decision of the administrative law judge concerning a petition to quash the production of evidence and/or for a protective order may, within 30 calendar days of the service of the decision, file a petition to quash and/or for protective order in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. A party applying for judicial relief from the decision of the Board or the administrative law judge concerning any disputed discovery issue shall give notice to the Board and all other parties to the action. The notice may be either oral at the time of the administrative law judge's decision, or written at the same time application is made for judicial relief.

NOTE: Authority cited: Sections 18701 and 18214, Government Code. Reference: Section 87164, Education Code; Section 915, Evidence Code; and Sections 8547.8, 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

HISTORY

1. New section filed 8-12-2002; operative 8-12-2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 33).
2. Amendment of section and NOTE filed 2-28-2006; operative 2-28-2006. Exempt from the Administrative Procedure Act pursuant to section 18211 of the Government Code and submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations pursuant to section 18214 of the Government Code (Register 2006, No. 9).

§ 60. Definition and Purpose.

Mediation refers to a process whereby a neutral third person called a Mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In mediation, decision making authority rests with the parties, not the Mediator. The role of the Mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

The purpose of the State Personnel Board's State Employee Mediation Program (SEMP) is to provide an efficient, inexpensive, non-adversarial alternative to managing or resolving disputes that occur within the workplace, without diminishing the rights of any party to the mediation to subsequently address the issue(s) in a more traditional administrative, judicial, or other forum.

NOTE: Authority cited: Section 18701, Government Code. Reference: Section 11420.20, Government Code.

HISTORY

1. New section filed 4-4-2002; operative 4-4-2002. Submitted to OAL for printing only pursuant to Government Code section 18214 (Register 2002, No. 14). For prior history, see Register 90, No. 22.

§ 60.1. Exclusivity.

The model regulations related to alternative dispute resolution implemented by the Office of Administrative Hearings (1 Cal. Code Regs.,

SENATE RULES COMMITTEE	AB 647
Office of Senate Floor Analyses	
1020 N. Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 647
 Author: Horton (D)
 Amended: 8/27/01 in Senate
 Vote: 21

SENATE PUBLIC EMP. & RET. COMMITTEE : 5-0, 7/9/01
 AYES: Soto, Haynes, Karnette, Oller, Romero

SENATE APPROPRIATIONS COMMITTEE : 10-0, 8/20/01
 AYES: Alpert, Battin, Bowen, Burton, Escutia, Karnette,
 McPherson, Murray, Perata, Poochigian

ASSEMBLY FLOOR : 77-0, 6/7/01 - See last page for vote

SUBJECT : Reporting by Community College Employees of
 Improper
 Governmental Activities Act

SOURCE : Faculty Association of California Community
 Colleges
 California Teachers Association

DIGEST : This bill expands provisions of the Reporting by
 Community College Employees of Improper Governmental
 Activities Act to authorize community college employees to
 file retaliation complaints with the State Personnel Board.

Senate Floor Amendments of 8/27/01 clarify that (1) the
 existing provisions that allow the State Personnel Board
 (SPB) to bill state agencies for hearings conducted on
 whistleblower cases will also apply to community colleges

CONTINUED

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for whistleblower hearings that may be conducted pursuant to this bill, and (2) whistleblower complainants are not compelled to report incidents to the SPB by this bill before they take their complaints to a court.

ANALYSIS : Existing law, pursuant to Chapter 531, Statutes of 2000, provides the Reporting by Public School Employees of Improper Governmental Activities (Act) and the Reporting by Community College Employees of Improper Governmental Activities Act, which provides protections to public school employees who report improper governmental activities.

This bill:

1. Allows community college employees to file a written complaint of reprisal or retaliation for reporting improper governmental activities with the State Personnel Board (SPB).
2. Requires SPB to initiate a hearing or investigation within 10 days of receiving a written complaint and requires SPB to complete findings within 60 working days.
3. Provides that if the SPB finds acts of alleged misconduct by the supervisor or employer, the supervisor or employer may request a hearing before SPB.
4. Provides that, if after the hearing, SPB determines that a violation of the Act has occurred, or if no hearing is requested and SPB has indicated in its findings that a violation has occurred, SPB may order any appropriate relief, including reinstatement, back pay, restoration of lost service credit, and the expunging of any adverse records of the employee.
5. Provides that when SPB determines that a supervisor or employer has committed a violation of the Act, that information will be entered into their personnel records.
6. Requires SPB to annually submit a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal action taken with regard to the Act.

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FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2001-02</u>	<u>2002-03</u>
<u>2003-04</u>	<u>Fund</u>	

SPB investigations -- Unknown, probably less than
 \$150 -- General

SUPPORT : (Verified 8/28/01)

California Teachers Association (co-source)
 Faculty Association of California Community Colleges
 (co-source)
 Johan Klehs, Member, State Board of Equalization
 California Federation of Teachers
 California Independent Public Employees Legislative Council
 California School Employees Association

OPPOSITION : (Verified 8/28/01)

Community College League of California
 State Department of Finance

ARGUMENTS IN SUPPORT : According to the author's office:

"Under current law, community college employees are protected from retaliation for disclosing improper governmental activity as long as the employee discloses the improper governmental activity to an official agent. However, an official agent is defined as a community college administrator, member of the governing board of a community college district or the Chancellor of the California Community Colleges."

ARGUMENTS IN OPPOSITION : According to the Community College League of California:

"The League is opposed to altering the responsibility for the investigation and complaints from local law enforcement agencies and employers to the State Personnel Board. The League is opposed to establishing matters of local

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community college employees under the auspice of the SPB, and must raise serious governance issues with this proposal. Furthermore, the bill singles out community college employees for this application, and disregards the original law, which dealt with public school and community college employees. If changes to the investigation process are necessary, then the application should be imposed on both school employees and community colleges to fulfill the original intent of AB 2472 (Chapter 531, Statutes of 2000) to ensure consistency of practice for employees of local

education agencies."

ASSEMBLY FLOOR :

AYES: Aanestad, Alquist, Aroner, Ashburn, Bates, Bogh,
Briggs, Calderon, Bill Campbell, John Campbell,
Canciamilla, Cardenas, Cardoza, Cedillo, Chan, Chavez,
Chu, Cohn, Corbett, Correa, Cox, Daucher, Diaz,
Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg,
Harman, Havice, Hollingsworth, Horton, Jackson, Keeley,
Kehoe, Kelley, Koretz, La Suer, Leach, Leonard, Leslie,
Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews,
Migden, Mountjoy, Nakano, Nation, Negrete McLeod,
Oropeza, Robert Pacheco, Rod Pacheco, Pavley, Pescetti,
Reyes, Richman, Runner, Salinas, Shelley, Simitian,
Steinberg, Strickland, Strom-Martin, Thomson, Vargas,
Washington, Wayne, Wesson, Wiggins, Wright, Wyland,
Wyman, Hertzberg

TSM:cm 8/28/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Commission on State Mandates

Original List Date: 6/18/2003

Mailing Information: Draft Staff Analysis

Last Updated: 4/26/2007

List Print Date: 07/19/2007

Mailing List

Claim Number: 02-TC-24

Issue: Reporting Improper Governmental Activities

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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