

COMMISSION ON STATE MANDATES

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September 11, 2008

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

Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

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

RE: Final Staff Analysis, Revised Draft Parameters and Guidelines, and Hearing Date Reporting Improper Governmental Activities, 02-TC-24
Education Code Section 87164
Statutes 2001, Chapter 416, Statutes 2002, Chapter 81
Santa Monica Community College District, Claimant

Dear Mr. Petersen and Ms. Brummels:

The final staff analysis and revised draft parameters and guidelines are enclosed.

Hearing

The revised draft proposed parameters and guidelines are set for hearing on **September 26, 2008**, at 9:30 a.m., Room 447, State Capitol, Sacramento, California. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enclosures

J:mandates/2002/02tc24/corres/psgfsatrans



ITEM 7

**FINAL STAFF ANALYSIS
REVISED DRAFT PARAMETERS AND GUIDELINES**

Education Code Sections 87164

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

Reporting Improper Governmental Activities
02-TC-24

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

On September 27, 2007, the Commission adopted a Statement of Decision on this test claim filed by San Juan Unified School District and Santa Monica Community College District on Education Code sections 44110 – 44114 and 87160 – 87164. These statutes address 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.

If a K-12 or community college employee or applicant for employment is subject to acts of reprisal for disclosing improper governmental activities, the test claim statutes allow the employee or applicant for employment to file a complaint with local law enforcement agencies. People 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, which then must conduct a hearing or investigation to investigate and remedy these complaints.

The Commission found that the plain language of Education Code sections 44110 – 44114 does not legally or practically compel K-12 school districts to engage in any state-mandated activities, and thus, these statutes do not constitute a state-mandated program subject to article XIII B, section 6 of the California Constitution.

However, in regard to community college employees and applicants for employment, the Commission found that Education Code section 87164, subdivision (f) as added by Statutes 2001, chapter 416, and subdivision (c)(1) and (c)(2), as added and amended by Statutes 2002, chapter 81, impose the following reimbursable state-mandated activities upon community college districts when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56–57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment’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), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual’s official personnel file by placing a copy of the State Personnel Board’s decision in that individual’s official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

Discussion

On October 9, 2007, the adopted Statement of Decision and draft parameters and guidelines were issued for the costs incurred beginning January 1, 2003, for the reimbursable activities found in Education Code section 87164, subdivision (c)(1) and (2), and beginning January 1, 2002, for the reimbursable activities found in Education Code section 87164, subdivision (f).

On October 24, 2007, claimant filed comments on staff’s draft parameters and guidelines. Claimant objects to the description in the parameter and guidelines of the reimbursable activities found in Education Code section 87164, subdivision (c)(1) as beginning on January 1, 2003. Claimant argues that subdivision (c)(1) was added as subdivision (c) in 2001 and thus was effective January 1, 2002. In addition, claimant objects to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements, and requests a response to these objections.

On July 14, 2008, the draft staff analysis and revised draft parameters and guidelines were issued addressing claimant’s comments on staff’s original proposed parameters and guidelines. No comments have been filed regarding the draft staff analysis and revised draft parameters and guidelines.

Objection to the description of the reimbursable activities

The adopted Statement of Decision addresses the beginning of the reimbursement period for the mandated activities found in Education Code section 87164, subdivision (c)(1) (formerly subdivision (c)). The Commission found that subdivision (c)(1), as added by Statutes 2002, chapter 81, imposes state-mandated activities beginning on January 1, 2003, as stated in the draft parameters and guidelines.

In addition, the Statement of Decision in *Reporting Improper Governmental Activities* (02-TC-24) is final, and the Commission does not have jurisdiction to reconsider or amend the Statement of Decision.¹

Objections to "boilerplate" language in sections IV, V, and VI of the parameters and guidelines

Within claimant's objections to the boilerplate language, claimant states, "Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past decisions."

Staff does not suggest any changes to the boilerplate language at this time. In addition, there is a pending request from the State Controller's Office to amend the boilerplate language. Staff recommends that all discussions about parameters and guidelines boilerplate occur when the State Controller's Office request is considered.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines as modified by staff, beginning on page 12.

Staff also recommends that the Commission authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ Claimant did not request reconsideration of the decision pursuant to Government Code section 17559 or challenge the decision in court.

STAFF ANALYSIS

Claimant

Santa Monica Community College District

Chronology

- 06/05/03 Test Claim (02-TC-24) filed by San Juan Unified School District and Santa Monica Community College District
- 09/27/07 Commission hears test claim and adopts Statement of Decision
- 10/09/07 Statement of Decision, draft parameters and guidelines (02-TC-24) issued
- 10/24/07 Claimant submits comments on draft parameters and guidelines
- 07/08/08 Draft staff analysis and draft parameters and guidelines issued

Background

Summary of the Mandate

On September 27, 2007, the Commission adopted a Statement of Decision on this test claim filed by San Juan Unified School District and Santa Monica Community College District on Education Code sections 44110 – 44114 and 87160 – 87164. These statutes address 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.

If a K-12 or community college employee or applicant for employment is subject to acts of reprisal for disclosing improper governmental activities, the test claim statutes allow the employee or applicant for employment to file a complaint with local law enforcement agencies. People 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, which then must conduct a hearing or investigation to investigate and remedy these complaints.

The Commission found that the plain language of Education Code sections 44110 – 44114 does not legally or practically compel K-12 school districts to engage in any state-mandated activities, and thus, these statutes do not constitute a state-mandated program subject to article XIII B, section 6 of the California Constitution.

However, in regard to community college employees and applicants for employment, the Commission found that Education Code section 87164, subdivision (f) as added by Statutes 2001, chapter 416, and subdivision (c)(1) and (c)(2), as added and amended by Statutes 2002, chapter 81, impose the following reimbursable state-mandated activities upon community college districts when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56–57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment’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), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual’s official personnel file by placing a copy of the State Personnel Board’s decision in that individual’s official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

Procedural Background

On October 9, 2007, the adopted Statement of Decision and draft parameters and guidelines were issued for the costs incurred beginning January 1, 2003, for the reimbursable activities found in Education Code section 87164, subdivision (c)(1) and (2), as added and amended by Statutes 2002, chapter 81; and beginning January 1, 2002, for the reimbursable activities found in Education Code section 87164, subdivision (f), as added by Statutes 2001, chapter 416.²

Claimant comments on the proposed parameters and guidelines

On October 24, 2007, claimant Santa Monica Community College District filed comments on staff’s proposed parameters and guidelines.³

Objection to the description of the reimbursable activities

With respect to the description of the reimbursable activities, specifically for the reimbursable activities found in Education Code section 87164, subdivision (c)(1), claimant argues, “[s]ubdivision (c)(1) was added as subdivision (c) by Chapter 416, Statutes of 2001, and is thus effective January 1, 2002, *not* 2003, as indicated in the proposed parameters and guidelines.” (Original emphasis.)⁴

Objections to “boilerplate” language in sections IV, V, and VI of the parameters and guidelines

Claimant objects to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements, and request a response to these objections. Regarding source documentation language, claimant states the following:

For the record and preservation of appeal rights, the test claimant objects to the boilerplate language regarding source documents, contemporaneous documents

² Exhibit A.

³ Exhibit B.

⁴ *Id.* at p.1.

and corroborating evidence. It is a standard of general application without independent statutory or regulatory basis. It is a standard which generally exceeds the documentation methods utilized in the usual course of business for local agencies and the standard required for substantiation of the use of, or application for, other state funds by local agencies. It is a standard imposed retroactively upon claimants without prior notice. These and other objections were made before by local agency representatives in previous Commission proceedings. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines. Unless there is some interest by the commission to revisit these issues, the parameters and guidelines can proceed since the boiler plate is consistent with past decisions.⁵

Similar arguments are raised about the indirect cost rate language and record retention requirements.

On July 14, 2008, the draft staff analysis and revised draft parameters and guidelines were issued addressing claimant's comments on staff's original proposed parameters and guidelines.⁶ No comments have been filed regarding the draft staff analysis and revised draft parameters and guidelines.

Discussion

Objection to the description of the reimbursable activities

Education Code section 87164, subdivision (c)(1), as added and amended by Statutes 2002, chapter 81, requires that a State Personnel Board hearing regarding a written complaint by a community college employee or applicant for employment alleging reprisal or retaliation for disclosing improper governmental activity to "be conducted in accordance with ... the rules of practice and procedure of the State Personnel Board." These rules of practice and procedure, set forth by California Code of Regulations, title 2, sections 56-57.4, require community college districts to cooperate fully with the State Personnel Board executive officer or investigator during an investigation or be subject to disciplinary action for impeding the investigation.⁷ In addition, State Personnel Board investigators are given the authority to administer oaths, subpoenas, and require the attendance of witnesses and the production of books or papers, and cause witness depositions pursuant to Government Code section 18671.⁸ If the State Personnel Board 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 State Personnel Board a written response to the complaint addressing the allegations contained in the complaint. During the informal hearing the administrative law judge conducting the hearing shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the

⁵ *Id.* at p. 2-3.

⁶ Exhibit C.

⁷ California Code of Regulations, title 2, section 56.3, Register 2006, No. 10 (March 10, 2006).

⁸ *Ibid.* Government Code section 18678 provides that a failure to appear and testify or to produce books or papers pursuant to a State Personnel Board subpoena issued pursuant to State Personnel Board regulations constitutes a misdemeanor.

hearing, and otherwise conduct the hearing in a manner and to the degree he or she deems appropriate.⁹

As a result, the Statement of Decision in *Reporting Improper Governmental Activities* (02-TC-24), on page 27, concludes:

... that Education Code section 87164, subdivision (f), as added by Statutes 2001, chapter 416, and subdivisions (c)(1), and (c)(2), as added and amended by ***Statutes 2002, chapter 81***, constitutes a reimbursable state-mandated program on community colleges 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 an employee or applicant for employment files a 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 employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment'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)***). (Emphasis added.)

Claimant has not requested any activities beyond the activities approved by the Commission in the Statement of Decision, however, claimant argues that “[s]ubdivision (c)(1) was added as subdivision (c) by chapter 416, Statutes of 2001, and is thus effective January 1, **2002**, not 2003, as indicated in the proposed parameters and guidelines.”¹⁰

The Statement of Decision, on pages 20 through 22, thoroughly addressed the beginning of the reimbursement period for the mandated activities found in Education Code section 87164, subdivision (c)(1) (formerly subdivision (c)). The Commission found that former subdivision (c), as amended by Statutes 2001, chapter 416, *did not* impose state-mandated activities upon community college districts, while subdivision (c)(1), as added by Statutes 2002, chapter 81 (eff. Jan. 1, 2003) *did* impose state-mandated activities. The Statement of Decision states the following:

Education Code section 87164, subdivision (c), as amended in 2001 (Stats. 2001, ch. 416), 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,

⁹ California Code of Regulations, title 2, section 56.4, Register 2006, No. 10 (March 10, 2006).

¹⁰ Exhibit B, p. 1.

or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code.

Claimant contends that Education Code section 87164, subdivision (c) requires claimant to appear and participate in hearings and investigations initiated by the State Personnel Board. However, the plain language of subdivision (c) indicates only that the State Personnel Board shall initiate a hearing or investigation of a community college employee or applicant for employment's complaint of reprisal. Government Code section 18671.2, which subdivision (c) incorporates by reference, requires that the State Personnel Board be reimbursed for the entire cost of hearings conducted by the hearing office pursuant to statutes administered by the board, or by interagency agreement. ***Thus, the plain language of Education Code section 87164, subdivision (c), as amended in 2001, does not require community college districts to appear and participate in State Personnel Board hearings or investigations.*** Effective, August 14, 2002, the State Personnel Board adopted California Code of Regulations, title 2, sections 56–57.4, to implement whistleblower laws, including Education Code sections 87160 – 87164. These regulations address the participation of community college districts in the State Personnel Board hearing and investigations processes, however, these regulations have not been pled by claimants. Therefore, the Commission makes no independent findings on the regulations.

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 State Personnel Board regulations provide that community college districts are required to cooperate fully with the State Personnel Board executive officer or investigator during an investigation or be subject to disciplinary action for impeding the investigation. 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 Government Code section 18671. If the State Personnel Board 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 State Personnel Board 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. ***As a result, Education Code section 87164, subdivision (c)(1), as added by Statutes 2002, chapter 81, requires 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 employee or applicant for employment and the State

Personnel Board 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.

Claimant further contends that Education Code section 87164, *subdivision (c), as amended in 2001*, requires community college districts to reimburse the State Personnel Board 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 State Personnel Board shall be reimbursed for the entire cost of hearings conducted by the hearing office and that the State Personnel Board “may bill appropriate *state agencies* for the costs incurred in conducting hearings involving *employees of those state agencies*.” However, because community college districts are not “state agencies,” and community college employees and applicants for employment are not employees of “state agencies,” the State Personnel Board does not have statutory authority to bill community college districts, under the 2001 statute. *Thus, pursuant to the plain language of Education Code section 87164, subdivision (c), as amended in 2001, a community college district is not required to reimburse the State Personnel Board for all of the costs of State Personnel Board hearings resulting from a complaint brought by an employee or applicant for employment with that community college district.*

In 2002, Education Code section 87164 was substantively amended to add subdivision (c)(2), which specifically provides:

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 that employs the complaining employee, or with whom the complaining applicant for employment has filed his or her employment application. [Emphasis added.]

Thus, the Commission 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 State Personnel Board hearing as a result of complaints filed by employees or applicants for employment with that community college district. (Emphasis added.)

Thus, for the reasons discussed in the Statement of Decision the reimbursement period for the reimbursable activities found in Education Code section 87164, subdivision (c)(1) begins on **January 1, 2003**, as stated in the draft parameters and guidelines.

The Commission’s Statement of Decision is final since the claimant did not request reconsideration of the decision pursuant to Government Code section 17559 or challenge the decision in court. Thus, the Commission does not have jurisdiction to change its prior final decision.

Summary of Mandate

This section of the parameters and guidelines has been amended to clarify the findings of the Statement of Decision and to specify the title and sections of the California Code of Regulations that set forth the rules of practice and procedure of the State Personnel Board.

Period of Reimbursement

Language regarding estimated claims in this section of the parameters and guidelines has also been stricken in the proposed parameters and guidelines. On February 16, 2008, Statutes 2008, chapter 6 (ABX3 8) became effective and repealed the authority for eligible claimants to file and be paid for estimated reimbursement claims.

In addition, this section of the parameters and guidelines has been amended to specify the beginning of the reimbursement periods for the reimbursable activities imposed by Education Code section 87164, subdivisions (c)(1), (c)(2), and (f).

Objections to "boilerplate" language in sections IV, V, and VI of the parameters and guidelines

Claimant objects to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements, and requests a response to these objections. Regarding source documentation language, claimant states the following:

For the record and preservation of appeal rights, the test claimant objects to the boilerplate language regarding source documents, contemporaneous documents and corroborating evidence. It is a standard of general application without independent statutory or regulatory basis. It is a standard which generally exceeds the documentation methods utilized in the usual course of business for local agencies and the standard required for substantiation of the use of, or application for, other state funds by local agencies. It is a standard imposed retroactively upon claimants without prior notice. These and other objections were made before by local agency representatives in previous Commission proceedings. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines.¹¹

Similar arguments are raised about the indirect cost rate language and record retention requirements.¹²

With respect to these objections, claimant further stated the following: *Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past decisions.*¹³ (Emphasis added.)

Staff does not suggest any changes to the boilerplate language at this time. There is also a pending request from the State Controller's Office to amend the boilerplate language. Staff

¹¹ Exhibit B, p. 2.

¹² *Id.* at p.2-3.

¹³ *Ibid*

recommends that all discussions about parameters and guidelines boilerplate occur when the State Controller's Office request is considered.

Staff Recommendation

Staff recommends that the Commission adopt the proposed parameters and guidelines as modified by staff, beginning on page 12.

Staff also recommends that the Commission authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.

REVISED DRAFT PARAMETERS AND GUIDELINES

Education Code Section 87164

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

Reporting Improper Governmental Activities

02-TC-24

Santa Monica Community College District, Claimant

I. SUMMARY OF THE MANDATE

On September 27, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision on this test claim filed by Santa Monica Community College District on Education Code sections 87160 – 87164. These statutes address the procedures used to protect 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.

If a community college employee or applicant for employment is subject to acts of reprisal for disclosing improper governmental activities, the test claim statutes allow the employee or applicant for employment to file a complaint with local law enforcement agencies. People that have been found to have engaged in retaliatory or coercive activities are subject to civil and criminal liabilities, and punitive damages. In addition, community college employees and applicants for employment are allowed to file their complaint with the State Personnel Board, which then must conduct a hearing or investigation to investigate and remedy these complaints.

The Commission found that Education Code section 87164, subdivision (f) as added by Statutes 2001, chapter 416, and subdivisions (c)(1) and (c)(2), as added and amended by Statutes 2002, chapter 81, impose the following reimbursable state-mandated activities upon community college districts when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163 finding that the test claim legislation imposes a partially reimbursable state-mandated program upon community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment'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), as added and amended by Stats. 2002, ch. 81).

- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual's official personnel file by placing a copy of the State Personnel Board's decision in that individual's official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

II. ELIGIBLE CLAIMANTS

Any community college district which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 5, 2003, establishing eligibility. ~~Therefore, the costs incurred for compliance with this program are eligible~~ for reimbursement on or after July 1, 2001, ~~unless otherwise specified in the Commission's Statement of Decision~~. However, Education Code section 87164, subdivisions (c)(1) and (c)(2) (Stats. 2002, ch. 81), became effective on January 1, 2003. Therefore costs incurred for compliance with the mandated activities found in subdivisions (c)(1) and (c)(2) are reimbursable on or after January 1, 2003. Education Code section 87164, subdivision (f) (Stats. 2001, ch. 416), became effective on January 1, 2002. Therefore, costs incurred for compliance with the mandated activities found in subdivision (f) are reimbursable on or after January 1, 2002.

Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs of the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,"

and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment’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), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual’s official personnel file by placing a copy of the State Personnel Board’s decision in that individual’s official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price

after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. **RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹⁴ is subject to the initiation

¹⁴ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Commission on State Mandates

Original List Date: 6/18/2003

Mailing Information: Final Staff Analysis

Last Updated: 9/21/2007

List Print Date: 09/11/2008

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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