

## **From Liebert Cassidy Whitmore (to Cerritos College, July 5, 2017)**

### **A court would likely hold community colleges are state agencies for purposes of compliance with Government Code section 11139.8**

Courts have held for purposes of Eleventh Amendment immunity, that community colleges are an arm of the state. In doing so, courts consider a number of factors including “whether a money judgment against the entity would be satisfied out of state funds; the degree of funding the entity receives from the state; whether the entity has independent authority to raise funds; the extent of state control over the entity's fiscal affairs; whether the entity performs central governmental functions; whether the entity may sue, be sued, and hold property in its own name; the corporate status of the entity under state law; the degree of autonomy enjoyed by the entity; the entity's immunity from state taxation; and the geographic scope of the entity's operation.” (*Kirchmann v. Lake Elsinore Unified School Dist.* (1997) 83 Cal.App.4th 1098, 1106 *Lynch v. San Francisco Housing Authority* (1997) 55 Cal.App.4th 527, 535,.) Construing California law, the Ninth Circuit has held that community college districts are state entities for Eleventh Amendment purposes (*Mitchell v. Los Angeles Community College Dist.* (9th Cir.1988) 861 F.2d 198, 201 [“California state colleges and universities are ‘dependent instrumentalities of the state[;]’ “ District's “budget is made up of funds received from the state's general fund pursuant to a state calculated formula” and “some fees charged by the district's colleges go to the state”], *Belanger v. Madera Unified School Dist.* (9th Cir.1992) 963 F.2d 248, 251 [California school district entitled to Eleventh Amendment immunity because judgment against the school district would be satisfied out-of-state funds and district is state agency that performs central governmental functions]; *Cerrato v. San Francisco Community College Dist*

to and not the funding source, unless the trip falls under one of the listed exceptions which are as follows:

- Enforcement of California law, including auditing and revenue collection.
- Litigation.
- To meet contractual obligations incurred before January 1, 2017.
- To comply with requests by the federal government to appear before committees.
- To participate in meetings or training required by a grant or required to maintain grant funding.
- To complete job-required training necessary to maintain licensure or similar standards required for holding a position, in the event that comparable training cannot be obtained in California or a different state not subject to the travel prohibition.
- For the protection of public health, welfare, or safety, as determined by the affected agency, department, board, authority, or commission, or by the affected legislative office.