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March 11, 2015

Ms. Sigrid Asmundson
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Proposed Decision**
Health Fee Elimination, 08-4206-I-18
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2002-2003, 2003-2004, and 2004-2005
Los Rios Community College District, Claimant

Dear Ms. Asmundson and Ms. Kanemasu:

Hearing

This matter is set for hearing on **Friday, March 27, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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 1187.9(b) 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.

Sincerely,

Heather Halsey
Executive Director

Hearing Date: March 27, 2015
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ITEM 10

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

Former Education Code Section 72246 (Renumbered as § 76355)[1]

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.); Statutes 1987, Chapter 1118

Health Fee Elimination

Fiscal Years 2002-2003, 2003-2004, and 2004-2005

08-4206-I-18

Los Rios Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses reductions totaling $2,554,615 made by the State Controller's Office (Controller) to reimbursement claims filed by Los Rios Community College District (claimant) for fiscal years 2002-2003, 2003-2004 and 2004-2005 under the *Health Fee Elimination* program.

The following issues are in dispute:

- Reduction of all costs claimed for salaries and benefits and services and supplies claimed that the Controller found were unallowable or not supported by documentation;
- Reduction of indirect costs based on asserted faults in the development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.
- An alleged $814,928 already paid to the claimant, or discharged as debt.

Although the parties raise several substantive issues, the sole issue discussed and determined in this incorrect reduction claim (IRC) is the reduction for the offsetting health fee revenue of $3,554,470 authorized to be charged and applied to this program. Staff finds that the adjustment is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Since the offsetting revenue covers the total amount claimed for this program in fiscal years 2002-2003 through 2004-2005 ($2,554,615), the remaining issues are not addressed.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for the purpose of voluntarily providing health supervision and services, direct and indirect medical hospitalization services,

[1] Statutes 1993, chapter 8.

and operation of student health centers.[2] In 1984, the Legislature repealed the community colleges' fee authority for health services.[3] However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at $7.50 for each semester (or $5 per quarter or summer semester).[4]

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.[5] As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.[6] In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than $7.50 for each semester, or $5 for each quarter or summer semester.[7] As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.[8]

Procedural History

Claimant filed its reimbursement claim for 2002-2003 on January 8, 2004,[9] for 2003-2004 on January 11, 2006,[10] and for 2004-2005 on January 11, 2006.[11] Controller issued its final audit

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[2] Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.]

[3] Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

[4] Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

[5] Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

[6] Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

[7] Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

[8] Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

[9] Exhibit A, IRC attachment, page 151.

[10] Exhibit A, IRC attachment, page 161.

[11] Exhibit A, IRC attachment, page 170.

report on May 21, 2008.[12] Claimant filed the IRC on February 5, 2009.[13] The Controller filed comments on the IRC on October 13, 2014.[14] Claimant filed rebuttal comments on December 12, 2014.[15] Commission on State Mandates (Commission) staff issued a draft proposed decision on the IRC on January 9, 2015. No comments were filed on the draft proposed decision.

Commission Responsibilities

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. 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.[16] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. 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."[17]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[18]

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[12] Exhibit A, IRC attachment, page 57.

[13] Exhibit A, IRC, page 2.

[14] Exhibit B, Controller's comments on the IRC.

[15] Exhibit C, Claimant's comments on the IRC.

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

[17] *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[18] *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[19] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[20]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Reduction based on offsetting student health fee authority.	Claimant asserts that the Controller incorrectly reduced the costs claimed based on health fees authorized to be charged, rather than health fees actually collected. Since the claimant does not impose a health fee on its students, it collected $0 in health service fees during the fiscal years at issue. Claimant therefore asserts that no offsetting revenues were required to be identified.	*Correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.* This issue has been conclusively decided by *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, in which the court held that to the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, the costs cannot be recovered as a state-mandated cost. In addition, the Controller's calculation of authorized health service fees ($3,554,470), based on enrollment data provided by the claimant, is not arbitrary, capricious, or entirely lacking in evidentiary support.

[19] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[20] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Staff Analysis

A. The Controller's Reduction of Costs Claimed for Unreported Offsetting Revenue Authority pursuant to *Clovis Unified* and the Health Fee Rule is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced all costs claimed for the three fiscal years at issue based on claimant's health service fee authority, multiplied by the number of students subject to the fee. Because the district does not collect a health services fee,[21] no offsetting revenue was identified by claimant in the reimbursement claims. Claimant argues that the parameters and guidelines only require a claimant to declare offsetting revenues that the claimant "experiences," and that while the fee that community college districts were authorized to impose may have increased during the applicable audit period, nothing in the Education Code made the increase of those fees mandatory. Claimant argues that the issue is the difference between fees collected and fees collectible.[22]

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified School Dist. V. Chiang*, which specifically addressed the Controller's practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the "Health Fee Rule" states in pertinent part:

> Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.[23]

The court in *Clovis Unified* upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fee districts are *authorized* to charge. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

> To the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.[24]

The court also noted that, "this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"[25] Since the *Clovis* case is a final decision of the court addressing the merits of

[21] Exhibit A, IRC, page 23.

[22] Exhibit A, IRC, pages 23-25.

[23] *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 811.

[24] *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 812.

[25] *Ibid.*

the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.[26]

Therefore, staff finds that the Controller's reduction of unreported offsetting health service fee authority to the extent of the district's fee authority is correct as a matter of law.

Staff further finds that the Controller's calculation of the claimant's authorized offsetting fee revenue totaling $3,554,470 is not arbitrary, capricious, or entirely lacking in evidentiary support because the Controller used the enrollment data available and reported by the claimant.[27]

Since the amount authorized to be charged and required to be identified as offsetting revenue ($3,554,470) exceeds the total amount claimed ($2,554,615), the remaining substantive issues are not addressed in the proposed decision.

Conclusion

Pursuant to Government Code section 17551(d), staff concludes that the reduction for offsetting health service fee revenue is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to deny the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

[26] *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

[27] Exhibit A, IRC, Final Audit Report, page 72.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Former Education Code Section 72246 (Renumbered as § 76355)[28] Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336) Fiscal Years 2002-2003, 2003-2004, and 2004-2005 Los Rios Community College District, Claimant.	Case No.: 08-4206-I-18 *Health Fee Elimination* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted March 27, 2015*)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on March 27, 2015. [Witness list will be included in the adopted decision.]

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

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

This analysis addresses an IRC filed by Los Rios Community College District (claimant) for reductions by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2002-2003, 2003-2004, and 2004-2005 under the *Health Fee Elimination* program. The Controller reduced all costs claimed during the three fiscal years at issue ($2,554,615) for a number of reasons not addressed in this decision.

The Commission finds that the reduction of costs based on offsetting health fee authority of $3,554,470, which exceeds claimant's costs for the mandated program, is correct as a matter of law. The reduction is consistent with the *Clovis Unified School District* decision, which upheld the Controller's reduction of reimbursement claims based on the health service fees districts are authorized to charge.[29] In addition, the Controller's calculation of authorized health service fees,

[28] Statutes 1993, chapter 8.

[29] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

based on enrollment data provided by the claimant, is not arbitrary, capricious, or entirely lacking in evidentiary support.

Pursuant to Government Code section 17551(d), the Commission concludes that the reduction of costs claimed is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

01/08/04	Claimant filed its fiscal year 2002-2003 reimbursement claim.[30]
01/11/06	Claimant filed its reimbursement claims for 2003-2004[31] and 2004-2005.[32]
05/21/08	Controller issued its final audit report.[33]
02/05/09	Claimant filed the IRC.[34]
10/13/14	Controller filed comments on the IRC.[35]
12/12/14	Claimant filed rebuttal comments.[36]
01/09/15	Commission staff issued the draft proposed decision.[37]

II. Background

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for th**e** purpose of voluntarily providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers.[38] In 1984, the Legislature repealed the community colleges' fee authority for health services.[39] However, the Legislature also reenacted

[30] Exhibit A, IRC, page 151.

[31] Exhibit A, IRC, page 161.

[32] Exhibit A, IRC, page 170.

[33] Exhibit A, IRC, page 57.

[34] Exhibit A, IRC, page 2.

[35] Exhibit B, Controller's comments on the IRC.

[36] Exhibit C, Claimant's comments on the IRC.

[37] Exhibit D, Draft Proposed Decision, issued January 9, 2015.

[38] Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.].

[39] Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

section 72246, to become operative on January 1, 1988, in order to reauthorize the fee at $7.50 for each semester (or $5 per quarter or summer semester).[40]

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.[41] As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.[42] In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than $7.50 for each semester, or $5 for each quarter or summer semester.[43] As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services.[44] In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.[45]

On November 20, 1986, the Commission determined that Statutes 1984, chapter 1 imposed a reimbursable state-mandated new program on community college districts. On August 27, 1987, the Commission adopted parameters and guidelines for the *Health Fee Elimination* program. On May 25, 1989, the Commission adopted amendments to the parameters and guidelines to reflect amendments made by Statutes1987, chapter 1118.

The parameters and guidelines generally provide that eligible community college districts shall be reimbursed for the costs of providing a health services program, and that only services specified in the parameters and guidelines and provided by the community college in the 1986-1987 fiscal year may be claimed.

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[40] Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

[41] Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

[42] Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

[43] Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

[44] In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar. (Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

[45] Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8).

Controller's Audit and Summary of the Issues

The Controller reduced the reimbursement claims for costs allegedly incurred during fiscal years 2002-2003, 2003-2004 and 2004-2005 under the *Health Fee Elimination* program. The following reductions are in dispute:

- Salaries and benefits of $20,908 for an increased level of health services provided at American River College, and insufficient documentation at Consumnes River College and Sacramento City College;
- Services and supplies of $27,564, including medical services at sporting events and physical examinations for intercollegiate athletes;
- Overstated indirect costs for fiscal years 2002-2003 and 2003-2004, and understated indirect costs for 2004-2005, resulting in $136,288 in overstated indirect costs;
- Offsetting revenue of $3,554,470 applied from claimant's health service fee authority; and
- An alleged $814,928 already paid to the claimant, or discharged as debt.

The sole issue discussed and determined in this IRC is the reduction of costs based on offsetting health fee authority of $3,554,470. Since the offsetting revenue exceeds the total amount claimed for this program in fiscal years 2002-2003 through 2004-2005 ($2,554,615), the remaining issues are not addressed.

III. Positions of the Parties

Los Rios Community College District

The claimant asserts that the Controller incorrectly reduced all costs claimed for fiscal years 2002-2005, and that the Controller's findings regarding salaries and benefits are incorrect as a matter of law. Claimant argues that neither the parameters and guidelines nor the claiming instructions require claimants to report the number or type of services actually provided, but only require claimants to report the number or types of services available. Claimant also criticizes the method used to calculate the costs as not taking into consideration the actual costs to provide the services, and not accounting for variance in monthly costs or different services.

The reduction for services and supplies included disallowance of costs to provide medical services at sporting events and physical exams for intercollegiate athletics. Claimant disagrees with the Controller's interpretation of Education Code section 76355(d)(2) used to justify its reduction for physical examinations for intercollegiate athletics or salary costs for health professionals at athletic events. Claimant argues that because it does not charge a health services fee, the statute that prohibits expenditures from the fund for these purposes does not apply to claimant.

Although claimant did not obtain federal approval for its indirect cost rate under OMB A-21 for its 2002-2003 and 2003-2004 claims as required by the claiming instructions, claimant asserts that the parameters and guidelines do not require indirect costs to be claimed in accordance with the claiming instructions, and that the claiming instructions were not adopted pursuant to the Administrative Procedure Act. The reduction for indirect costs also results from the Controller's allocation of various costs as direct or indirect pursuant to the claiming instructions. Claimant

argues that the Controller's method arbitrarily assigns costs to different categories of direct or indirect costs.

Claimant also argues that a reduction of its total claim based on uncollected authorized health service fees was incorrect because the parameters and guidelines require claimants to state offsetting savings "experienced," and claimant did not experience offsetting savings for fees that it did not charge to students.[46]

In rebutting the Controller, claimant argues that the Controller's comments of October 12, 2014 "should not be considered as evidence by the Commission in its consideration of the IRC" because they were submitted late in violation of Government Code section 17553(d), which states that the Controller "shall have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim." Claimant argues that section 17553(d) "creates a clear statute of limitations of 90 days in which the SCO may file comments," and that if the SCO comments are allowed to be submitted and relied upon, the language of the statute would be superfluous.[47]

Claimant did not file comments on the draft proposed decision.

State Controller's Office

The Controller maintains that the audit adjustments are correct and that this IRC should be denied. The Controller found that the district provided services during the audit period that it did not provide during 1986-1987, and that the district did not maintain source documentation that showed all services provided. The Controller used the health logs because that was what claimant provided in response to a request for source documentation, and no other documentation was provided. The Controller disagrees with claimant's assertion that neither the parameters and guidelines nor the claiming instructions require claimants to report the number or type of services actually provided.

As to services and supplies, the Controller asserts that Education Code section 76355(d)(2) defines authorized expenditures to not include physical examinations for intercollegiate athletics or the salaries of health professionals for athletic events. Because the mandated program does not require a "maintenance of effort" for athletic-related services, the district is not required to provide these services. Therefore, these are not mandated costs as defined by Government Code section 17514.

The audit also found that overstated and understated indirect cost rates resulted in unallowable indirect costs totaling $136,288. Claimant did not obtain federal approval for its indirect cost rate under OMB A-21 for its 2002-2003 and 2003-2004 claims. For it 2004-2005 claim, claimant did not allocate direct and indirect costs according to the Controller's claiming

[46] Exhibit A, IRC, pages 10-28.

[47] Exhibit C, Claimant's comments on the IRC. The Commission does not address the claimant's interpretation of Government Code section 17553(d) because this decision is based solely on the findings in the audit report, which has not been challenged as untimely, and the decision resolves the IRC as a matter of law.

instructions. Because the claiming instructions are incorporated by reference into the parameters and guidelines, they do not need to be adopted pursuant to the Administrative Procedure Act.

In addition, the Controller found that the claimant understated its authorized health service fees for the audit period by approximately $3.5 million. Using enrollment and exemption data, the Controller recalculated the health fees that the claimant was authorized to collect, and reduced the claim by the amount not stated as offsetting revenues. The Controller argues that "if the district fails to collect fees, it is not relieved from its responsibility to offset those fees from its mandated program claims."[48]

The Controller did not file comments on the draft proposed decision.

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. 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.[49] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. 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."[50]

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[51] Under this standard, the courts have found that:

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[48] Exhibit B, Controller's Comments on IRC, pages 10-26.

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

[50] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[51] *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[52]

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [53] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[54]

A. The Controller's Reductions for Unreported Offsetting Health Service Fee Authority Pursuant to *Clovis Unified* and the Health Fee Rule are Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced all costs claimed for the three fiscal years at issue based on claimant's health service fee authority, multiplied by the number of students subject to the fee. Because the district does not collect a health services fee,[55] claimant did not identify any offsetting revenue in the reimbursement claims.

Claimant argues that the Education Code permits, but does not require, a community college district to levy a health services fee, and that the parameters and guidelines require a community college district to deduct from its reimbursement claims "[a]ny offsetting savings that the claimant experiences as a direct result of this statute…" Claimant argues that "[i]n order for the district to 'experience' these 'offsetting savings' the district must actually have collected these fees." Claimant concludes that "[s]tudent fees actually collected must be used to offset costs, but not student fees that could have been collected and were not."[56]

The Commission finds that the correct calculation and application of offsetting revenue from student health service fees has been resolved by *Clovis Unified School Dist. v. Chiang*, and that the reduction is consistent with the court's decision and is correct as a matter of law.

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[52] *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

[53] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

[54] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

[55] Exhibit A, IRC, page 23.

[56] Exhibit A, IRC, pages 24-25.

After the claimant filed its IRC, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller's practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge those fees. As expressed by the court, the "Health Fee Rule" states in pertinent part:

> Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.[57] (Underline in original.)

The Health Fee Rule relies on Education Code section 76355(a), which provides in relevant part:

> (a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars ($10) for each semester, seven dollars ($7) for summer school, seven dollars ($7) for each intersession of at least four weeks, or seven dollars ($7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.
>
> (a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar ($1) above the existing fee, the fee may be increased by one dollar ($1).[58]

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases at the same rate as the Implicit Price Deflator; when that calculation produces an increase of one dollar above the existing fee, the fee may be increased by one dollar.[59] The Chancellor of the California Community Colleges issues a notice to the governing boards of all community colleges when a fee increase is triggered.[60] Claimant argues that the Controller cannot rely on the Chancellor's notice to adjust the claim for 'collectible' student health services fees because the fees levied on students are raised by the governing board

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[57] *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 811.

[58] Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

[59] See Education Code section 76355 (Stats. 1995, ch. 758 (AB 446)). The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

[60] Exhibit A, IRC, California Community Colleges Chancellor's Office, Student Health Fee Increase, March 5, 2001, pages 148-149.

of the community college district.[61] But the *authority* to impose the health service fees increases automatically with the Implicit Price Deflator, as noticed by the Chancellor. Accordingly, the court in *Clovis Unified* upheld the Controller's use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

> To the extent a local agency or school district "has the authority" to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.[62]

The court also notes that, "this basic principle flows from common sense as well. As the Controller succinctly puts it, 'Claimants can choose not to require these fees, but not at the state's expense.'"[63] Additionally, in responding to claimant's argument that, "since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission's P&G's",[64] the court held:

> To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.[65] (Italics added.)

Thus, pursuant to the court's decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by claimant for the *Health Fee Elimination* program is valid. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.[66] In addition, the *Clovis* decision is binding on the claimant under principles of collateral estoppel.[67] Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.[68] Although the claimant to this IRC was not a party to the *Clovis* action, the

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[61] Exhibit A, IRC, pages 23-27.

[62] *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794, 812.

[63] *Ibid.*

[64] *Ibid.* (Original italics.)

[65] *Clovis Unified School Dist. v. Chiang*, *supra*, 188 Cal.App.4th 794, 812.

[66] *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

[67] The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

[68] *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

claimant is in privity with the petitioners in *Clovis*. "A party is adequately represented for purposes of the privity rule if his or her interests are so similar to a party's interest that the latter was the former's virtual representative in the earlier action."[69]

The Commission further finds that the Controller's calculation of the claimant's authorized offsetting fee revenue totaling $3,554,470 is not arbitrary, capricious, or entirely lacking in evidentiary support because the Controller used the enrollment data available and reported by the claimant. The Controller obtained student enrollment, Board of Governors Grant (BOGG) recipient, and apprenticeship program enrollment data that the claimant reported to the Chancellor's Office, and calculated the authorized health service fees using the rates that the Chancellor's Office noticed during the fiscal years at issue.[70]

Therefore, the Commission finds that the Controller's reduction of costs based on the claimant's unreported offsetting fee authority is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support. Since the amount authorized to be charged and required to be identified as offsetting revenue ($3,554,470) exceeds the total amount claimed ($2,554,615), the remaining substantive issues in the IRC are not addressed.

V. Conclusion

Pursuant to Government Code section 17551(d), the Commission concludes that the reduction of costs claimed is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission denies this IRC.

[69] *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

[70] Exhibit A, IRC, Final Audit Report, page 72.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

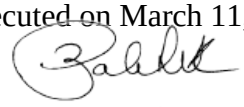
I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 11, 2015, I served the:

Proposed Decision
Health Fee Elimination, 08-4206-I-18
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2002-2003, 2003-2004, and 2004-2005
Los Rios Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 11, 2015 at Sacramento, California.



_____

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COMMISSION ON STATE MANDATES

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Last Updated: 2/3/15

Claim Number: 08-4206-I-18

Matter: Health Fee Elimination

Claimant: Los Rios Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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