

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



May 15, 2015

Mr. Keith Petersen  
SixTen & Associates  
P.O. Box 340430  
Sacramento, CA 95834-0430

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**

*Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-10*  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961 ; Statutes 1991, Chapter 1213  
Fiscal Years 1999-2000 through 2001-2002  
Foothill-De Anza Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The proposed decision for the above-named matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, May 29, 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,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM 4**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961 ; Statutes 1991, Chapter 1213

*Collective Bargaining and Collective Bargaining Agreement Disclosure*

Fiscal Years 1999-2000 through 2001-2002

05-4425-I-10

Foothill-De Anza Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This analysis addresses reductions made by the State Controller's Office (Controller) to Foothill-De Anza Community College District's (claimant's) reimbursement claims for costs incurred during fiscal years 1999-2000 through 2001-2002 under the *Collective Bargaining* program.

The following issues are in dispute:

- The statutory deadlines for initiation and completion of an audit;
- Reductions of a portion of salaries and benefits for part-time teachers, and a portion of salaries and benefits for management employees, based on asserted insufficient documentation or duplicate claiming; and
- Reduction of productive hourly rates based on documentation provided by the claimant that substantiates a lower rate than that claimed.

As explained herein, staff finds that the original final audit report was timely initiated and timely completed, but that the revised audit report was not timely completed. However, the revised audit report in this case makes no reductions and reinstates some of the costs reduced in original final audit. To the extent that the revised audit moots issues raised in the IRC filing by reinstating claimed costs, the Commission on State Mandates (Commission) may take official notice of the revised audit.

Staff also finds the Controller has not identified a valid reason for the remaining reductions. Therefore, the Controller's determination that these costs were unsupported, or insufficiently supported is entirely lacking in evidentiary support, and these reductions are incorrect. However, staff finds that the Controller's reductions with respect to productive hourly rates were consistent with the parameters and guidelines and supported by evidence in the record, and are therefore correct; and, the Controller's reductions with respect to duplicate costs claimed for salaries and benefits were correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

### Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates

On July 17, 1978, the Board of Control, predecessor to the Commission, found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and were amended on January 27, 2000.

At the time the reimbursement claims at issue were prepared and submitted to the Controller, the amended parameters and guidelines, adopted on January 27, 2000, were applicable. These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1 of the Government Code, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;
- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.<sup>1</sup>

### **Procedural History**

On January 5, 2001, claimant filed its fiscal year 1999-2000 reimbursement claim with the Controller. On December 21, 2001, claimant filed its fiscal year 2000-2001 reimbursement claim.<sup>2</sup> On January 13, 2003, claimant’s fiscal year 2001-2002 reimbursement claim was signed

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<sup>1</sup> Exhibit A, Incorrect Reduction Claim, pages 29-39 [Parameters and Guidelines].

<sup>2</sup> Exhibit A, IRC 05-4425-I-10, page 20; Exhibit B, Controller’s Comments, page 2 [The Controller states that the 2000-2001 claim was not actually received until January 8, 2002, but because the analysis herein concludes that the earlier filing date does not affect the statutory deadline for audits, it is not necessary to resolve this issue.].

and dated.<sup>3</sup> On March 12, 2003, an audit entrance conference was held.<sup>4</sup> On July 2, 2004, the Controller's audit report was issued.<sup>5</sup> On September 13, 2005, claimant filed this IRC.<sup>6</sup> On March 12, 2008, the Controller submitted comments on the IRC.<sup>7</sup> On August 24, 2009, the claimant filed rebuttal comments.<sup>8</sup> On October 9, 2012, the Controller issued a revised audit report.<sup>9</sup>

On April 3, 2015, Commission staff issued the draft proposed decision.<sup>10</sup> On April 9, 2015, the claimant submitted written comments on the draft proposed decision.<sup>11</sup> On April 24, 2015, the Controller submitted written comments on the draft proposed decision.<sup>12</sup>

### **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.<sup>13</sup> 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

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<sup>3</sup> Exhibit A, IRC 05-4425-I-10, page 415.

<sup>4</sup> Exhibit B, Controller's Comments, page 2.

<sup>5</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>6</sup> Exhibit A, IRC 05-4425-I-10, page 1.

<sup>7</sup> Exhibit B, Controller's Comments.

<sup>8</sup> Exhibit C, Claimant Rebuttal Comments.

<sup>9</sup> Exhibit D, Controller's Revised Audit Report.

<sup>10</sup> Exhibit E, Draft Proposed Decision.

<sup>11</sup> Exhibit F, Claimant Comments on the Draft Proposed Decision.

<sup>12</sup> Exhibit G, Controller's Comments on the Draft Proposed Decision.

<sup>13</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>14</sup>

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.<sup>15</sup>

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 claimant.<sup>16</sup> In addition, sections 1185.2(c) and 1185.2(f)(3) 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.<sup>17</sup>

**Claims**

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

Issue	Description	Staff Recommendation
Statutory deadlines to initiate and to complete an audit of claimant’s 1999-2000 and 2000-2001 annual reimbursement claims.	<p>At the time the underlying reimbursement claims were filed, Government Code section 17558.5 provided that a claim is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.</p> <p>As amended by Statutes 2002, chapter 313 (AB 2224), section 17558.5 provided that a claim would be “subject to the initiation of an audit” for three years from the date the claim is filed or last amended.</p> <p>Claimant asserts that its fiscal year 1999-2000 and 2000-2001 claims were no longer <i>subject to audit</i> at the time the original final audit report was issued, July 2, 2004, based on the</p>	<p><i>The original final audit report was timely initiated and timely completed, but the revised audit report was not timely completed</i> – Staff finds that the plain language of section 17558.5, at the time the reimbursement claims were filed, did not require the Controller to <i>complete</i> an audit within any specified period of time, but only to begin an audit within two year of the end of the calendar year in which the claim(s) were</p>

<sup>14</sup> *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>15</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (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.

<sup>16</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>17</sup> 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.

	<p>asserted filing dates of January 5, 2001, and December 21, 2001, respectively.</p> <p>As amended by Statutes 2004, chapter 890 (AB 2856), section 17558.5 requires an audit to be <i>completed</i> not later than two years after the date that the audit is commenced. This provision became effective January 1, 2005, and applies to all audits then pending or thereafter completed.</p>	<p>filed. Additionally, a subsequent amendment to the statute demonstrates that “subject to audit” means “subject to the initiation of an audit”, and because the period subject to audit had not yet closed at the time that amendment became effective, the Controller receives the benefit of the extra time. Therefore, staff finds that the final audit report is not barred.</p> <p>Additionally, staff finds that the two-year completion requirement for audits, effective January 1, 2005, was not applicable to the original final audit report, which was completed within sixteen and one-half months of initiation. However, the revised final audit report issued October 9, 2012, falls outside the two year completion requirement of section 17558.5, and is therefore not timely.</p>
<p>Reductions for disallowed salaries and benefits, and related indirect costs based on asserted insufficient supporting documentation.</p>	<p>The parameters and guidelines require a claimant to show the classification of the employees involved in the mandate, the amount of time spent, and their hourly rate. The claimant submitted worksheets detailing the names and classifications of employees involved in the mandated and evidence showing the length and attendees of meetings, and therefore facially complied.</p> <p>The Controller reduced salaries and benefits for negotiations, and for grievance proceedings, based on asserted insufficient or missing supporting documentation. However, neither the employees for whom salary costs were disallowed, nor the dates and activities for which costs were disallowed, were identified in the audit report or the revised audit report, and no particular duplicate cost</p>	<p><i>Incorrect-</i> The claimant facially complied with the parameters and guidelines, and the Controller does not point to any evidence in the record to support its reductions. Therefore, these reductions are entirely lacking in evidentiary support and are incorrect.</p>

	was specified. In response to the draft proposed decision, the Controller has identified employees for whom costs were disallowed, but has still failed to point to any evidence supporting the disallowance. Instead the Controller cites generally the lack of supporting documentation without specifying what is lacking or why what was submitted does not meet the requirements of the parameters and guidelines.	
Reductions for disallowed salaries and benefits, and related indirect costs based on duplicate claiming	The Controller reduced salaries and benefits claimed on the basis of a single meeting that was claimed under two approved activities stated in the parameters and guidelines. The Controller allowed the proportion of the costs properly allocated to each activity, and denied the portion that represented double claiming (i.e. that was already being reimbursed under the proper activity).	<i>Correct</i> – Staff finds that this reduction is supported by evidence in the record.
Reductions for productive hourly rates	The Controller reduced claimed productive hourly rates for part-time teachers based on documentation provided by the claimant that supported a rate lower than that claimed.	<i>Correct</i> – Staff finds that these reductions are supported by evidence in the record.

### Staff Analysis

#### **A. The Controller Met the Statutory Deadline for the Initiation and Completion of the Audit, but the Revised Audit Report was not Completed Within the Two Year Statutory Deadline.**

1. *The Final Audit Report Issued July 2, 2004 was Timely, Pursuant to Government Code Section 17558.5.*

Staff finds that the first final audit report is both timely initiated and timely completed, based on the plain language of section 17558.5, as added by Statutes 1995, chapter 945, and as amended by Statutes 2002, chapter 1128 and Statutes 2004, chapter 890. The 1995 version of section 17558.5 provided that a claim was “subject to audit by the Controller *no later than two years after the end of the calendar year* in which the reimbursement claim is filed or last amended.”<sup>18</sup>

Based only upon the plain language of this section, the reimbursement claims in issue, filed January 5, 2001, and December 21, 2001,<sup>19</sup> would be “subject to audit” until the end of the calendar year 2003. However, staff finds that “subject to audit” does not require the *completion*

<sup>18</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

<sup>19</sup> The Controller asserts that it received the claimant’s 2000-2001 reimbursement claim on January 8, 2002, but it is not necessary to resolve that question to determine whether the audit was timely, and therefore the analysis allows for the date asserted by the claimant.

of an audit before the end of the calendar year, and that initiating an audit before the expiration of that period is sufficient. Accordingly, the clarifying amendment made by Statutes 2002, chapter 1128 provided that a reimbursement claim “is subject to the initiation of an audit by the Controller no later than ~~two-three~~ years after the ~~end of the calendar year in which~~ date that the actual reimbursement claim is filed or last amended, whichever is later.”<sup>20</sup> This amendment supports the interpretation urged by the Controller that “subject to audit” requires only that an audit be initiated before a time certain. Moreover, because the amendment expanded the statutory period while it was still pending, the Controller receives the benefit of the additional time.<sup>21</sup> Therefore, based on the plain language as amended in 2002 (effective January 1, 2003), the reimbursement claims in issue would be “*subject to the initiation of an audit*” until three years after the claims were filed, or January 5, 2004, for the 1999-2000 reimbursement claim and December 21, 2004 for the 2000-2001 reimbursement claim. Because an entrance conference was held March 12, 2003, the audit was initiated prior to the running of the statutory period under either the prior version of section 17558.5, or under the amended section, and the audit was therefore timely initiated.<sup>22</sup>

At the time the costs were incurred in this case, section 17558.5 did not expressly fix the time during which an audit must be completed. Nevertheless, the Controller was still required under common law to complete the audit within a reasonable period of time. Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant.<sup>23</sup> Here, the audit report was issued July 2, 2004, approximately sixteen and one-half months after the initiation date of March 12, 2003. Therefore, there is no evidence of an unreasonable delay in the completion of the audit.

Based on the foregoing, staff finds that the original final audit of the subject reimbursement claims is timely and not barred by section 17558.5.

2. *The Revised Audit Issued October 9, 2012 was Issued Beyond the Deadlines Imposed by Section 17558.5, But May be Considered by the Commission to the Extent that it Narrows the Issues in Dispute or Makes Concessions to the Claimant.*

Statutes 2004, chapter 890 (SB 2856), effective January 1, 2005, added a requirement in section 17558.5 that “[i]n any case, an audit *shall be completed* not later than two years after the date that the audit is commenced.” Here, the Controller’s audit of the relevant claim years was “commenced,” within the meaning of section 17558.5, no later than March 12, 2003, when the entrance conference was held. The amendment to section 17558.5 that imposed the two year completion requirement became effective January 1, 2005. Therefore, a timely audit must be

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<sup>20</sup> Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

<sup>21</sup> *Douglas Aircraft v. Cranston* (1962) 58 Cal.2d 462, 465.

<sup>22</sup> Staff acknowledges that the audit was likely initiated earlier than the entrance conference (such as when it can be independently verified that the audit initiation letter was sent or received) but there is no evidence of an earlier initiation in this record and, in this case an earlier date would not change the conclusion that the audit was timely initiated.

<sup>23</sup> *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.



completed by March 12, 2005, and the Controller had over two months notice of the requirement to complete the audit within two years.

Based on relevant case law, two months notice to complete the audit before applying the statutory bar is sufficient, and the Legislature's action cutting off the Controller's power to audit must be upheld.<sup>24</sup> As explained above, the original "final" audit report was timely, because it was completed approximately sixteen and one-half months after the initiation date, and prior to the institution of the two-year completion requirement. However, the revised audit report, modifying the *original* "final" audit report, was issued on October 9, 2012, approximately seven years and seven months after the audit was initiated. It therefore falls outside the statutory two year completion requirement imposed by section 17558.5, as amended by Statutes 2004, chapter 890. Nevertheless, staff finds that the Commission may take official notice<sup>25</sup> of the revised audit report, to the extent that the revised audit report narrows the issues in dispute or mitigates the amounts of the reductions originally asserted by the Controller.

Based on the foregoing, staff finds that the revised audit report issued October 9, 2012 was not completed within the deadline required by section 17558.5, but may be considered by the Commission to the extent that it narrows the issues in dispute or makes concessions to the claimant with respect to its allegations in the IRC.

**B. Some of the Controller's Reductions of Salaries and Benefits and Related Indirect Costs are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

1. *The Controller's reduction of duplicate costs claimed is supported by evidence in the record, and is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.*

In response to the conclusion in the draft proposed decision that reductions based on asserted duplicate costs must be reinstated, the Controller submitted comments on the draft, including additional documentation to support the duplicate cost reductions.<sup>26</sup> The documentation shows that for fiscal year 2001-2002, the claimant submitted a meeting sign in sheet for a meeting labeled "Negotiations", which took place on February 6, 2002, and lasted from 1:00 pm to 2:50 pm. However, that document contains a notation: "Contract Review 'til 2:15 pm", meaning only 1.25 hours of the meeting was related to "Component G6 – Contract Administration", and one half hour was related to "Component G3 – Cost of Negotiations".<sup>27</sup> Therefore, the costs of the meeting should have been separately allocated to those two components, rather than claimed under both activities as 1.75 hours.

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<sup>24</sup> See *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, 123 ["The plaintiff, therefore, had practically an entire year to bring his case to trial..."]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, 61 [three months].

<sup>25</sup> Code of Regulations, title 2, section 1187.5(c) ["Official notice may be taken in the manner and of the information described in Government Code section 11515."].

<sup>26</sup> See Exhibit G, Controller's Comments on the Draft Proposed Decision, page 28.

<sup>27</sup> Exhibit G, Controller's Comments, page 28.

Staff finds that the evidence in the record supports the Controller’s conclusions and, thus, the following reductions are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$250 claimed for fiscal year 2001-2002 under Component G6-Administration/Grievances for part-time teachers’ hours, which the Controller held represented duplicate costs.
  - \$626 claimed for fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held represented duplicate costs.
2. *The Controller’s reduction of salaries and benefits based on insufficient or lacking source documentation is incorrect as a matter of law, and is arbitrary, capricious, or entirely lacking in evidentiary support.*
    - a. The parameters and guidelines for the Collective Bargaining program, interpreted by the court in *Clovis Unified*, require only that the claimant identify the employees involved in the mandate, the time spent on the mandate, and their hourly rate; no source documents are required.

The parameters and guidelines, as amended January 27, 2000,<sup>28</sup> under “Supporting Data for Claims”, state that a claimant must show “the classification of the employees involved, amount of time spent, and their hourly rate.”<sup>29</sup> The claiming instructions issued by the State Controller contain additional instructions to provide source documentation (much of which is created at or near the same time the actual cost was incurred) to support salary and benefit costs:

Source documents may include, but are not limited to, time logs evidencing actual costs claimed under Reimbursable Activities, time sheets, payroll records, canceled payroll warrants, organization charts, duty statements, pay rate schedules, and other documents evidencing the expenditure.<sup>30</sup>

The court in *Clovis Unified School Dist. v. Chiang*<sup>31</sup> reviewed the documentation requirements for claiming salary and benefit costs under the *Collective Bargaining* program in fiscal years 1998-2003 (a time period that includes the reimbursement claims filed in this IRC), and concluded that the Controller’s contemporaneous source document rule (CSDR) contained in the claiming instructions, as applied to the *Collective Bargaining* program during these fiscal years, was an unenforceable underground regulation and invalidated the audits.<sup>32</sup> The court further stated that the parameters and guidelines for the *Collective Bargaining* program did not require

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<sup>28</sup> See Exhibit A, IRC 05-4425-I-10, page 29.

<sup>29</sup> See Exhibit A, IRC 05-4425-I-10, page 38.

<sup>30</sup> Exhibit H, Controller’s State Mandated Cost Manual issued September 2000, Excerpt: claiming instructions for Collective Bargaining, page 9.

<sup>31</sup> (2010) 188 Cal.App.4th 794.

<sup>32</sup> *Id.* at page 807.

claimants to provide any “source documents”, and that only the parameters and guidelines were enforceable during the pertinent time.<sup>33</sup>

Moreover, before 2000, Government Code section 17564 required that claims for reimbursement to be filed “in the manner prescribed by the Controller.”<sup>34</sup> From 2000 through 2004, when these reimbursement claims were filed, the Legislature amended section 17564 to state that “claims for direct and indirect costs filed pursuant to Section 17561 shall be filed *in the manner prescribed in the parameters and guidelines.*”<sup>35</sup> The Commission, like a court, presumes that by deleting the reference to the State Controller in section 17564(b), the Legislature intended to change the law.<sup>36</sup> The plain language indicates that the intent was to change the claim filing requirements to comply with the parameters and guidelines rather than the claiming instructions.

Thus, pursuant to Government Code section 17564 and the decision in *Clovis*, the Controller may not reduce reimbursement claims for the *Collective Bargaining* program in fiscal years 1999-2000, 2000-2001, and 2001-2002, on the ground that the claimant failed to provide source documents, such as time sheets or time logs, to support claims for salary and benefits. Claimants need only comply with the parameters and guidelines and “[s]upply workload data requested ... to support the level of costs claimed” and “[s]how the classification of the employees involved, amount of time spent, and their hourly rate”; nothing is said about “source documents.”<sup>37</sup>

- b. The claimant has facially satisfied the documentation requirements of the parameters and guidelines, while the Controller’s remaining reductions rely on a lack of source documentation.

In accordance with the parameters and guidelines, the claimant here submitted worksheets stating the names and classifications of employees involved in the mandate, and the amount of time spent, along with what appear to be sign-in sheets from meetings, with hand-written signatures of the persons in attendance to substantiate that time. The claimant’s filed documentation thus facially appears to comply with and exceed the requirements of the parameters and guidelines, in that it provides the classification of employees involved, the amount of time spent, and the hourly rate, but also shows attendance at meetings as a way of substantiating a portion of the hours claimed. As the court pointed out in *Clovis Unified* with respect to the parameters and guidelines: “nothing is said about ‘source documents.’”<sup>38</sup>

The Controller stated in its audit report, however, that the disallowance for “Component G3-Negotiations” is based on a “portion of part-time teachers’ hours” that were insufficiently supported, and no supporting documentation for “a portion of management team members and

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<sup>33</sup> *Ibid.* Emphasis added.

<sup>34</sup> Statutes 1992, chapter 1041.

<sup>35</sup> Statutes 1999, chapter 643. Statutes 2004, chapter 890 (A.B.2856) added “and claiming instructions” to this provision, effective January 1, 2005.

<sup>36</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55. It was not until 2004 that the statute was amended to require claims to be filed “in the manner prescribed in the parameters and guidelines *and the claiming instructions.*” (Emphasis added.)

<sup>37</sup> *Clovis Unified School Dist., supra*, 188 Cal.App.4th 794, 807.

<sup>38</sup> 188 Cal.App.4th 794, 807.

confidential assistant hours claimed.”<sup>39</sup> In addition, the Controller stated a disallowance for “Component G6-Administration/Grievances” based on insufficient documentation to support “a portion of part-time teachers’ hours”, and “duplicate costs for part-time teachers”. None of these disallowances, as explained herein, were specifically identified or linked to documentation in the record, and the amounts of the disallowances were not adequately explained to support a Commission finding upholding the reductions.

The draft proposed decision for this IRC concluded that the Controller’s reductions are not “sufficiently identified or linked to documentation in the record, and the amounts of the disallowances are not adequately explained to support a Commission finding upholding the reductions.”<sup>40</sup> In comments on the draft proposed decision, the Controller concedes that some of the reductions should be reinstated, but continues to assert that portions of “Management and Confidential Assistants” hours claimed, and “Part-time Teachers” hours claimed are unallowable. The Controller has submitted new documentation with its comments on the draft proposed decision, but the findings still rest on a lack of documentation supporting a portion of hours claimed. Specifically, for fiscal years 1999-2000, the Controller believes that the amount adjusted for Management and Confidential Assistants hours reflects “pre-negotiation meeting preparation” costs, which the Controller agrees to reinstate, in the amount of \$7,008.<sup>41</sup> However, the last \$492 that the Controller continues to dispute is not adequately identified in the record. The inconsistency of the Controller’s audit conclusions becomes more evident when considering concessions made by the Controller for fiscal years 2000-2001 and 2001-2002. For fiscal year 2000-2001, the Controller agreed to reinstate \$9,361 for pre-negotiation meeting preparation, plus \$1,472 in related indirect costs, but stated “the district did not provide us with documentation to support the remaining \$1,559 in salaries and benefits.”<sup>42</sup> And, for fiscal year 2001-2002, the Controller agrees to reinstate the full \$13,921 plus related indirect costs for pre-negotiation meeting preparation. It is unclear what documentation the Controller is relying upon to determine that the costs to be reinstated pertain to meeting preparation, because the record does not contain, so far as Commission staff is able to discern, a document that clearly indicates the hours spent on pre-negotiation meeting preparation for either of those fiscal years.

The reductions made for unsupported hours for part-time teachers are similarly unsubstantiated. The amounts still in dispute can only be amounts that the Controller determined were not sufficiently supported by either meeting sign-in sheets or other source documentation. But no source documentation is required, as explained above; only the classifications of employees, the time spent, and the hourly rates. The Controller is in essence asking the Commission to uphold its reductions based on the absence of evidence, and to hold against the claimant the evidence that was produced, even though the claimant was under no compulsion to do so.

The Controller’s additional documentation does not identify specifically which amounts were incorrectly claimed, or claimed in excess, and staff cannot determine the basis on which these reductions have been made based on the evidence in the record. Rather, the Controller’s finding

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<sup>39</sup> Exhibit D, Revised Audit Report, page 10.

<sup>40</sup> See Exhibit E, Draft Proposed Decision, pages 25-26.

<sup>41</sup> Exhibit G, Controller’s Comments on Draft Proposed Decision, page 8.

<sup>42</sup> Exhibit G, Controller’s Comments on Draft Proposed Decision, page 8.

continues to rest on an absence of source documents, which, as the court in *Clovis Unified* determined, are not required to make out a claim for the *Collective Bargaining* program.

The claimant argues that “[t]he Controller is the party with the power to create, maintain, and provide evidence regarding the auditing methods and procedures used, as well as the specific facts relied upon for the audit findings.” The claimant concludes that the Controller “bears the burden of going forward...”

The Commission agrees. The Controller’s conclusions are not supported by documentary evidence. Section 1185.2(c) of the Commission’s regulations, addressing the review of IRCs, provides requires representations of fact to be supported by documentary evidence (i.e., more than an allegation of the absence of evidence). Furthermore, *Daniels v. Department of Motor Vehicles*<sup>43</sup> supports requiring the Controller to support its reductions with “evidence necessary to sustain a finding.”<sup>44</sup>

Here, the revised audit stated that the claimant did not provide supporting documentation for a portion of management team members and confidential assistant hours, and a portion of part-time teachers’ hours. The Controller’s findings, however, were not themselves supported by documentary evidence, and were not sufficiently specific that the Commission could evaluate the propriety of the adjustments on the basis of the evidence in the record. In other words, the Controller had the burden of going forward with the evidence.

Based on the foregoing, staff finds that the Controller’s reductions for salaries of part-time teachers, and salaries of management team members and confidential assistants, based on insufficient or lacking documentation, are entirely lacking in evidentiary support and are incorrect as a matter of law. Therefore, staff recommends that the Commission direct the Controller to reinstate in full the following reductions in direct costs, plus related indirect costs:

- \$1,478 claimed for fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held was not sufficiently supported.
- \$424 claimed for fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held was not sufficiently supported.
- \$301 claimed for fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held was not sufficiently supported.
- \$7,500 claimed for fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$10,920 claimed for fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.

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<sup>43</sup> (1983) 33 Cal.3d 532.

<sup>44</sup> Exhibit C, Claimant Rebuttal Comments, page 3 [citing *Daniels, supra*, 33 Cal.3d at p. 536.].

- \$13,921 claimed for fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$335 claimed for fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.

Based on the foregoing, staff finds that the Controller's reductions for salaries of part-time teachers and salaries of management team members and confidential assistants, based on insufficient or lacking source documentation are entirely lacking in evidentiary support, and must be reinstated.

1. *The Controller's reduction of costs for claimed productive hourly rates is consistent with the parameters and guidelines, and is supported by evidence in the record, and is therefore not arbitrary, capricious, or entirely lacking in evidentiary support.*

The parameters and guidelines state, with respect to benefits:

Benefits are reimbursable. Actual benefit percent must itemized. If no itemization is submitted, 21 percent must be used for computation of claim costs.

Accordingly, the claimant submitted summary cost worksheets that rely upon the 21 percent benefit rate to compute total productive hourly rates.<sup>45</sup> The Controller provided documentation in its comments that supported a rate significantly lower than the 21 percent default rate; specifically a document that states the costs of health insurance and retirement benefits, and states that it was provided "by Auditee".<sup>46</sup> On that basis, the Controller reduced the productive hourly rates, and found reductions of "\$1,516 in FY 1999-2000, \$1,917 in FY 2000-01, and \$2,326 in FY 2001-02" under "Component G3-Negotiations", and \$298 for fiscal year 2000-2001 and \$233 for fiscal year 2001-2002 for "Component G6-Administration/Grievances".

Article XIII B, section 6 only requires reimbursement of actual mandated costs incurred; it does not generally allow for reimbursement in excess of the increased costs experienced by a claimant. Therefore, to the extent that the evidence in the record supports a benefit rate lower than the default 21 percent rate, that lower rate must be applied to the claim.

Based on the foregoing, staff finds that the Controller's reductions of salaries and benefits during the audit period on the basis of unsupported productive hourly rates were consistent with the parameters and guidelines, and not arbitrary, capricious, or entirely lacking in evidentiary support. The reductions totaling \$ 1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002 are, therefore, correct.

### **Conclusion**

Pursuant to Government Code section 17551(d), staff concludes that the reductions to the following direct costs are incorrect as a matter of law, and are arbitrary, capricious, or entirely lacking in evidentiary support:

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<sup>45</sup> See, e.g., Exhibit A, IRC 05-4425-I-10, pages 84-86; 89.

<sup>46</sup> Exhibit B, Controller's Comments, page 34.

- \$1,478 claimed for fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$424 claimed for fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$301 claimed for fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$7,500 claimed for fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$10,920 claimed for fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$13,921 claimed for fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$335 claimed for fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.

As a result, staff recommends that the Commission direct the Controller reinstate the above direct and related indirect costs to the claimant.

Staff further finds that the following reductions are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reductions in amounts of \$626 claimed for fiscal year 2001-2002 under Component G3 – Negotiations and \$250 claimed for fiscal year 2001-2002 under Component G6 – Administration/Grievances for part-time teachers' hours, which the Controller found represented duplicate costs.
- Reductions totaling \$1,516 for fiscal year 1999-2000, \$2,215 for fiscal year 2000-2001, and \$2,559 for fiscal year 2001-2002, on the basis of unsupported productive hourly rates, are consistent with the parameters and guidelines.

Based on the foregoing, staff recommends that the Commission partially approve this IRC.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision to partially approve the IRC, and, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, to request that the Controller reinstate \$35,755 in direct costs, plus related indirect costs, to the claimant. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Government Code Sections 3540-3549.9

Statutes 1975, Chapter 961 ; Statutes 1991,  
Chapter 1213

Fiscal Years 1999-2000, 2000-2001, and  
2001-2002

Foothill-De Anza Community College District,  
Claimant.

Case No.: 05-4425-I-10

*Collective Bargaining and Collective  
Bargaining Agreement Disclosure*

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

(Adopted: May 29, 2015)

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on May 29, 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] this IRC at the hearing by a vote of [vote count will be included in the adopted decision].

**Summary of the Findings**

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims filed by Foothill-De Anza Community College District (claimant) for costs incurred during fiscal years 1999-2000 through 2001-2002 under the *Collective Bargaining and Collective Bargaining Agreement Disclosure* program. Over the three fiscal years in question, the Controller reduced the claims by a total of \$256,612 based on unsupported and ineligible costs.<sup>47</sup> However, only \$42,045 in direct salaries and benefits, and \$15,340 in related indirect costs remain in dispute.<sup>48</sup>

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<sup>47</sup> The revised audit report figures reflect the court's determination in *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794 that the contemporaneous source document rule was invalid and unenforceable, and the Controller's audit must allow costs supported by electronic calendars, email messages, and internal memoranda. (See Exhibit D, Controller's Revised Audit, page 2.)

<sup>48</sup> Exhibit D, Controller's Revised Audit, page 10; Exhibit A, IRC 05-4425-I-03, page 19.



The Commission finds that the original final audit report, issued July 2, 2004, was both timely initiated and timely completed pursuant to Government Code section 17558.5, but the revised audit was issued outside the two year completion requirement of section 17558.5, and is therefore not timely completed. Nevertheless, the Commission finds that the revised audit may be considered to the extent that it narrows the issues or amounts in dispute, and therefore the findings of the revised audit are primarily relied upon in this analysis.

The Commission further finds that the Controller's adjustments for unallowable salaries and benefits, and the related indirect cost adjustments based on insufficient or lacking documentation, are not supported by evidence in the record. Neither the claimant, nor the Controller, has clearly identified the cost items in dispute, but the Controller has the burden of going forward with some evidence to support the reductions before the claimant can adequately respond. For that reason, the Commission finds that the Controller's reductions for salaries and benefits during the audit period of \$34,879, and related indirect costs, are arbitrary, capricious, and entirely lacking in evidentiary support, and must be reinstated. The Commission further finds, however, that reductions of salaries and benefits on the basis of duplicate hours claimed, and productive hourly rates that were lower than those claimed, are supported by evidence in the record, and are thus correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

## COMMISSION FINDINGS

### I. Chronology

- |            |  |
|------------|--|
| 01/05/2001 | Claimant filed its fiscal year 1999-2000 reimbursement claim. <sup>49</sup>            |
| 12/21/2001 | Claimant filed its fiscal year 2000-2001 reimbursement claim. <sup>50</sup>            |
| 01/13/2003 | Claimant signed and dated its fiscal year 2001-2002 reimbursement claim. <sup>51</sup> |
| 03/12/2003 | An entrance conference for the audit of all three fiscal years was held. <sup>52</sup> |
| 07/02/2004 | The Controller issued a final audit report. <sup>53</sup>                              |
| 09/19/2005 | Claimant filed this IRC. <sup>54</sup>   |
| 03/10/2008 | The Controller filed comments on the IRC. <sup>55</sup>                                |
| 08/24/2009 | Claimant filed rebuttal comments. <sup>56</sup>  |

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<sup>49</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>50</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>51</sup> Exhibit A, IRC 05-4425-I-10, page 415.

<sup>52</sup> Exhibit B, Controller's Comments, page 2.

<sup>53</sup> Exhibit A, IRC 05-4425-I-10, page 20.

<sup>54</sup> Exhibit A, IRC 05-4425-I-10, page 1.

<sup>55</sup> Exhibit B, Controller's Comments.

<sup>56</sup> Exhibit C, Claimant Rebuttal Comments.

10/09/2012      Controller issued a revised audit report.<sup>57</sup>  
04/03/2015      Commission staff issued the draft proposed decision.<sup>58</sup>  
04/09/2015      Claimant filed written comments on the draft proposed decision.<sup>59</sup>  
04/24/2015      Controller filed written comments on the draft proposed decision.<sup>60</sup>

## **II. Background**

### *Collective Bargaining and Collective Bargaining Agreement Disclosure Mandates*

On July 17, 1978, the Board of Control, predecessor to the Commission on State Mandates (Commission), found that Statutes 1975, chapter 961 imposed a reimbursable state mandate. On March 26, 1998, the Commission adopted a second test claim decision on Statutes 1991, chapter 1213. Parameters and guidelines for the two programs were consolidated on August 20, 1998, and were amended on January 27, 2000.

At the time the reimbursement claims at issue were prepared and submitted to the Controller, the amended parameters and guidelines, adopted on January 27, 2000, were applicable.<sup>61</sup> These parameters and guidelines authorize reimbursement for costs incurred to comply with sections 3540 through 3549.1 of the Government Code, and “regulations promulgated by the Public Employment Relations Board,” including:

- Determination of appropriate bargaining units for representation and determination of the exclusive representation and determination of the exclusive representatives;
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot;
- Negotiations: reimbursable functions include – receipt of exclusive representative’s initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer’s proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement;
- Impasse proceedings, including mediation, fact-finding, and publication of the findings of the fact-finding panel;
- Collective bargaining agreement disclosure before the adoption of the agreement by the governing body;

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<sup>57</sup> Exhibit D, Controller’s Revised Audit Report.

<sup>58</sup> Exhibit E, Draft Proposed Decision.

<sup>59</sup> Exhibit F, Claimant Comments on the Draft Proposed Decision.

<sup>60</sup> Exhibit G, Controller’s Comments on the Draft Proposed Decision.

<sup>61</sup> Although the Parameters and Guidelines Amendment was not adopted until January 27, 2000, the request for amendment was filed in 1999 and the reimbursement period affected included the 1999-2000 fiscal year.

- Contract administration and adjudication of contract disputes either by arbitration or litigation, including grievances and administration and enforcement of the contract; and
- Unfair labor practice adjudication process and public notice complaints.<sup>62</sup>

### The Controller’s Audit and Summary of the Issues

Reductions totaling \$256,612 were made to the reimbursement claims for the three fiscal years in question based on asserted “unsupported and ineligible costs” and related indirect costs. The Controller’s audit reduced costs for salaries and benefits totaling \$42,045 in direct costs and \$15,340 in related indirect costs, as well as \$192,680 in ineligible or unsupported contract services, and a net \$6,547 in indirect costs, based on a recalculated rate applied to a broader base of direct costs than originally claimed. However, only the reductions for salaries and benefits totaling \$42,045 in direct costs and \$15,340 in related indirect costs are in issue in this IRC.

This IRC addresses the following issues:

- The statute of limitations applicable to audits of reimbursement claims by the Controller;
- Duplicate hours claimed under two different components of the parameters and guidelines;
- Documentation requirements to support salaries and benefits claimed; and
- Documentation supporting productive hourly rates lower than the default rate provided for in the parameters and guidelines.

### **III. Positions of the Parties**

#### Foothill-De Anza Community College District

Claimant does not dispute the Controller’s reductions for unallowable contract services, or indirect cost rates claimed.<sup>63</sup> The revised audit report indicates that the claimant revised its indirect cost rate proposals during audit fieldwork, using the state FAM-29C method, and that there was initially a dispute regarding a federal indirect cost rate that the claimant believed to be applicable to the program, but that matter appears to have been resolved.<sup>64</sup>

However, the claimant continues to dispute the Controller’s reductions of salaries and benefits during the audit period. Specifically, the claimant asserts that the Controller incorrectly reduced costs claimed for fiscal years 1999-2000 through 2001-2002, for salaries and benefits of district employees participating in the mandate, totaling \$207,533.<sup>65</sup> In the revised audit the Controller reinstated costs “to allow costs supported by electronic calendars, e-mail messages, and internal memoranda.”<sup>66</sup> The remaining reductions for salaries and benefits after the revised audit are

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<sup>62</sup> Exhibit A, IRC 05-4425-I-10, pages 29-39 [Parameters and Guidelines].

<sup>63</sup> Exhibit A, IRC 05-4425-I-10, page 19.

<sup>64</sup> Exhibit D, Controller’s Revised Audit Report, page 13.

<sup>65</sup> Exhibit A, IRC 05-4425-I-10, page 10.

<sup>66</sup> Exhibit D, Controller’s Revised Audit, page 2.

\$42,045 in direct costs and \$15,340 in related indirect costs.<sup>67</sup> The claimant asserts that “[i]t appears that all of the disallowances were made either due to lack of documentation or were the result of an adjustment to the employee salaries.”<sup>68</sup> However, as noted above, the Controller revised its audit findings in light of the court’s decision in *Clovis Unified*, and some of the disputed costs for which documentation was deemed insufficient have now been determined to be allowable pursuant to the revised audit report.<sup>69,70</sup>

With respect to adjustments made to claimed productive hourly rates, the claimant asserts that the Controller made adjustments to the salary component for several employees without providing a reason for the adjustment, which resulted in a reduction, “the propriety of [which] cannot be determined until the Controller states the reason for each change to the employee payroll information.”<sup>71</sup> The claimant further argues, “[s]ince none of the reasons for the adjustments stated in the audit report relate to the mandated activities performed by the employees [,] [i]t appears that the entire basis of the adjustments is the quantity and quality of District documentation.”<sup>72</sup> The claimant asserts that it has complied with the parameters and guidelines and provided source documents that show the validity of costs claimed and their relationship to the mandated program, and the Controller’s “insistence on documentation not required by the parameters and guidelines, contemporaneous record keeping, and corroborating evidence are ministerial preferences, are an unpublished standard which exceeds the parameters and guidelines, and is [*sic*] not enforceable absent rulemaking which would put the claimants on notice to the contrary.”<sup>73</sup> As noted above, the Controller revised some of these objectionable findings after the court’s decision in *Clovis Unified*, which found that the documentation requirements were indeed unenforceable.

The claimant also asserts that the Controller’s payment amounts per the audit report are not explained,<sup>74</sup> and challenges the timeliness of the audit itself, based on the provisions of section

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<sup>67</sup> Exhibit D, Controller’s Revised Audit, page 10.

<sup>68</sup> Exhibit A, IRC 05-4425-I-10, page 10.

<sup>69</sup> Exhibit D, Controller’s Revised Audit, page 2.

<sup>70</sup> In its IRC, claimant argued that the Controller disallowed costs that were insufficiently supported based on the claimant’s use of “Meeting Maker” software to track hours spent by district employees at certain meetings associated with the mandate; and the Controller also disallowed costs supported only by staff memoranda or emails. The claimant argued that these reductions were inconsistent with the parameters and guidelines, which did not require any specific type of documentation. The revised audit report has mitigated or conceded a number of the disputed reductions, so the analysis below will address the claimant’s concerns as applied to the remaining disputed costs only.

<sup>71</sup> Exhibit A, IRC 05-4425-I-10, page 17.

<sup>72</sup> Exhibit A, IRC 05-4425-I-10, page 18.

<sup>73</sup> Exhibit A, IRC 05-4425-I-10, page 18. This argument has been largely mooted by the revised audit report issued in response to the court’s findings in *Clovis Unified*, 188 Cal.App.4th 794.

<sup>74</sup> Exhibit A, IRC 05-4425-I-10, page 19.

17558.5 in effect when the claims were filed.<sup>75</sup> The issue of payments received from the state is addressed by the Controller's comments, as stated below, and is not further discussed in the claimant's rebuttal comments.<sup>76</sup>

In comments on the draft proposed decision, the claimant continues to argue that the statutory language of section 17558.5 in effect at the time the subject reimbursement claims were filed should control, and that "subject to audit" must be interpreted to require the completion of an audit within the statutory period.<sup>77</sup> In addition, the claimant takes issue with the analysis of the 21 percent default rate for productive hourly rates. The claimant argues that the 21 percent rate should be treated as one of two acceptable methods of filing a claim, and as a convenience, rather than a punitive measure taken only when a claimant fails to support a higher rate. The claimant argues that "[i]t is inappropriate for the Controller to only select and adjust classes of employees for whom the itemized rate would result in a rate less than 21% and allow the other claimed staff to be limited to the 21%."<sup>78</sup>

#### State Controller's Office

The Controller stated in its comments on the IRC that "the claimant has not come forward with source documentation or other reliable information to support all of the costs claimed."<sup>79</sup> The Controller stated that "[t]he unallowable costs occurred because the district (1) did not adequately support employee hours charged to the mandated program; (2) overstated the productive hourly rate claimed for part-time teachers; and (3) claimed duplicate costs."<sup>80</sup> In its revised audit, the Controller notes the decision of the court in *Clovis Unified School District v. Chiang*, which held the contemporaneous source document rule void and unenforceable prior to July 1, 2005, when the CSDR was adopted in the Commission's parameters and guidelines: "In compliance with the court decision, we revised our audit to allow costs supported by electronic calendars, e-mail messages, and internal memoranda." This resulted in an increase in allowable costs by \$192,084.<sup>81</sup> The remaining reductions, then, as detailed in the revised audit, include \$42,045 in disallowed salaries and benefits and \$15,340 in related indirect costs, based on insufficient documentation, duplicate costs claimed, unsupported productive hourly rates, and a lack of supporting documentation.<sup>82</sup> The revised audit also finds unallowable contract services and overstated indirect costs, which the claimant does not dispute.<sup>83</sup>

With respect to the claimant's argument that section 17558.5 bars the audit of the 1999-2000 and 2000-2001 claims, the Controller argues that claimant "incorrectly applies the 1996 version" of

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<sup>75</sup> Exhibit A, IRC 05-4425-I-10, pages 19-23.

<sup>76</sup> Exhibit C, Claimant's Rebuttal Comments, pages 1-8.

<sup>77</sup> Exhibit F, Claimant Comments, pages 2-5.

<sup>78</sup> Exhibit F, Claimant Comments, pages 5-7.

<sup>79</sup> Exhibit B, Controller's Comments, page 2.

<sup>80</sup> Exhibit B, Controller's Comments, page 12.

<sup>81</sup> Exhibit D, Controller's Revised Audit, page 2.

<sup>82</sup> Exhibit D, Controller's Revised Audit, page 10.

<sup>83</sup> Exhibit D, Controller's Revised Audit, pages 11-12; Exhibit A, IRC 05-4425-I-10, page 19.

section 17558.5 to argue that the audit is not timely. The Controller explains that the prior version of section 17558.5 provided that a reimbursement claim is “subject to audit” for two years after the end of the calendar year in which the claim is filed, but that “[t]here is no statutory language that requires the SCO to publish a final audit before the two-year period expires.”<sup>84</sup> Moreover, the Controller argues that “the 1999-00 and 2000-01 audits were subject to the provisions of Section 17558.5 that were effective on January 1, 2003, not the 1996 version.” The Controller argues that the 1999-2000 and 2000-2001 fiscal year claims, filed on January 5, 2001 and December 21, 2001, were, even under the prior version of section 17558.5, subject to audit until December 31, 2003. And, under “the 2003 provisions of Section 17558.5”, the audit of the 1999-2000 claim was required to be initiated by January 5, 2004, and an audit of the 2000-2001 claim was required to be initiated by December 21, 2004. Therefore, the Controller reasons that “[s]ince the audit for both claims was initiated no later than March 12, 2003 [the date of the entrance conference], the audit of those years is valid and enforceable.”<sup>85</sup>

With respect to the claimant’s assertion that the amount paid by the state is misstated or otherwise unclear in the audit report, the Controller explains that for fiscal year 1999-2000, “the district’s claimed amount does not recognize a \$36,282 accounts receivable offset applied March 6, 2002.” The Controller states that its “remittance advice (Tab 9) documents this offset.” For fiscal year 2000-2001, the Controller explains that the district’s claimed amount does not recognize an offset of \$112,998 “to collect an overpayment applicable to the district’s FY 1998-99 Health Fee Elimination Program claim.” Additionally, “the district’s claimed amount does not recognize a \$7,994 payment issued May 16, 2002.” The Controller states that Tabs 10 and 11 of its comments document these offsets and payments.<sup>86</sup>

In response to the draft proposed decision, the Controller submitted additional comments, which concede that some of the reductions should be reinstated, and documentation, which purportsto support the remaining reductions made. In its comments the Controller agrees to reinstate \$7,008 for fiscal year 1999-2000 and \$9,361 for fiscal year 2000-2001, plus related indirect costs, stating: “Based on the Commission’s draft proposed decision and related documents the district provided with its September 19, 2005 IRC filing, and our subsequent analysis, we believe that [the respective amounts] of the audit adjustment for the Faculty Association Management Team is for pre-negotiation meeting preparation.” However, the Controller found that “the district did not provide us with documentation to support the remaining” \$492 for fiscal year 1999-2000 and \$1,559 for fiscal year 2000-2001.<sup>87</sup> The Controller also agreed to reinstate in full its reduction for fiscal year 2001-2002 for Component G3 – Negotiations, finding that although the “at-table negotiation sign-in sheets the district provided” did not support all the hours claimed, “we believe that the entire adjustment relates to pre-negotiation meeting preparation.”<sup>88</sup>

However, the Controller still disputes the following reductions, which the draft proposed decision concluded should be reinstated:

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<sup>84</sup> Exhibit B, Controller’s Comments, page 21.

<sup>85</sup> Exhibit B, Controller’s Comments, page 2.

<sup>86</sup> Exhibit B, Controller’s Comments, pages 19-20.

<sup>87</sup> Exhibit G, Controller’s Comments on Draft Proposed Decision, page 8.

<sup>88</sup> *Ibid.*

- For fiscal year 1999-2000, 18.50 hours for part-time teachers’ salaries and benefits for Component G3-Negotiations, totaling \$1,478, based on a lack or insufficiency of supporting documentation;
- For fiscal year 2000-2001, 4.75 hours for part-time teachers’ salaries and benefits for Component G3-Negotiations, totaling \$424 based on a lack or insufficiency of supporting documentation;
- For fiscal year 2001-2002, 3.00 hours for part-time teachers’ salaries and benefits for Component G3-Negotiations, totaling \$301 based on a lack or insufficiency of supporting documentation;
- For fiscal year 2000-2001, 3.75 hours for part-time teachers’ salaries and benefits for Component G6-Contract Administration, totaling \$335 based on a lack or insufficiency of supporting documentation;
- For fiscal year 2001-2002, 6.25 hours for part-time teachers’ salaries and benefits for Component G3-Negotiations, totaling \$626, based on duplicate costs claimed;
- For fiscal year 2001-2002, 2.50 hours for part-time teachers’ salaries and benefits for Component G6-Contract Administration, totaling \$250, based on duplicate costs claimed; and,
- Related indirect costs for all of the above reductions.

The additional documentation submitted by the Controller consists of worksheets and schedules presumably developed by the Controller from the meeting sign-in sheets that are in the record, which were provided to the Commission in the claimant’s IRC filing, Exhibit A.

#### **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 SCO has incorrectly reduced payments to a 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 SCO 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.<sup>89</sup> 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

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<sup>89</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>90</sup>

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.<sup>91</sup> Under this standard, the courts have found that:

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.’ ”<sup>92</sup>

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 claimant.<sup>93</sup> In addition, section 1185.1(f) and 1185.2(c) of the Commission’s regulations requires 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.<sup>94</sup>

**A. The Controller Met the Statutory Deadline for the Initiation and Completion of the Original Audit, but the Revised Audit Report was not Completed Within the Two Year Statutory Deadline.**

*1. The Final Audit Report Issued July 2, 2004 was Timely, Pursuant to Government Code Section 17558.5.*

The Commission finds that the audit is both timely initiated and timely completed, based on the plain language of section 17558.5, as added by Statutes 1995, chapter 945, and as amended by Statutes 2002, chapter 1128 and Statutes 2004, chapter 890. The 1995 version of section 17558.5 provides as follows:

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<sup>90</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>91</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (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.

<sup>92</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>93</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>94</sup> 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.



A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller *no later than two years after the end of the calendar year* in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>95</sup> (Emphasis added.)

Based only upon the plain language of this section, the reimbursement claims in issue, filed January 5, 2001, and December 21, 2001,<sup>96</sup> would be “subject to audit” until the end of the calendar year 2003. The Commission finds that “subject to audit” does not require the completion of an audit before the end of the calendar year; initiating an audit before the expiration of that period is sufficient. This interpretation is supported by reading the two sentences above together, and interpreting them in a manner that seeks to harmonize the provisions. The second sentence provides that if no funds are appropriated for a program, the time to audit will be tolled until the initial payment; however, the second sentence does not state what that time frame should be, but relies on the “two years after the end of the calendar year” of the first sentence. Moreover, in relying on the time period defined in the first sentence, the second sentence clearly states that the tolling shall affect “the time for the Controller to initiate an audit”. There is no reason in law or in the record of this IRC to interpret “subject to audit” in the first sentence to mean something other than “the time for the Controller to initiate an audit”.

Additionally, the interpretation that “subject to audit” means the time to initiate an audit is further supported by the clarifying amendment made by Statutes 2002, chapter 1128, which provides:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than ~~two~~ three years after the ~~end of the calendar year in which 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 ~~made~~ filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.<sup>97</sup>

Moreover, the period provided under the prior statute was open until December 31, 2003, and this amendment was effective January 1, 2003. Because the amendment expanded the statutory period while the audit at issue in this matter was still pending, the Controller receives the benefit of the additional time.<sup>98</sup> Therefore, based on the plain language as amended in 2002 (effective

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<sup>95</sup> Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11)).

<sup>96</sup> The Controller asserts that it received the claimant’s 2000-2001 reimbursement claim on January 8, 2002, but it is not necessary to resolve that question to determine whether the audit was timely, and therefore the analysis allows for the date asserted by the claimant.

<sup>97</sup> Government Code section 17558.5 (Stats. 2002, ch. 1128 (AB 2834)).

<sup>98</sup> In *Douglas Aircraft v. Cranston* (1962) 58 Cal.2d 462, 465, the court stated the general rule as follows:

January 1, 2003), the reimbursement claims in issue would be “*subject to the initiation of an audit*” until three years after the claims were filed, or January 5, 2004, for the 1999-2000 reimbursement claim and December 21, 2004 for the 2000-2001 reimbursement claim. Because an entrance conference was held March 12, 2003, the audit was initiated prior to the running of the statutory period, under either the prior version of section 17558.5, or under the amended section, and the audit was therefore timely initiated.

The only reading of these facts and of section 17558.5 that could bar the subject audits would be to hold that section 17558.5 requires an audit to be *completed* within two years of filing, in which case the final audit report issued July 2, 2004 would be barred. This is the interpretation urged by the claimant, but this reading of the code is not supported by the plain language of the statute, as explained above. At the time the costs were incurred in this case, section 17558.5 did not expressly fix the time during which an audit must be completed. Nevertheless, the Controller was still required under common law to complete the audit within a reasonable period of time. Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant.<sup>99,100</sup> However, here the audit report was issued July 2, 2004, approximately sixteen

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The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred. (*Weldon v. Rogers*, 151 Cal. 432.) The party claiming to be adversely affected is deemed to suffer no injury where he was under an obligation to pay before the period was lengthened. This is on the theory that the legislation affects only the remedy and not a right. (*Mudd v. McColgan*, 30 Cal.2d 463; *Davis & McMillan v. Industrial Acc. Com.*, 198 Cal. 631; 31 Cal.Jur.2d 434.) An enlargement of the limitation period by the Legislature has been held to be proper in cases where the period had not run against a corporation for additional franchise taxes (*Edison Calif. Stores, Inc. v. McColgan*, 30 Cal.2d 472), against an individual for personal income taxes (*Mudd v. McColgan, supra*, 30 Cal.2d 463), and against a judgment debtor (*Weldon v. Rogers, supra*, 151 Cal. 432). It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan, supra*, 30 Cal.2d 463.)

<sup>99</sup> *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986.

<sup>100</sup> The claimant argues that “the Commission is a state agency with a specific statute of limitations to apply and need not rely on laches, therefore this is not an ‘appropriate circumstance,’ even if the Commission had such common law jurisdiction.” However, the court in *Steen v. City of Los Angeles* (1948) 31 Cal.2d 542, 546, held that laches applies in quasi-adjudicative proceedings. Nevertheless, the Commission is not finding that laches exists in this case. Laches requires a finding of unreasonable delay resulting in prejudice to an adverse party. In *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986, the court determined that the hospital failed to establish an unreasonable delay in audits conduct by Department of Health Services, since the Department conducted audits two years or less after the end of the fiscal period that it was auditing, which was less than the three-year period permitted by statute. The conclusion here is that there is no evidence of an unreasonable delay by the Controller in completing the audit and, thus, the defense of laches does not apply.

and one-half months after the initiation date. Thus, there is no evidence of an unreasonable delay in the completion of the audit.

Based on the foregoing, the Commission finds that the first final audit of the subject reimbursement claims was both timely initiated and timely completed, and is not barred by section 17558.5.

2. *The Revised Audit Issued October 9, 2012 was Issued Beyond the Deadlines Imposed by Section 17558.5, But May be Considered by the Commission to the Extent that it Narrows the Issues in Dispute or Makes Concessions to the Claimant.*

Statutes 2004, chapter 890 (AB 2856) amended Government Code section 17558.5, to provide that “[i]n any case, an audit *shall be completed* not later than two years after the date that the audit is commenced.” Applying the amended section to the date of initiation, no later than the March 12, 2003 entrance conference, means a timely audit would be required to be completed by March 12, 2005 at the latest.

The courts of this state have held that “[i]t is settled that the Legislature may enact a statute of limitations ‘applicable to existing causes of action or shorten a former limitation period if the time allowed to commence the action is reasonable.’”<sup>101</sup> The courts have held that “[a] party does not have a vested right in the time for the commencement of an action.”<sup>102</sup> And neither “does he have a vested right in the running of the statute of limitations prior to its expiration.”<sup>103</sup> A statute of limitation is “within the jurisdictional power of the legislature of a state,” and therefore may be altered or amended at the Legislature’s prerogative.<sup>104</sup> However, “[t]here is, of course, one important qualification to the rule: where the change in remedy, as, for example, the shortening of a time limit provision, is made retroactive, there must be a reasonable time permitted for the party affected to avail himself of his remedy before the statute takes effect.”<sup>105</sup> If a statute “operates immediately to cut off the existing remedy, or within so short a time as to give the party no reasonable opportunity to exercise his remedy, then the retroactive application of it is unconstitutional as to such party.”<sup>106</sup> In other words, a party has no more vested right to the time remaining on a statute of limitation than the opposing party has to the swift expiration of the statute, but if a statute is newly imposed or shortened, due process demands that a party must be granted a reasonable time to vindicate an existing claim before it is barred. The California Supreme Court has held that approximately one year is more than sufficient, but has cited to

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<sup>101</sup> *Scheas v. Robertson* (1951) 38 Cal.2d 119, 126 [citing *Mercury Herald v. Moore* (1943) 22 Cal.2d 269, at p. 275; *Security-First National Bank v. Sartori* (1939) 34 Cal.App.2d 408, 414].

<sup>102</sup> *Liptak v. Diane Apartments, Inc.* (1980) 109 Cal.App.3d 762, 773 [citing *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80].

<sup>103</sup> *Liptak, supra*, at p. 773 [citing *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468].

<sup>104</sup> *Scheas, supra*, at p. 126 [citing *Saranac Land & Timber Co v. Comptroller of New York*, 177 U.S. 318, at p. 324].

<sup>105</sup> *Rosefield Packing Company v. Superior Court of the City and County of San Francisco* (1935) 4 Cal.2d 120, 122.

<sup>106</sup> *Rosefield Packing Co., supra*, at pp. 122-123.

decisions in other jurisdictions providing as little as thirty days.<sup>107</sup> Moreover, with respect to state agencies' rights and powers, *California Employment Stabilization Commission v. Payne*<sup>108</sup> held:

This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state.<sup>109</sup>

Thus, the Controller's authority to audit is subject to limitation by the Legislature, even to the extent that the authority may be unexpectedly cut off.

Here, the Controller's audit of the relevant claim years was "commenced," within the meaning of section 17558.5, no later than March 12, 2003, when the entrance conference was held. The amendment to section 17558.5 that imposed the two year completion requirement became effective January 1, 2005.<sup>110</sup> Therefore, a timely audit must be completed by March 12, 2005 at the latest, and the Controller had over two months notice of the requirement to complete the audit within two years. Based on the case law described above, two months notice to complete the audit is sufficient, and the Legislature's action cutting off the Controller's power to effectively audit must be upheld. As explained above, the original "final" audit report was therefore timely. However, the revised audit report, *modifying the original* "final" audit report, was issued on October 9, 2012, approximately seven years and seven months after the audit was initiated. It therefore falls outside the statutory two year completion requirement imposed by section 17558.5, as amended by Statutes 2004, chapter 890.

The Commission notes that the revised audit report states that it "reconsidered the audit adjustments in light of the September 21, 2010 appellate court decision in *Clovis Unified School District...*"<sup>111</sup> The report continues: "Based on the court decision, we allowed all costs supported by electronic calendars, e-mail messages, and internal memoranda. As a result, allowable costs increased by \$192,084 for the audit period."<sup>112</sup> The court in *Clovis Unified* ruled the Controller's contemporaneous source document rule to be an invalid and unenforceable audit standard. It therefore appears that the Controller took action in this matter, in the form of a

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<sup>107</sup> See *Rosefield Packing Co.*, *supra*, at p. 123 ["The plaintiff, therefore, had practically an entire year to bring his case to trial..."]; *Kerchoff-Cuzner Mill and Lumber Company v. Olmstead* (1890) 85 Cal. 80 [thirty days to file a lien on real property]. See also *Kozisek v. Brigham* (Minn. 1926) 169 Minn. 57, 61 [three months].

<sup>108</sup> (1947) 31 Cal.2d 210.

<sup>109</sup> *Id.*, at p. 215.

<sup>110</sup> The precise date of initiation is not determined in this analysis since it is unnecessary to the determination that the first audit was timely initiated and completed and the second audit was not.

<sup>111</sup> Exhibit D, Controller's Revised Audit, page 7 [citing 188 Cal.App.4th 794].

<sup>112</sup> Exhibit D, Controller's Revised Audit, page 7.

“revised audit” to comply with the decision in *Clovis Unified*. Although the revised audit is beyond the deadlines imposed by 17558.5, the Commission finds that it may take official notice<sup>113</sup> of the revised audit report, to the extent that the revised audit report narrows the issues in dispute or mitigates the amount of reductions originally asserted by the Controller.

Based on the foregoing, the Commission finds that the revised audit report issued October 9, 2012 was not completed within the deadline required by section 17558.5, but may be considered by the Commission to the extent that it narrows the issues in dispute or makes concessions to the claimant with respect to its allegations in the IRC.

**B. Some of the Controller’s Reductions of Salaries and Benefits and Related Indirect Costs are Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The revised audit finds as follows:

Component G3–Negotiations

- The district did not provide sufficient documentation to support a *portion of part-time teachers’ hours claimed*. Unallowable costs totaled \$1,478 (18.5 hours) in FY 1999-2000, \$424 (4.75 hours) in FY 2000-01, and \$301 (3 hours) in FY 2001-02.
- The district claimed *duplicate costs for part-time teachers* totaling \$626 (6.25 hours) in FY 2001-02.
- The district did not support the productive hourly rate claimed for part-time teachers. The district claimed part-time teacher costs using productive hourly rates of \$79.87, \$89.41, and \$100.08 for FY 1999-2000, FY 2000-01, and FY 2001-02, respectively. The *district provided documentation that supported* rates of \$70.51, \$77.87, and \$87.66 for the three fiscal years. As a result, unallowable costs totaled \$1,516 in FY 1999-2000, \$1,917 in FY 2000-01, and \$2,326 in FY 2001-02.
- The district did not provide supporting documentation for a *portion of management team members and confidential assistant hours claimed*. Unallowable costs totaled \$7,500 (126.5 hours) in FY 1999-2000, \$10,920 (144.75 hours) in FY 2000-01, and \$13,921 (169 hours) in FY 2001-02.

Component G6–Administration/Grievances

- The district did not provide *sufficient documentation to support a portion of part-time teachers’ hours claimed*. Unallowable costs totaled \$335 (3.75 hours) in FY 2000-01.
- The district claimed *duplicate costs for part-time teachers* totaling \$250 (2.5 hours) in FY 2001-02.

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<sup>113</sup> Code of Regulations, title 2, section 1187.5(c) [“Official notice may be taken in the manner and of the information described in Government Code section 11515.”].

- The district’s records *did not support productive hourly rates* claimed for part-time teachers. Unallowable costs totaled \$298 in FY 2000-01, and \$233 in FY 2001-02.<sup>114</sup>

However, the draft proposed decision for this IRC concluded that the Controller’s reductions were not “sufficiently identified or linked to documentation in the record, and the amounts of the disallowances are not adequately explained to support a Commission finding upholding the reductions.”<sup>115</sup> The draft proposed decision for this IRC therefore requested that the Controller reinstate a total of \$35,755 in salaries and benefits, plus related indirect costs. The Controller responded to the draft by conceding \$30,290 in reduced salaries and benefits, plus \$4,948 in related indirect costs. However, in addition, the Controller submitted additional documentation that purports to substantiate and explain the remaining reductions.

Based on the analysis herein, the Commission finds that the Controller has substantiated its reduction for duplicate costs. But based on the parameters and guidelines and the *Clovis Unified* decision as it relates to the *Collective Bargaining* program during the claim years in question, the lack or insufficiency of source documentation is not a sound reason for reduction, and the Controller has not met its burden to show that its reductions are based on evidence in the record.

3. *The Controller’s reduction of duplicate costs claimed is supported by evidence in the record, and is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.*

In response to the conclusion in the draft proposed decision that reductions based on asserted duplicate costs must be reinstated, the Controller submitted comments on the draft, including additional documentation to support the duplicate cost reductions.<sup>116</sup> The Controller explains:

For FY 2001-02, we adjusted 6.25 hours (1.25 hours is unallowable for five employees), totaling \$626 in salaries and benefits, and \$108 in related indirect costs. During audit fieldwork, the district provided us with a sign-in sheet dated February 6, 2002. Review of this sign-in sheet indicates that 1.25 hours of the meeting was for contract review (G6 – Contract Administration) that the district also claimed under the G6-Contract Administration cost component. We have attached a schedule of the audit adjustment amounts by employee as well as the February 6, 2002 sign-in sheet in Tab 8.

[¶...¶]

For FY 2001-02, we adjusted 2.50 hours (0.50 hours unallowable for five employees), totaling \$250 in salaries and benefits, and \$43 in related indirect costs. During audit fieldwork, the district provided us with a sign-in sheet dated February 6, 2002. Review of this sign-in sheet indicates that 0.50 hours of the meeting was for at-table negotiations that the district also claimed under a G3-Cost of Negotiation cost component. We have attached a schedule of the audit

<sup>114</sup> Exhibit D, Controller’s Revised Audit, page 10 [emphasis added].

<sup>115</sup> See Exhibit E, Draft Proposed Decision, pages 25-26.

<sup>116</sup> See Exhibit G, Controller’s Comments, page 28.

adjustment amounts by employee as well as the February 6, 2002 sign-in sheet in Tab 8.<sup>117</sup>

The documentation referred to shows that for fiscal year 2001-2002, the claimant submitted a meeting sign in sheet for a meeting labeled “Negotiations”, which took place on February 6, 2002, and lasted from 1:00 pm to 2:50 pm. However, that document contains a notation: “Contract Review ‘til 2:15 pm”, meaning only 1.25 hours of the meeting was related to “Component G6 – Contract Administration”, and one half hour was related to “Component G3 – Cost of Negotiations”.<sup>118</sup> Therefore, the costs of the meeting should have been separately allocated to those two components, rather than claimed under both activities as 1.75 hours. The Controller asserts that for the five employees in attendance at that meeting, costs must be reduced by 1.25 hours for Negotiations, and one half hour for Contract Administration.

The Commission finds that the evidence in the record supports the Controller’s conclusions and, thus, the following reductions are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$250 claimed for fiscal year 2001-2002 under Component G6-Administration/Grievances for part-time teachers’ hours, which the Controller held represented duplicate costs.
  - \$626 claimed for fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers’ hours, which the Controller held represented duplicate costs.
4. *The Controller’s reduction of salaries and benefits based on insufficient or lacking source documentation is incorrect as a matter of law, and is arbitrary, capricious, or entirely lacking in evidentiary support.*
- a. The parameters and guidelines for the Collective Bargaining program, interpreted by the court in *Clovis Unified*, require only that the claimant identify the employees involved in the mandate, the time spent on the mandate, and their hourly rate; no source documents are required.

The parameters and guidelines, as amended January 27, 2000,<sup>119</sup> under “Supporting Data for Claims”, state that a claimant must show “the classification of the employees involved, amount of time spent, and their hourly rate.”<sup>120</sup> The claiming instructions issued by the State Controller contain additional instructions to provide source documentation (much of which is created at or near the same time the actual cost was incurred) to support salary and benefit costs:

Source documents may include, but are not limited to, time logs evidencing actual costs claimed under Reimbursable Activities, time sheets, payroll records,

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<sup>117</sup> Exhibit G, Controller’s Comments, page 9.

<sup>118</sup> Exhibit G, Controller’s Comments, page 28.

<sup>119</sup> See Exhibit A, IRC 05-4425-I-10, page 29.

<sup>120</sup> See Exhibit A, IRC 05-4425-I-10, page 38.

anceled payroll warrants, organization charts, duty statements, pay rate schedules, and other documents evidencing the expenditure.<sup>121</sup>

The claiming instructions issued in September 2001 similarly require that “[s]ource documents required to be maintained by the claimant may include, but are not limited to, *employee time records* that show the employee's actual time spent on this mandate.”<sup>122</sup>

The court in *Clovis Unified School Dist. v. Chiang* reviewed the documentation requirements for claiming salary and benefit costs under the *Collective Bargaining* program in fiscal years 1998-2003 (a time period that includes the reimbursement claims filed in this IRC). In *Clovis Unified*, the Controller reduced costs for several state-mandated programs, including *Collective Bargaining*, in fiscal years 1998 through 2003 because the claimant failed to provide contemporaneous source documents to support the salary and benefit costs claimed. The Controller described contemporaneous source documents to include “employee time records or time logs, sign-in sheets, invoices, and receipts.”<sup>123</sup> The Controller did not consider worksheets to be contemporaneous source documents, but secondary evidence that could be used to corroborate the source documents.<sup>124</sup> The court concluded that the Controller’s contemporaneous source document rule (CSDR) contained in the claiming instructions, as applied to the *Collective Bargaining* program during these fiscal years, was an unenforceable underground regulation and invalidated the audits.<sup>125</sup> The court further stated that the parameters and guidelines for the *Collective Bargaining* program did not require claimants to provide any “source documents,” as follows:

As pertinent, the Collective Bargaining Program P & G’s require school districts seeking reimbursement for employee salary and benefit costs to simply “[s]upply workload data requested ... to support the level of costs claimed” and “[s]how the classification of the employees involved, amount of time spent, and their hourly rate”; *nothing is said about “source documents.”* The Controller’s Collective Bargaining Program-specific Claiming Instructions substantively mirror those of the Intradistrict Attendance Program, stating that source documents include employee time records that show the employee’s actual time spent on the mandated function. (And as with the Intradistrict Attendance Program, the Commission, in early 2010, incorporated the Controller’s CSDR into the Collective Bargaining Program P & G’s ...)

Consequently, employing the same reasoning we have employed above, we conclude that the Controller’s CSDR is an underground, unenforceable regulation as applied to the audits of the School Districts’ Collective Bargaining Programs for the applicable periods roughly encompassing the fiscal years 1998 to 2003.

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<sup>121</sup> Exhibit H, Controller’s State Mandated Cost Manual issued September 2000, Excerpt: claiming instructions for Collective Bargaining, page 9.

<sup>122</sup> Exhibit A, IRC, page 47. Emphasis added.

<sup>123</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

<sup>124</sup> *Id.* at page 804.

<sup>125</sup> *Id.* at page 807.



(See fn. 2, ante.) These audits are invalidated to the extent they used the CSDR.<sup>126</sup>

Moreover, before 2000, Government Code section 17564 required that claims for reimbursement to be filed “in the manner prescribed by the Controller.”<sup>127</sup> From 2000 through 2004, when these reimbursement claims were filed, the Legislature amended section 17564 to state that “claims for direct and indirect costs filed pursuant to Section 17561 shall be filed *in the manner prescribed in the parameters and guidelines.*”<sup>128</sup> The Commission, like a court, presumes that by deleting the reference to the State Controller in section 17564(b), the Legislature intended to change the law.<sup>129</sup> The plain language indicates that the intent was to change the claim filing requirements to comply with the parameters and guidelines rather than the claiming instructions.

Thus, pursuant to Government Code section 17564 and the decision in *Clovis*, the Controller may not reduce reimbursement claims for the *Collective Bargaining* program for fiscal years 1999-2000, 2000-2001, and 2001-2002, on the ground that the claimant failed to provide source documents, such as time sheets or time logs, to support claims for salary and benefits. Claimants need only comply with the parameters and guidelines and “[s]upply workload data requested ... to support the level of costs claimed” and “[s]how the classification of the employees involved, amount of time spent, and their hourly rate”; nothing is said about “source documents.”<sup>130</sup>

- b. The claimant has facially satisfied the documentation requirements of the parameters and guidelines, while the Controller’s remaining reductions rely on a lack of source documentation.

In accordance with the parameters and guidelines, the claimant here submitted worksheets stating the names and classifications of employees involved in the mandate, and the amount of time spent, along with what appear to be sign-in sheets from meetings, with hand-written signatures of the persons in attendance to substantiate that time. For example, pages 84-86 of the IRC purport to show a summary of costs for “Negotiations”, and include the names, classifications, and hours spent on the mandate for fiscal year 1999-2000. Those totals are followed by a “MANDATED COSTS REPORT” providing meeting dates, names, and times, at pages 100-104, and sign-in sheets with names and hours handwritten, at pages 110-125.<sup>131</sup> Similar documentation is provided for fiscal year 2000-2001: the claim forms state a total cost of salaries and benefits for “Negotiations” of \$43,411, which is broken down into faculty negotiations (\$37,909), CSEA (\$1,686), and SEIU (\$3,815); those amounts are supported by worksheets listing the names and classifications of employees involved in the mandate, and

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<sup>126</sup> *Ibid.* Emphasis added.

<sup>127</sup> Statutes 1992, chapter 1041.

<sup>128</sup> Statutes 1999, chapter 643. Statutes 2004, chapter 890 (A.B.2856) added “and claiming instructions” to this provision, effective January 1, 2005.

<sup>129</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55. It was not until 2004 that the statute was amended to require claims to be filed “in the manner prescribed in the parameters and guidelines *and the claiming instructions.*” (Emphasis added.)

<sup>130</sup> *Clovis Unified School Dist., supra*, 188 Cal.App.4th 794, 807.

<sup>131</sup> Exhibit A, IRC 05-4425-I-10, pages 84-86; 100-104; 110-125.

stating the hours attributed to the mandate, and then further supported by lists of meeting times and dates, and names of attendees of those meetings.<sup>132</sup> And, for fiscal year 2001-2002, the claim forms indicate costs of \$64,758 for “Negotiations”, which costs are supported by worksheets stating the names and classifications and hourly wages of persons involved in mandated negotiations activities, and stating the hours attributed to the mandate, followed by a list of dates, attendees, and hours for mandate-related meetings and activities.<sup>133</sup> Finally, similar documentation is provided for “Component G6-Administration/Grievances”.<sup>134</sup> The claimant’s filed documentation thus facially appears to comply with and exceed the requirements of the parameters and guidelines, in that it provides the classification of employees involved, the amount of time spent, and the hourly rate, but also shows attendance at meetings as a way of substantiating a portion of the hours claimed. As the court pointed out in *Clovis Unified* with respect to the parameters and guidelines: “nothing is said about ‘source documents.’”<sup>135</sup>

The Controller stated in its audit report, however, that the disallowance for “Component G3-Negotiations” is based on a “portion of part-time teachers’ hours” that were insufficiently supported, “duplicate costs for part-time teachers,” and no supporting documentation for “a portion of management team members and confidential assistant hours claimed.”<sup>136</sup> In addition, the Controller stated a disallowance for “Component G6-Administration/Grievances” based on insufficient documentation to support “a portion of part-time teachers’ hours”, and “duplicate costs for part-time teachers”. None of these disallowances, as explained herein, were specifically identified or linked to documentation in the record, and the amounts of the disallowances were not adequately explained to support a Commission finding upholding the reductions.

The draft proposed decision for this IRC concluded that the Controller’s reductions were not “sufficiently identified or linked to documentation in the record, and the amounts of the disallowances are not adequately explained to support a Commission finding upholding the reductions.”<sup>137</sup> In comments on the draft proposed decision, the Controller concedes that some of the reductions should be reinstated, but continues to assert that portions of “Management and Confidential Assistants” hours claimed, and “Part-time Teachers” hours claimed are unallowable, as follows:

### **G3 – Cost of Negotiations**

#### *Unsupported Hours for Management and Confidential Assistants*

- For FY 1999-2000, we adjusted 126.50 hours, totaling \$7,500 in salaries and benefits. During audit fieldwork, we traced hours claimed to the at-table negotiation sign-in sheets the district provided. We found that the hours

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<sup>132</sup> Exhibit A, IRC 05-4425-I-10, pages 283; 291; 295-314; 324-331; 339-361.

<sup>133</sup> Exhibit A, IRC 05-4425-I-10, pages 418; 430-442 .

<sup>134</sup> Exhibit A, IRC 05-4425-I-10, pages 81-82; 89; 291-294; 307-308; 315-321; 332-338; 424-429; 444-447; 450-455.

<sup>135</sup> 188 Cal.App.4th 794, 807.

<sup>136</sup> Exhibit D, Revised Audit Report, page 10.

<sup>137</sup> See Exhibit E, Draft Proposed Decision, pages 25-26.

claimed exceeded the hours reported on the sign-in sheets. During the audit, we were not able to reconcile the difference. We have attached a schedule of the audit adjustment amounts by employee and union in Tab 3.

Based on the Commission's draft proposed decision and related documents the district provided with its September 19, 2005 IRC filing, and our subsequent analysis, we believe that \$7,008 of the audit adjustment for the Faculty Association Management Team is for pre-negotiation meeting preparation. Therefore, we agree to reinstate \$7,008 in salaries and benefits, plus \$1,067 in related indirect costs, totaling \$8,075. However, the district did not provide us with documentation to support the remaining \$492 in salaries and benefits.

- For FY 2000-01, we adjusted 144.75 hours, totaling \$10,920 in salaries and benefits. During audit fieldwork, we traced hours claimed to the at-table negotiation sign-in sheets the district provided. We found that the hours claimed exceeded the hours reported on the sign-in sheets. During the audit, we were not able to reconcile the difference. We have attached a schedule of the audit adjustment amounts by employee and union in Tab 4.

Based on the Commission's draft proposed decision and related documents the district provided with its September 19, 2005 IRC filing, and our subsequent analysis, we believe that \$9,361 of the audit adjustment for the Faculty Association Management Team is for pre-negotiation meeting preparation. Therefore, we agree to reinstate \$9,361 in salaries and benefits, plus \$1,472 in related indirect costs, totaling \$10,833. However, the district did not provide us with documentation to support the remaining \$1,559 in salaries and benefits.

- For FY 2001-02, we adjusted 169.00 hours, totaling \$13,921 in salaries and benefits. During audit fieldwork, we traced hours claimed to the at-table negotiation sign-in sheets the district provided. We found that the hours claimed exceeded the hours reported on the sign-in sheets. During the audit, we were not able to reconcile the difference. We have attached a schedule of the audit adjustment amounts by employee and union in Tab 5.

Based on the Commission's draft proposed decision and related documents the district provided with its September 19, 2005 IRC filing, and our subsequent analysis, we believe that the entire adjustment relates to pre-negotiation meeting preparation. Therefore, we agree to reinstate \$13,921 in salaries and benefits, plus \$2,409 in related indirect costs, totaling \$16,331.

#### *Unsupported Hours for Part-time Teachers*

- For the audit period, we adjusted \$2,203 for salaries and benefits and \$344 for related indirect costs because the hours claimed were not supported by source documentation, as follows:
  - FY 1999-2000 - 18.50 hours are unallowable, totaling \$1,478 in salaries and benefits

- FY 2000-01 – 4.75 hours are unallowable, totaling \$424 in salaries and benefits
- FY 2001-02 – 3.00 hours are unallowable, totaling \$301 in salaries and benefits

During audit field work, we traced the hours claimed to the at-table negotiation sign-in sheets provided. We found that the hours claimed exceeded the hours reported on the sign-in sheets. During the audit, we were not able to reconcile the difference. We have attached a schedule of the audit adjustment amounts by employee in Tab 6.

[¶]...[¶]

## **G6 – Contract Administration**

### *Unsupported Part-time Teachers’ Hours*

- For FY 2001-02, we adjusted 3.75 hours, totaling \$335 in salaries and benefits, and \$53 in related indirect costs. During audit fieldwork, we traced the hours claimed to the contract review sign-in sheets provided. We found that the hours claimed exceeded the hours reported on the sign-in sheets. During the audit, we were not able to reconcile the difference. We have attached a schedule of the audit adjustment amounts by employee in Tab 7.<sup>138</sup>

Thus, while the Controller has agreed to reinstate the majority of the claim amount reduced, the Controller still disputes small amounts of four cost elements, as described above. However, as the analysis herein concludes, the Controller’s additional documentation does not identify specifically which amounts were incorrectly claimed, or claimed in excess, and Commission staff cannot determine the basis on which these reductions have been made based on the evidence in the record. Rather, the Controller’s finding continues to rest on an absence of source documents, which, as the court in *Clovis Unified* determined, are not required to make out a claim for reimbursement for the *Collective Bargaining* program.

The claimant argues that “[t]he Controller is the party with the power to create, maintain, and provide evidence regarding the auditing methods and procedures used, as well as the specific facts relied upon for the audit findings.” The claimant concludes that the Controller “bears the burden of going forward...”

The Commission agrees. The Controller’s conclusions are not supported by documentary evidence. Section 1185.2(c) of the Commission’s regulations, addressing the review of IRCs, provides as follows:

Written comments and supporting documentation may be filed in accordance with section 1181.3. If the written comments make representations of fact, the representations shall be supported by documentary evidence and shall be submitted with the comments in accordance with section 1187.5 of these regulations... Written rebuttals and supporting documentation shall be filed and served pursuant to section 1181.3. If the written rebuttal involves representations of fact, the representations shall be supported by documentary evidence and shall

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<sup>138</sup> Exhibit G, Controller’s Comments on Draft Proposed Decision, pages 8-9.

be submitted with the rebuttal in accordance with section 1187.5 of these regulations.

Furthermore, *Daniels v. Department of Motor Vehicles*<sup>139</sup> supports requiring the Controller to support its reductions with “evidence necessary to sustain a finding.”<sup>140</sup> In that case, the Department of Motor Vehicles (DMV) suspended Daniels’ license solely on the basis of a report filed by another person describing an alleged accident for which Daniels failed to file a report and proof of financial responsibility. At the hearing Daniels did not deny being involved in the alleged accident, and the DMV ordered his license suspended on the recommendation of the referee. On appeal, the California Supreme Court held that the agency had “the burden of proving the facts necessary to support the action...” and “[u]ntil the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond.”<sup>141</sup> Because the accident report was hearsay, and not subject to any of the statutory exceptions to the hearsay rule, it could not form the sole basis of the DMV’s findings.<sup>142</sup>

Here, the revised audit stated that the claimant did not provide supporting documentation for a portion of management team members and confidential assistant hours, and a portion of part-time teachers’ hours. The Controller’s findings, however, were not themselves supported by documentary evidence, and were not sufficiently specific that the Commission could evaluate the propriety of the adjustments on the basis of the evidence in the record. In other words, the Controller had the burden of going forward with the evidence.

In response to the draft proposed decision, the Controller has submitted new documentation, but the findings still rest on a lack of source documentation supporting a portion of hours claimed. With respect to “Management and Confidential Assistants”, the reductions that remain in dispute are based on a lack of supporting documentation. Specifically, for fiscal years 1999-2000, the Controller believes that the amount adjusted reflects “pre-negotiation meeting preparation” costs, which the Controller agrees to reinstate, in the amount of \$7,008.<sup>143</sup> However, the last \$492 that the Controller continues to dispute is not adequately identified in the record. Neither, indeed, is the “pre-negotiation meeting preparation” portion of costs that the Controller now agrees to reinstate itself supported by source documentation. The claimant included in its IRC filing a document summarizing the dates, hours spent, and persons in attendance for a number of contract negotiation meetings, including meeting preparation dates, but that document does not contain the signatures of persons in attendance at pre-negotiation meeting preparations.<sup>144</sup> It appears from the Controller’s comments that the earlier disallowance of \$7,500 plus related indirect costs was due to *excluding* “pre-negotiation meeting preparation”, which the Controller now finds constituted \$7,008 of the \$7,500 reduction, but the Controller’s acceptance of these

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<sup>139</sup> (1983) 33 Cal.3d 532.

<sup>140</sup> Exhibit C, Claimant Rebuttal Comments, page 3 [citing *Daniels, supra*, 33 Cal.3d at p. 536.].

<sup>141</sup> 33 Cal.3d at p. 536.

<sup>142</sup> *Id.*, at p. 541.

<sup>143</sup> Exhibit G, Controller’s Comments on Draft Proposed Decision, page 8.

<sup>144</sup> Exhibit A, IRC, pages 100-104.

costs without source documentation is not explained. Moreover, based on the parameters and guidelines and *Clovis Unified*, the claimant was not required to submit at-table negotiation meeting sign-in sheets in the first instance, but rather only to state the classification of employees involved in the mandate, the hours spent, and their hourly rate.

The inconsistency in the Controller's audit conclusions becomes more evident when considering concessions made by the Controller for fiscal years 2000-2001 and 2001-2002. For fiscal year 2000-2001, the Controller agreed to reinstate \$9,361 for pre-negotiation meeting preparation, plus \$1,472 in related indirect costs, but stated "the district did not provide us with documentation to support the remaining \$1,559 in salaries and benefits."<sup>145</sup> And, for fiscal year 2001-2002, the Controller agrees to reinstate the full \$13,921 plus related indirect costs for pre-negotiation meeting preparation. It is unclear what documentation the Controller is relying upon to determine that the costs to be reinstated pertain to meeting preparation, because the record does not contain, so far as the Commission is able to discern, a document that clearly indicates the hours spent on pre-negotiation meeting preparation for either of those fiscal years.

The reductions made for unsupported hours for part-time teachers are similarly unsubstantiated. The amounts still in dispute appear to be amounts that the Controller determined were not sufficiently supported by either meeting sign-in sheets or other source documentation. But no source documentation is required, as explained above; only the classifications of employees, the time spent, and the hourly rates. The Controller is in essence asking the Commission to uphold its reductions based on the absence of evidence, or to limit the claimant's reimbursement to the evidence that was produced, even though the claimant was under no compulsion to do so.

Based on the foregoing, the Commission finds that the Controller's reductions for salaries of part-time teachers, and salaries of management team members and confidential assistants, based on insufficient or lacking documentation, are entirely lacking in evidentiary support and are incorrect as a matter of law. Therefore, the Controller is requested to reinstate in full the following reductions in direct costs, plus related indirect costs:

- \$1,478 claimed for fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$424 claimed for fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$301 claimed for fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported. \$7,500 claimed for fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$10,920 claimed for fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.

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<sup>145</sup> Exhibit G, Controller's Comments on Draft Proposed Decision, page 8.

- \$13,921 claimed for fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
  - \$335 claimed for fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.
5. *The Controller's reduction of costs for claimed productive hourly rates is consistent with the parameters and guidelines, and is supported by evidence in the record, and is therefore not arbitrary, capricious, or entirely lacking in evidentiary support.*

The parameters and guidelines state, with respect to benefits:

Benefits are reimbursable. Actual benefit percent must be itemized. If no itemization is submitted, 21 percent must be used for computation of claim costs.

Accordingly, the claimant submitted summary cost worksheets that rely upon the 21 percent benefit rate to compute total productive hourly rates.<sup>146</sup> The claimant argues that the parameters and guidelines provide for a 21 percent default rate unless "actual benefit percent" is itemized; the claimant asserts that it did not submit such itemization, and therefore the 21 percent rate is required.<sup>147</sup> The Controller provided documentation in its comments that supported a rate significantly lower than the 21 percent default rate; specifically a document that states the costs of health insurance and retirement benefits, and states that it was provided "by Auditee".<sup>148</sup> The documents provided average hourly salaries of \$65.82 for fiscal year 1999-2000, \$71.39 for fiscal year 2000-2001, and \$79.99 for fiscal year 2001-2002, and benefit rates of 7.13 percent for fiscal year 1999-2000, 9.08 percent for fiscal year 2000-2001, and 9.59 percent for fiscal year 2001-2002.<sup>149</sup> On that basis, the Controller reduced the productive hourly rates from "\$79.87, \$89.41, and \$100.08 for FY 1999-2000, FY 2000-01, and FY 2001-02, respectively" to "\$70.51, \$77.87, and \$87.66 for the three fiscal years." As a result, the Controller found reductions of "\$1,516 in FY 1999-2000, \$1,917 in FY 2000-01, and \$2,326 in FY 2001-02" under "Component G3-Negotiations", and \$298 for fiscal year 2000-2001 and \$233 for fiscal year 2001-2002 for "Component G6-Administration/Grievances".

The claimant's reading of the parameters and guidelines suggests that the 21 percent benefit rate must be applied unless the claimant submits an itemization that supports a different rate. However, as the Controller points out, article XIII B, section 6 only requires reimbursement of actual mandated costs incurred; it does not generally allow for reimbursement in excess of the increased costs experienced by a claimant. Therefore, to the extent that the evidence in the record supports a benefit rate lower than the default 21 percent rate, that lower rate must be applied to the claim. In response to the draft proposed decision, the claimant argues strenuously that the 21 percent rate, though an anachronism created in the parameters and guidelines, has been treated by both claimants and the Controller as one of two acceptable methods for filing a

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<sup>146</sup> See, e.g., Exhibit A, IRC 05-4425-I-10, pages 84-86; 89.

<sup>147</sup> Exhibit C, Claimant Rebuttal Comments, page 5.

<sup>148</sup> Exhibit B, Controller's Comments, page 34.

<sup>149</sup> Exhibit B, Controller's Comments, pages 32-34.

claim: “[u]sing the 21% rate has been perceived as a convenience for claim preparation, to avoid calculating individual rates for the numerous staff claimed, rather than a punitive measure.”

The language in question has existed in the parameters and guidelines since at least 1981, and at that time no mention was made of its addition to the text, or its meaning.<sup>150</sup> The plain language in the second and third sentences above is susceptible of more than one interpretation. The second sentence, providing that “[a]ctual benefit percent *must be itemized*” seems to place the burden on the claimant to support its benefit rate with documentation. The third sentence is consistent with the burden being placed on the claimant, to the extent that it provides “[i]f no itemization is *submitted*, 21 percent must be used...” The two provisions together suggest that the 21 percent rate should generally provide an incentive for the claimant to provide an itemization of costs that supports a higher rate, and that the 21 percent rate is intended to be punitive.

However, the language does not suggest that a claimant has discretion whether to claim the 21 percent rate: it requires the claimant to itemize, and states that “21 percent *must be used*” if an itemization is not “submitted”. Therefore it would be reasonable to interpret the provision to hold that if the claimant does not submit the itemization, the 21 percent rate is required, even if another rate can be independently developed or verified. The difficulty with that interpretation is that, as the Controller has pointed out, it might permit a claimant to receive reimbursement in excess of its actual costs,<sup>151</sup> to the extent actual benefit percent can be verified through evidence in the record. And, it appears to conflict with the earlier sentence, which is strongly worded to require a benefit percent to be itemized.

Here, as explained above, the Controller has submitted evidence in the record that it states was provided “by Auditee”, and which allows the Controller to itemize a benefit percentage, where the claimant failed to do so. Moreover, there is nothing in the parameters and guidelines that suggests that 21 percent *must* be a minimum rate; though it seems likely that it was intended that way. The Controller’s itemization and reduction of benefit percentage is consistent with the intent and purpose of article XIII B, section 6 to reimburse only increased costs mandated by the state, and with Government Code sections 17560 and 17561, and therefore is correct as a matter of law.

Based on the foregoing, the Commission finds that the Controller’s reductions of salaries and benefits during the audit period on the basis of unsupported productive hourly rates were consistent with the parameters and guidelines, and not arbitrary, capricious, or entirely lacking in evidentiary support. The reductions totaling \$ 1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002 are, therefore, correct.

## **V. Conclusion**

Pursuant to Government Code section 17551(d), the Commission concludes that the reductions to the following direct costs are incorrect as a matter of law, and are arbitrary, capricious, or entirely lacking in evidentiary support:

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<sup>150</sup> Exhibit H, Admin Record Excerpt, page 35.

<sup>151</sup> Government Code section 17560 requires a local agency or school district to file its annual claim “that details the costs actually incurred for that fiscal year.”



- \$1,478 claimed for fiscal year 1999-2000 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$424 claimed for fiscal year 2000-2001 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$301 claimed for fiscal year 2001-2002 under Component G3-Negotiations for part-time teachers' hours, which the Controller held was not sufficiently supported.
- \$7,500 claimed for fiscal year 1999-2000 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$10,920 claimed for fiscal year 2000-2001 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$13,921 claimed for fiscal year 2001-2002 under Component G3-Negotiations for management team and confidential assistant hours, which the Controller held was not supported.
- \$335 claimed for fiscal year 2000-2001 under Component G6-Administration/Grievances for part-time teachers' hours, which the Controller held was not sufficiently supported.

As a result, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission requests that the Controller reinstate the above direct and related indirect costs to the claimant.

The Commission further finds that the following reductions are correct as a matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- Reductions of \$626 claimed for fiscal year 2001-2002 under Component G3 – Negotiations and \$250 claimed for fiscal year 2001-2002 under Component G6 – Administration/Grievances for part-time teachers' hours, which the Controller found represented duplicate costs.
- Reductions totaling \$1,516 in fiscal year 1999-2000, \$2,215 in fiscal year 2000-2001, and \$2,559 in fiscal year 2001-2002, on the basis of unsupported productive hourly rates, are consistent with the parameters and guidelines.

Based on the foregoing, the Commission partially approves this IRC.

**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 May 15, 2015, I served the:

**Proposed Decision**

*Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-10*  
Government Code Sections 3540-3549.9  
Statutes 1975, Chapter 961 ; Statutes 1991, Chapter 1213  
Fiscal Years 1999-2000 through 2001-2002  
Foothill-De Anza 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 May 15, 2015 at Sacramento, California.



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Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/24/15

**Claim Number:** 05-4425-I-10

**Matter:** Collective Bargaining

**Claimant:** Foothill-De Anza Community College District

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**Socorro Aquino**, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

**Marieta Delfin**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

**Donna Ferebee**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

**Susan Geanacou**, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

**Ed Hanson**, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

ed.hanson@dof.ca.gov

**Cheryl Ide**, Associate Finance Budget Analyst, *Department of Finance*

Education Systems Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

Cheryl.ide@dof.ca.gov

**Matt Jones**, *Commission on State Mandates*  
980 9th Street, Suite 300, Sacramento, CA 95814  
Phone: (916) 323-3562  
matt.jones@csm.ca.gov

**Jill Kanemasu**, *State Controller's Office*  
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 322-9891  
jkanemasu@sco.ca.gov

**Jay Lal**, *State Controller's Office (B-08)*  
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816  
Phone: (916) 324-0256  
JLal@sco.ca.gov

**Kathleen Lynch**, *Department of Finance (A-15)*  
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814  
Phone: (916) 445-3274  
kathleen.lynch@dof.ca.gov

**Kevin McElroy**, *Vice Chancellor, Foothill-De Anza Community College District*  
12345 El Monte Road, Los Altos Hills, CA 94022  
Phone: (650) 949-6201  
McElroyKevin@fhda.edu

**Yazmin Meza**, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
Yazmin.meza@dof.ca.gov

**Robert Miyashiro**, *Education Mandated Cost Network*  
1121 L Street, Suite 1060, Sacramento, CA 95814  
Phone: (916) 446-7517  
robertm@sscal.com

**Jameel Naqvi**, *Analyst, Legislative Analysts' Office*  
Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814  
Phone: (916) 319-8331  
Jameel.naqvi@lao.ca.gov

**Andy Nichols**, *Nichols Consulting*  
1857 44th Street, Sacramento, CA 95819  
Phone: (916) 455-3939  
andy@nichols-consulting.com

**Christian Osmena**, *Department of Finance*  
915 L Street, Sacramento, CA 95814  
Phone: (916) 445-0328  
christian.osmena@dof.ca.gov

**Arthur Palkowitz**, *Stutz Artiano Shinoff & Holtz*  
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106  
Phone: (619) 232-3122

apalkowitz@sashlaw.com

**Keith Petersen**, *SixTen & Associates*

**Claimant Representative**

P.O. Box 340430, Sacramento, CA 95834-0430

Phone: (916) 419-7093

kbsixten@aol.com

**Sandra Reynolds**, *Reynolds Consulting Group, Inc.*

P.O. Box 894059, Temecula, CA 92589

Phone: (951) 303-3034

sandrareynolds\_30@msn.com

**David Scribner**, *Max8550*

2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670

Phone: (916) 852-8970

dscribner@max8550.com

**Jim Spano**, Chief, Mandated Cost Audits Bureau, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-5849

jspano@sco.ca.gov

**Dennis Speciale**, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

DSpeciale@sco.ca.gov