

# SixTen and Associates

## Mandate Reimbursement Services

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May 20, 2015

**RECEIVED**  
May 20, 2015  
Commission on  
State Mandates

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Halsey:

RE: CSM 09-4206-I-22  
**Long Beach Community College District**  
Fiscal Years: 2003-04 through 2005-06  
Health Fee Elimination  
Education Code Section 76355  
Statutes of 1984, Chapter 1, 2<sup>nd</sup> E.S.  
Statutes of 1987, Chapter 1118  
Incorrect Reduction Claim

I have received the Commission Draft Proposed Decision (DPD) dated May 1, 2015, for the above-referenced incorrect reduction claim, to which I respond on behalf of the District.

### PART A. STATUTE OF LIMITATIONS APPLICABLE TO AUDITS OF ANNUAL REIMBURSEMENT CLAIMS

The District asserted in its incorrect reduction claim filed September 24, 2009, that the clause in Government Code Section 17558.5 (as amended by Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003 ) that delays the commencement of the three-year period of time for the Controller to audit to the date of initial payment is void because it is impermissibly vague. It is impossible for the claimant to know when the statute of limitations will expire at the time the claim is filed, which is contrary to the purpose of a statute of limitations. It allows the Controller's own unilateral delay, or failure to make payments from funds appropriated for the purpose of paying the claims, to control the tolling of the statute of limitations, which is also contrary to the purpose of a statute of limitations.

Chronology of Annual Claim Action Dates

December 13, 2004	FY 2003-04 claim filed by the District
December 13, 2007	FY 2003-04 statute of limitations for audit expires
October 3, 2008	Audit entrance conference letter date
June 26, 2009	Original final audit report issued
October 24, 2012	Revised final audit report issued <sup>1</sup>

The relevant version of Section 17558.5 in effect at the time the FY 2003-04 annual claim was filed (December 13, 2004) is Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003, as amended:

(a) 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 three years after the ~~end of the calendar year in which the date that the actual~~ reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is made filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

The Commission concludes (DPD, 14) that since Section 17558.5 "plainly provides that if no funds are appropriated or no payment is made . . . , the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim," that the Controller timely initiated the audit. This conclusion does not address the issue

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<sup>1</sup> The October 24, 2012, audit transmittal letter states the following reason for the revised audit:

This revised final report supersedes our previous report dated June 26, 2009. Our original report offset authorized health services fees against all allowable mandated costs claimed by the district. On October 27, 2011, the Commission on State Mandates (CSM) issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. This revised report offsets authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. As a result, allowable costs increased by \$4,032 for the audit period.

of vagueness raised by the District. The Commission asserts (DPD, 14):

Statutes 2002, chapter 1128, which amended Government Code section 17558.5, is a duly enacted statute and must be presumed valid and constitutional. 61 Article III, section 3.5 of the California Constitution states that an administrative agency has no power “[t]o declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional...”

Since the Commission is denying jurisdiction to address the issue of vagueness, it remains an issue for litigation.

#### PART B. APPLICATION OF AN INDIRECT COST RATE

The original audit report asserts that the District overstated its indirect cost rates and costs in the amount of \$74,504 for FY 2003-04. This finding is based upon the Controller’s statement that the District did not obtain federal approval for its indirect cost rate, a stated requirement of the Controller’s claiming instructions. The Commission concludes that compliance with the claiming instructions is required (DPD, 17):

Therefore, the Commission finds that the parameters and guidelines expressly require claimants to claim indirect costs in the manner described in the Controller’s claiming instructions, which in turn provide that an indirect cost rate may be developed in accordance with federal OMB guidelines or the state Form FAM-29C.

The threshold Commission conclusion is that claimants must comply with the Controller’s claiming instructions and that the Controller’s use of its own instructions and forms to recalculate the indirect cost rates was not arbitrary. The District asserts that the Controller’s claiming instructions are not alone enforceable as a matter of law as they are not regulations nor were they adopted pursuant to the administrative rulemaking process required to enforce agency manuals and instructions, as did the *Clovis Court*.<sup>2</sup> Therefore, any documentation standards or cost accounting formulas

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<sup>2</sup> From the Clovis Appellate Court Decision (4):

“Once the Commission determines that a state mandate exists, it adopts regulatory “[P]arameters and [G]uidelines” (P&G’s) to govern the state-mandated reimbursement. (§ 17557.) The Controller, in turn, then issues nonregulatory “[C]laiming [I]nstructions” for each Commission-determined mandate; these instructions must derive from the Commission’s test claim decision and its adopted P&G’s. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs.” Emphasis added.

published in the claiming instructions, to be enforceable, must derive from another source. However, there are no cost accounting standards for calculating the indirect cost rate for the Health Fee Elimination mandate published anywhere except the Controller's claiming instructions.

The Commission (DPD, 16) instead relies upon the "plain language" of the 1989 parameters and guidelines:

Claimant's argument is unsound: the parameters and guidelines plainly state that "indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The interpretation that is consistent with the plain language of the parameters and guidelines is that "indirect costs may be claimed," or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the parameters and guidelines and claim indirect costs in the manner described in the Controller's claiming instructions.

Claiming indirect costs is not conditional on the claiming instruction methods. Colleges "may" claim indirect costs, or any other eligible cost, on every mandate, not just Health Fee Elimination. The Commission's attribution of the conditional "may" to the ultimate decision to claim indirect costs, rather than the subsequent discretionary choice to use claiming instructions method is gratuitous.

The District agrees that the parameters and guidelines have the force of law, but that it does not extend by mere reference to the general or specific claiming instructions for Health Fee Elimination. Neither the Commission nor the Controller has ever adopted the Controller's claiming instructions pursuant the process required by the regulations relevant to the Commission or the Administrative Procedure Act relevant to the Controller, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller's claiming instructions. The Controller's use of the FAM-29C method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code

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From the Clovis Appellate Court Decision (15):

"Given these substantive differences between the Commission's pre-May 27, 2004 SDC P&G's and the Controller's CSDR, we conclude that the CSDR implemented, interpreted or made specific the following laws enforced or administered by the Controller: the Commission's pre-May 27, 2004 P&G's for the SDC Program (§ 17558 [the Commission submits regulatory P&G's to the Controller, who in turn issues nonregulatory Claiming Instructions based thereon]; and the Controller's statutory authority to audit state-mandated reimbursement claims (§ 17561, subd. (d)(2))." Emphasis added.

Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedure Act, when it is required to, the rule is called an "underground regulation." Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50).

Note that the Health Fee Elimination parameters and guidelines were amended on January 29, 2010. However, the indirect cost rate language remained the same:

### 3. Allowable Overhead Cost

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

The Commission has had numerous opportunities to clarify its intent and language regarding the indirect cost rate calculation methods and resolve or avoid the delegation and derivation issue. For example, and by contrast, the parameters and guidelines language for the new college mandate Cal Grants, adopted on the same date as the January 29, 2010, amendment for Health Fee Elimination, has the needed specific and comprehensive language:

#### B. Indirect Cost Rates

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

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

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

This language in the parameters and guidelines for Cal Grants makes the Controller's guidance on the suggested three choices of indirect cost calculation methods legally enforceable. The Commission properly adopted this language within the scope of their discretion and has utilized it in college mandate parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

In the absence of legally enforceable claiming instructions, rules or methods, or standards or specific language in the parameters and guidelines for the indirect cost rate calculation, the remaining standard is Government Code Section 17561. No particular indirect cost rate calculation method is required by law. Government Code Section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim if the Controller determines the claim to be excessive or unreasonable. Here, the District computed indirect cost rates utilizing cost accounting principles from the Office of Management and Budget Circular A-21, and the Controller has disallowed the rates without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles. The substitution of the Controller's method is an arbitrary choice of the auditor, not a "finding" enforceable either by fact or law. In order to enforce the adjustment, the burden of proof is on the Controller to prove that the District's calculation is unreasonable.

#### PART C. UNDERSTATED OFFSETTING REVENUES

This finding is the result of the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received, resulting in a total adjustment of \$639,989 for the audit period. The Controller computed the total student health fees collectible based on state-approved rates while the District reported actual fees collected.

The Commission (DPD, 18) has determined that the correct calculation and application of offsetting revenue from student health fees have been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law:

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

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.79 (Underline in original.)

The District agrees that claimants and state agencies are bound to apply the Health Fee Rule as decided law and that this extends to retroactive fiscal years still within the Commission's or Controller's jurisdiction.

### CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the District or state agency which originated the document.

Executed on May 20, 2015, at Sacramento, California, by



Keith B. Petersen, President  
SixTen & Associates

Service by Commission Electronic Drop Box

# **LONG BEACH COMMUNITY COLLEGE DISTRICT**

Revised Audit Report

## **HEALTH FEE ELIMINATION PROGRAM**

Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session;  
and Chapter 1118, Statutes of 1987

*July 1, 2003, through June 30, 2006*



**JOHN CHIANG**  
California State Controller

October 2012





**JOHN CHIANG**  
**California State Controller**

October 24, 2012

Roberto Uranga, President  
Board of Trustees  
Long Beach Community College District  
4901 East Carson Street  
Long Beach, CA 90808

Dear Mr. Uranga:

The State Controller's Office audited the costs claimed by the Long Beach Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session; and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2006.

This revised final report supersedes our previous report dated June 26, 2009. Our original report offset authorized health services fees against all allowable mandated costs claimed by the district. On October 27, 2011, the Commission on State Mandates (CSM) issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. This revised report offsets authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. As a result, allowable costs increased by \$4,032 for the audit period.

The district claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$196,839 is allowable and \$672,695 is unallowable. The costs are unallowable because the district overstated its fiscal year 2003-04 indirect cost rate and understated authorized health service fees. The State paid the district \$96,210. The State will pay allowable costs claimed that exceed the amount paid, totaling \$100,629, contingent upon available appropriations.

The district previously filed an Incorrect Reduction Claim (IRC) on September 24, 2009. The district may file an amended IRC with the CSM based on this revised final audit report. The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the CSM's website at [www.csm.ca.gov/docs/IRCForm.pdf](http://www.csm.ca.gov/docs/IRCForm.pdf).

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

JVB/sk

cc: Eloy O. Oakley, Superintendent/President  
Long Beach Community College District  
Ann-Marie Gabel, Vice President, Administrative Services  
Long Beach Community College District  
John Thompson, Director, Fiscal Services  
Long Beach Community College District  
Christine Atalig, Specialist  
College Finance and Facilities Planning  
California Community Colleges Chancellor's Office  
Ed Hanson, Principal Program Budget Analyst  
Education Systems Unit  
Department of Finance

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## Revised Audit Report

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# Revised Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the Long Beach Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2<sup>nd</sup> Extraordinary Session; and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2006.

The district claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$196,839 is allowable and \$672,695 is unallowable. The costs are unallowable because the district overstated its fiscal year (FY) 2003-04 indirect cost rate and understated authorized health service fees. The State paid the district \$96,210. The State will pay allowable costs claimed that exceed the amount paid, totaling \$100,629, contingent upon available appropriations.

## Background

Chapter 1, Statutes of 1984, 2nd Extraordinary Session repealed Education Code section 72246, which authorized community college districts to charge a health fee for providing health supervision and services, providing medical and hospitalization services, and operating student health centers. This statute also required that health services for which a community college district charged a fee during FY 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health service fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 (subsequently renumbered as section 76355 by Chapter 8, Statutes of 1993). The law requires any community college district that provided health services in FY 1986-87 to maintain health services at the level provided during that year for FY 1987-88 and for each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd Extraordinary Session imposed a "new program" upon community college districts by requiring specified community college districts that provided health services in FY 1983-84 to maintain health services at the level provided during that year for FY 1984-85 and for each fiscal year thereafter. This maintenance-of-effort requirement applied to all community college districts that levied a health service fee in FY 1983-84.

On April 27, 1989, the CSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, requiring them to maintain that level in FY 1987-88 and for each fiscal year thereafter.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. The CSM adopted parameters and guidelines on August 27, 1987, and amended them on May 25, 1989, and January 29, 2010. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist school districts in claiming mandated program reimbursable costs.

## **Objective, Scope, and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

## **Conclusion**

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Long Beach Community College District claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for costs of the Health Fee Elimination Program. Our audit disclosed that \$196,839 is allowable and \$672,695 is unallowable.

For the FY 2003-04 claim, the State paid the district \$37,425 from funds specifically appropriated for mandated program claims and \$12,772 from funds appropriated under Chapter 724, Statutes of 2010 (Assembly Bill No. 1610). Our audit disclosed that the entire amount is allowable.

For the FY 2004-05 claim, the State paid the district \$46,013 from funds specifically appropriated for mandated program claims. Our audit disclosed that \$142,610 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$96,597, contingent upon available appropriations.

For the FY 2005-06 claim, the State made no payment to the district. Our audit disclosed that \$4,032 is allowable. The State will pay that amount, contingent upon available appropriations.

### **Views of Responsible Official**

We issued a draft audit report on May 8, 2009. Ann-Marie Gabel, Vice-President, Administrative Services, responded by letter dated May 29, 2009 (Attachment), disagreeing with the audit results. We issued our original final audit report on June 26, 2009.

On October 27, 2011, the CSM issued a statement of decision in response to multiple incorrect reduction claims filed for the Health Fee Elimination Program. In its statement of decision, the CSM concluded that authorized health service fees may not be offset against the cost of athlete physicals. Therefore, we revised our final report to offset authorized health service fees against all allowable costs claimed, excluding costs attributable to athlete physicals. As a result, allowable costs increased by \$4,032 for the audit period. On September 24, 2012, we notified Ms. Gabel; John Thompson, Director, Fiscal Services; and other district staff of the final audit report revisions. District staff did not comment on the revisions.

### **Restricted Use**

This report is solely for the information and use of Long Beach Community College District, the Los Angeles County Office of Education, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

October 24, 2012

**Revised Schedule 1—  
Summary of Program Costs  
July 1, 2003, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2003, through June 30, 2004</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 1,941	\$ 1,941	\$ —	
Services and supplies	1,035	1,035	—	
Total direct costs	2,976	2,976	—	
Indirect costs	988	506	(482)	Finding 1
Total program costs, athlete physicals	3,964	3,482	(482)	
All other health services:				
Direct costs:				
Salaries and benefits	363,369	363,369	—	
Services and supplies	93,273	93,273	—	
Total direct costs	456,642	456,642	—	
Indirect costs	151,651	77,629	(74,022)	Finding 1
Total direct and indirect costs	608,293	534,271	(74,022)	
Less authorized health service fees	(344,231)	(486,684)	(142,453)	Finding 2
Less offsetting savings/reimbursements	(872)	(872)	—	
Total program costs, all other health services	263,190	46,715	(216,475)	
Total program costs	<u>\$ 267,154</u>	50,197	<u>\$ (216,957)</u>	
Less amount paid by the State <sup>2</sup>		(50,197)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 2,032	\$ 2,032	\$ —	
Services and supplies	1,040	1,040	—	
Total direct costs	3,072	3,072	—	
Indirect costs	993	993	—	
Total program costs, athlete physicals	4,065	4,065	—	

## Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2004, through June 30, 2005 (continued)</u>				
All other health services:				
Direct costs:				
Salaries and benefits	339,389	339,389	—	
Services and supplies	96,706	96,706	—	
Total direct costs	436,095	436,095	—	
Indirect costs	140,990	140,990	—	
Total direct and indirect costs	577,085	577,085	—	
Less authorized health service fees	(274,352)	(437,702)	(163,350)	Finding 2
Less offsetting savings/reimbursements	(838)	(838)	—	
Total program costs, all other health services	301,895	138,545	(163,350)	
Total program costs	\$ 305,960	142,610	\$ (163,350)	
Less amount paid by the State		(46,013)		
Allowable costs claimed in excess of (less than) amount paid		\$ 96,597		
<u>July 1, 2005, through June 30, 2006</u>				
Athlete physicals:				
Direct costs:				
Salaries and benefits	\$ 2,217	\$ 2,217	\$ —	
Services and supplies	1,130	1,130	—	
Total direct costs	3,347	3,347	—	
Indirect costs	1,133	1,133	—	
Total direct and indirect costs	4,480	4,480	—	
Less late filing penalty <sup>3</sup>	—	(448)	(448)	
Total program costs, athlete physicals	4,480	4,032	(448)	
All other health services:				
Direct costs:				
Salaries and benefits	344,403	344,403	—	
Services and supplies	103,762	103,762	—	
Total direct costs	448,165	448,165	—	
Indirect costs	151,749	151,749	—	
Total direct and indirect costs	599,914	599,914	—	
Less authorized health service fees	(305,891)	(640,077)	(334,186)	Finding 2
Less offsetting savings/reimbursements	(1,083)	(1,083)	—	
Less late filing penalty	(1,000)	—	1,000	
Audit adjustments exceeding claimed costs	—	41,246	41,246	
Total program costs, all other health services	291,940	—	(291,940)	
Total program costs	\$ 296,420	4,032	\$ (292,388)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		\$ 4,032		



## Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<b>Summary: July 1, 2003, through June 30, 2006</b>				
<b>Athlete physicals:</b>				
Direct costs:				
Salaries and benefits	\$ 6,190	\$ 6,190	\$ —	
Services and supplies	3,205	3,205	—	
Total direct costs	9,395	9,395	—	
Indirect costs	3,114	2,632	(482)	
Total direct and indirect costs	12,509	12,027	(482)	
Less late filing penalty	—	(448)	(448)	
Total program costs, athlete physicals	12,509	11,579	(930)	
<b>All other health services:</b>				
Direct costs:				
Salaries and benefits	1,047,161	1,047,161	—	
Services and supplies	293,741	293,741	—	
Total direct costs	1,340,902	1,340,902	—	
Indirect costs	444,390	370,368	(74,022)	
Total direct and indirect costs	1,785,292	1,711,270	(74,022)	
Less authorized health service fees	(924,474)	(1,564,463)	(639,989)	
Less offsetting savings/reimbursements	(2,793)	(2,793)	—	
Less late filing penalty	(1,000)	—	1,000	
Audit adjustments exceeding claimed costs	—	41,246	41,246	
Total program costs, all other health services	857,025	185,260	(671,765)	
Total program costs	\$ 869,534	196,839	\$ (672,695)	
Less amount paid by the State		(96,210)		
Allowable costs claimed in excess of (less than) amount paid		\$ 100,629		

<sup>1</sup> See the Revised Findings and Recommendations section.

<sup>2</sup> The district was paid \$37,425 from funds specifically appropriated for mandated program claims and \$12,772 from funds appropriated under Chapter 724, Statutes of 2010 (Assembly Bill No. 1610).

<sup>3</sup> Government Code section 17568 (effective for the audit period) states that a claim filed late shall be assessed a penalty of 10% of the amount that would have been allowed, up to a maximum of \$1,000.

# Findings and Recommendations

**FINDING 1—  
Overstated indirect  
cost rate**

The district claimed unallowable indirect costs totaling \$74,504 for fiscal year (FY) 2003-04. The costs are unallowable because the district overstated its indirect cost rate. A similar issue was noted in Finding 2 of the SCO’s revised audit report of the same program dated October 11, 2012. That report covered the period from July 1, 2001, through June 30, 2003.

For FY 2003-04, the district claimed indirect costs based on an indirect cost rate prepared using the principles of Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget [OMB] Circular A-21). However, the district used expenditures from the prior year’s CCFS-311 to prepare the indirect cost rate in that fiscal year. The district indicated that it used the most current data available to prepare its ICRP and believes that federal approval was not necessary.

State regulations require every college district to complete and file the financial statements on Form CCFS-311 on or before October 15, and the annual audit report on or before December 31. Therefore, data for FY 2003-04 should have been available at year end, as the mandated cost claims were not due until January 15 of the subsequent calendar year.

For FY 2003-04, the SCO’s claiming instructions allow the district to use a federally approved rate prepared in accordance with OMB Circular A-21. The district did not obtain federal approval for FY 2003-04. We calculated the allowable indirect cost rate based on the FAM-29C methodology that the parameters and guidelines and the SCO’s claiming instructions allow. We applied the allowable indirect cost rate to allowable direct costs according to the SCO’s claiming instructions.

The following table summarizes the claimed and allowable indirect cost rates:

	Fiscal Year 2003-04
Allowable indirect cost rate	17.00%
Less claimed indirect cost rate	<u>(33.21)%</u>
Overstated indirect cost rate	<u>(16.21)%</u>

The following table summarizes the audit adjustment based on the overstated indirect cost rate:

	Fiscal Year 2003-04
Athlete physicals:	
Direct costs claimed	\$ 2,976
Overstated indirect cost rate	<u>× (16.21)%</u>
Audit adjustment, athlete physicals	<u>\$ (482)</u>
All other health services:	
Direct costs claimed	\$ 456,642
Overstated indirect cost rate	<u>× (16.21)%</u>
Audit adjustment, all other health services	<u>\$ (74,022)</u>
Total audit adjustment	<u>\$ (74,504)</u>

The program's parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

For FY 2003-04, the SCO's claiming instructions state, "A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 'Cost Principles for Educational Institutions,' or the Controller's [FAM-29C] methodology. . . ."

### Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO's claiming instructions.

### District's Response

The draft audit report concludes that the District claimed unallowable indirect costs by \$75,504 for fiscal year (FY) 2003-04. The draft audit report states that the District developed the indirect cost rate based on the principles of OMB Circular A-21, but that it was not a cost study approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate. However, the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are the legally enforceable standards for claiming costs, state that: "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Instead, the burden is on the Controller to show that the indirect cost method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

The draft audit report notes that the District did not use the most recent CCFS-311 information available for the calculation of the indirect cost rate. For each fiscal year, the District used the prior year CCFS-311, prepared based on annual costs from the prior fiscal year for use in the current budget year. The draft audit report asserts that since the CCFS-311 is due to the state by October 15 each year, that district audited annual financial audits (the source of depreciation information for a method used in later fiscal years by the Controller) are due December 31 each year, and that the FY 2003-04 claim was due January 15, 2005, the District had adequate time to utilize the current CCFS-311 report rather than the report from the prior year. The audit report assumes that districts receive the audited prior year financial statements by January 1, which is a conclusion of fact without foundation.

Regardless of the factual issue of when the necessary supporting documentation is available to districts, the audit report does not indicate an enforceable legal requirement to use the most current CCFS-311. In fact, the Controller accepts indirect cost rates based on “old” data. Federally approved indirect cost rates are allowed by the Controller for some mandate programs and some fiscal years. Federally approved rates are approved for periods of two or more years. This means the data from the fiscal year from which the federal rates were calculated would be at least three years prior to the last year in which the federal rate was used.

The draft audit report notes that this same finding was made in the previous audit of this program for prior years at this District. The Controller knows that the District has appealed that audit to the Commission on State Mandates and that the District is therefore neither legally nor practically compelled to alter its position until a final adjudication of this issue.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the District’s rates as unreasonable or excessive, the adjustment should be withdrawn.

#### SCO’s Comment

In our revised audit report, we separately identified indirect cost audit adjustments attributable to athlete physicals and all other health services. The total audit adjustment amount and the recommendation remain unchanged.

The parameters and guidelines (section VI) state, “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.” The district interprets “may be claimed” to mean that compliance with the claiming instructions is voluntary. Instead, “may be claimed” permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO’s claiming instructions.

The district states, “the District used the prior year CCFS-311, prepared based on annual costs from the prior fiscal year for use in the current budget year.” Our audit validates this statement; however, no mandate-related authoritative criteria exist to support this methodology. Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. In addition, the parameters and guidelines require the district to report actual costs. For each fiscal year, “actual costs” are costs of the current fiscal year, not costs from a prior fiscal year.

State regulations require every college district to complete and file the financial statements on Form CCFS-311 on or before October 15, and to file the annual audit report on or before December 31. The district had the information on hand or could have obtained it from its external auditors before submitting its claim for reimbursement.

We acknowledge that the CSM has not scheduled a hearing to respond to a prior IRC that the district filed.

**FINDING 2—  
Understated authorized  
health service fees**

The district understated its reported authorized health service fees by \$639,989 during the audit period. It reported actual health service fee revenue that it collected rather than authorized health service fees.

Mandated costs do not include costs that are reimbursable from authorized fees. Government Code section 17514 states that “costs mandated by the state “means any increased costs that a school district is required to incur.” To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

Education Code section 76335, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. For FY 2003-04, the authorized fees are \$12 per semester, \$9 per summer session, and \$9 per intersession of at least four weeks. For FY 2004-05, the authorized fees are \$13 per semester, \$10 per summer session, and \$10 per intersession of at least four weeks. For FY 2005-06, the authorized fees are \$14 per semester, \$11 per summer session, and \$11 per intersession of at least four weeks. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the California Community Colleges Chancellor’s Office (CCCCO). The CCCCCO data is based on student data that the district reported. We calculated total authorized health service fees using the authorized health service fee rates that the CCCCCO identified.

The following table shows the authorized health service fees and audit adjustment revenue:

	Summer	Semester		Total
	Session	Fall	Spring	
FY 2003-04:				
Number of enrolled students	12,602	29,810	28,508	
Less number of BOGG recipients	(4,882)	(11,896)	(11,655)	
Subtotal	7,720	17,914	16,853	
Authorized health service fee rate	× \$ (9.00)	× \$(12.00)	× \$(12.00)	
Authorized health service fees	\$ (69,480)	\$ (214,968)	\$ (202,236)	\$ (486,684)
Less authorized health service fees claimed				344,231
Audit adjustment, FY 2003-04				(142,453)
FY 2004-05:				
Number of enrolled students	13,714	26,392	25,149	
Less number of BOGG recipients	(5,426)	(12,245)	(12,002)	
Subtotal	8,288	14,147	13,147	
Authorized health service fee rate	× \$(10.00)	× \$(13.00)	× \$(13.00)	
Authorized health service fees	\$ (82,880)	\$ (183,911)	\$ (170,911)	(437,702)
Less authorized health service fees claimed				274,352
Audit adjustment, FY 2004-05				(163,350)

	Summer	Semester		Total
	Session	Fall	Spring	
FY 2005-06:				
Number of enrolled students	13,554	25,768	25,970	
Less number of BOGG recipients	<u>(5,629)</u>	<u>(12,245)</u>	<u>—</u>	
Subtotal	7,925	13,523	25,970	
Authorized health service fee rate	× \$(11.00)	× \$(14.00)	× \$(14.00)	
Authorized health service fees	<u>\$ (87,175)</u>	<u>\$ (189,322)</u>	<u>\$ (363,580)</u>	(640,077)
Less authorized health service fees claimed				<u>305,891</u>
Audit adjustment, FY 2005-06				<u>(334,186)</u>
Total audit adjustment				<u>\$ (639,989)</u>

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCO data element STD7, codes A through G. We also recommend that the district identify the number of apprenticeship program enrollees based on data elements SB 23, code 1, and STD7, codes A through G.

In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1).

District’s Response

The draft audit report states that student health service fee revenue offsets were understated by \$639,989 for the three-year audit period. This adjustment is due to the fact that the District reported actual student health service fees that it collected rather than “authorized” student health service fees the could have been collected. The auditor calculated “authorized” student health service fee revenues, that is, the student health service fees collectible based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

“Authorized” Fee Amount

The draft audit report alleges that claimants must compute the total student health service fees collectible based on the highest “authorized” rate. The draft audit report does nto provide the statutory basis for the calculation of the “authorized” rate, nor the source of the legal right of any state entity to “authorize” student health service fee amounts absent rulemaking or compliance with the Administrative Procedure Act by the “authorizing” state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that “[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee. . . for health supervision and services. . .” There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: “*If*, pursuant to this

section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.” (Emphasis supplied in both instances)

#### Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that “[t]o the extent that community college districts can charge a fee, they are not required to incur a cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

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

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language that describes the legal effect of fees collected.

#### Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.” Government Code Section 17556 as last amended by Statutes of 2004, Chapter 895, actually states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(d) The local agency or school district has the authority to levy service charges, fees, and assessments sufficient to pay for the mandated program or increased level of service.

The draft audit report misrepresents the law. Government Code Section 14556 prohibits the Commission on State Mandates from finding costs subject to reimbursement that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

### Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, states, in relevant part: “Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “any offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.”

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

### SCO’s Comment

The finding remains unchanged. In our revised audit report, we eliminated information from the recommendation that was rendered irrelevant by the CSM’s statement of decision issued October 27, 2011.

### **“Authorized” Fee Amount**

We agree that community college districts may elect not to levy a health service fee or to levy a fee less than the authorized amount. Regardless of the district’s determination to levy or not levy the authorized health service fee, Education Code section 76355, subdivision (a), provides districts the *authority* to levy the fee. The CCCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

### **Education Code Section 76355**

Education Code section 76355 (specifically, subdivision (a)) authorizes the health service fee rate. The statutory section also provides the basis for calculating the authorized rate applicable to each fiscal year. The statutory section states:

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



### **Government Code Section 17514**

Government Code section 17514 states, “Costs mandated by the state’ means any increased costs which a local agency or school district is *required* [emphasis added] to incur. . . .” The district ignores the direct correlation that if the district has authority to collect fees attributable to health service expenses, then it is not *required* to incur a cost. Therefore, those health service expenses do not meet the statutory definition of mandated costs.

### **Government Code Section 17556**

The district presents an invalid argument that the statutory language applies only when the fee authority is sufficient to offset the “entire” mandated costs. The CSM recognized that the Health Fee Elimination Program’s costs are not uniform among districts. Districts provided different levels of service in FY 1986-87 (the “base year”). Furthermore, districts provided these services at varying costs. As a result, the fee authority may be sufficient to pay for some districts’ mandated program costs, while it is insufficient to pay the “entire” costs of other districts. Meanwhile, Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the CSM adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. To the extent that districts have authority to charge a fee, they are not required to incur a cost.

Two court cases addressed the issue of fee authority<sup>1</sup>. Both cases concluded that “costs,” as used in the constitutional provision, exclude “expenses that are recoverable from sources other than taxes.” In both cases, the source other than taxes was fee authority.

<sup>1</sup> *County of Fresno v. California* (1991) 53 Cal. 3d 482; *Connell v. Santa Margarita* (1997) 59 Cal. App. 4<sup>th</sup> 382.

### **Parameters and Guidelines**

The district incorrectly interprets the parameters and guidelines’ requirement regarding authorized health service fees. The CSM recognized the *availability* of another funding source by including the fees as offsetting savings in the parameters and guidelines. The CSM’s staff analysis of May 25, 1989, states the following regarding the proposed parameters and guidelines amendments that the CSM adopted that day:

Staff amended Item “VIII. Offsetting Savings and Other Reimbursements” to reflect the reinstatement of [the] fee authority.

In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants’ reimbursable costs:

“If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied.”

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Thus, CSM intended that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter from the CCCCCO dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the CSM regarding authorized health service fees.

The CSM did not revise the proposed parameters and guidelines amendments further, as the CSM’s staff concluded that the DOF’s proposed language did not substantively modify the scope of its proposed language. The CSM’s meeting minutes of May 25, 1989, corroborate that the CSM adopted the proposed parameters and guidelines on consent, with no additional discussion. Therefore, no community college districts objected and there was no change to the CSM’s interpretation regarding authorized health service fees.

**OTHER ISSUE—  
Public records request**

The district’s response included a public records request. The district’s response and SCO’s comment are as follows:

District’s Response

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 1 (indirect cost rate calculation standards) and Finding 2 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

SCO’s Comment

The SCO provided the district the requested records by separate letter dated June 22, 2009.

**Attachment—  
District's Response to  
Draft Audit Report**

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*Board of Trustees*  
Mark J. Bowen  
Dr. Thomas J. Clark  
Jeffrey A. Kellogg  
Douglas W. Otto  
Roberto Uranga

*Superintendent-President*  
Eloy O. Oakley

Long Beach City College • Long Beach Community College District

4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL - #7006 0100 0004 6064 6161

May 29, 2009

Mr. Jim L. Spano, Chief  
Mandated Costs Audits Bureau  
Division of Audits  
California State Controller  
P.O. Box 942850  
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984  
Health Fee Elimination  
Annual Claim Fiscal Years: 2003-04, 2004-05, and 2005-06

Dear Mr. Spano:

This letter is the response of the Long Beach Community College District to the draft audit report for the above referenced program and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated May 8, 2009, and received by the District on May 15, 2009.

**Finding 1 - Overstated indirect costs rates**

The draft audit report concludes that the District claimed unallowable indirect costs by \$75,504 for fiscal year (FY) 2003-04. The draft audit report states that the District developed the indirect cost rate based on the principles of OMB Circular A-21, but that it was not a cost study approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate. However, the Controller's claiming instructions were never adopted as rules or regulations, so they have no force of law.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are the legally enforceable standards for claiming costs, state

that: "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Instead, the burden is on the Controller to show that the indirect cost method used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

The draft audit report notes that the District did not use the most recent CCFS-311 information available for the calculation of the indirect cost rate. For each fiscal year, the District used the prior year CCFS-311, prepared based on annual costs from the prior fiscal year for use in the current budget year. The draft audit report asserts that since the CCFS-311 is due to the state by October 15 each year, that district audited annual financial audits (the source of depreciation information for a method used in later fiscal years by the Controller) are due December 31 each year, and that the FY 2003-04 claim was due January 15, 2005, the District had adequate time to utilize the current CCFS-311 report rather than the report from the prior year. The audit report assumes that districts receive the audited prior year financial statements by January 1, which is a conclusion of fact without foundation.

Regardless of the factual issue of when the necessary supporting documentation is available to districts, the audit report does not indicate an enforceable legal requirement to use the most current CCFS-311. In fact, the Controller accepts indirect cost rates based on "old" data. Federally approved indirect cost rates are allowed by the Controller for some mandate programs and some fiscal years. Federally approved rates are approved for periods of two or more years. This means the data from the fiscal year from which the federal rates were calculated would be at least three years prior to the last year in which the federal rate is used.

The draft audit report notes that this same finding was made in the previous audit of this program for prior years at this District. The Controller knows that the District has appealed that audit to the Commission on State Mandates and that the District is therefore neither legally nor practically compelled to alter its position until a final adjudication of this issue.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the District's rates as unreasonable or excessive, the adjustment should be withdrawn.

#### **Finding 2 - Understated authorized health fee service fees**

The draft audit report states that student health service fee revenue offsets were understated by \$639,989 for the three-year audit period. This adjustment is due to the fact that the District reported actual student health service fees that it collected rather than "authorized" student health service fees the could have been collected. The auditor

calculated "authorized" student health service fee revenues, that is, the student health service fees collectible based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

#### "Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health service fees collectible based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health service fee amounts absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

#### Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee . . . for health supervision and services . . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "*If*, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, *if any*, that a part-time student is required to pay. *The governing board may decide whether the fee shall be mandatory or optional.*" (Emphasis supplied in both instances)

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There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

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The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: "Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)." The use of the term "any offsetting savings" further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are "offsetting savings" that were not "experienced."

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

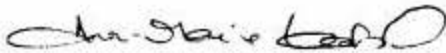
**Public Records Request**

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 1 (indirect cost rate calculation standards) and Finding 2 (calculation of the student health service fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

○ ○ ○

Sincerely,



Ann-Marie Gabel, Vice President, Administrative Services  
Long Beach Community College District

AG:lr

cc: Eloy Oakley, Superintendent-President  
Long Beach Community College District

Keith Peterson, President  
SixTen and Associates



**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**



JOHN CHIANG  
California State Auditor

October 3, 2008

Eloy O. Oakley  
Superintendent / President  
Long Beach Community College District  
4901 East Carson Street  
Long Beach, CA 90808

Re: Audit of Mandated Cost Claims for Health Fee Elimination Program  
For the Period of July 1, 2003, through June 30, 2006

Dear Mr. Oakley:

This letter confirms that Janny Chan has scheduled an audit of Long Beach Community College District's legislatively mandated Health Fee Elimination Program cost claims filed for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06. *Government Code* sections 12410, 17558.5, and 17561 provide the authority for this audit. The entrance conference is scheduled for Thursday, October 16, 2008, at 11:00 a.m. We will begin audit fieldwork after the entrance conference.

Please furnish working accommodations for and provide the necessary records (listed on the Attachment) to the audit staff. If you have any questions, please call me at (310) 342-5639.

Sincerely,

A handwritten signature in black ink, appearing to read "Art Luna".

Art Luna, Audit Manager  
Mandated Cost Audits Bureau  
Division of Audits

AL/kr

Attachment

Eloy O. Oakley  
October 3, 2008  
Page 2

cc: Linda Roseth, Administrative Secretary / Mandated Cost Specialist  
Long Beach Community College District  
Jim L. Spano, Chief  
Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
Ginny Brummels, Manager  
Division of Accounting and Reporting  
State Controller's Office  
Janny Chan, Auditor-in-Charge  
Division of Audits  
State Controller's Office

**Long Beach Community College District**  
**Records Request for Mandated Cost Program**  
**FY 2003-04, FY 2004-05, and FY 2005-06**

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1. Copy of external and internal audit reports performed on the mandated cost program
2. Organization charts for the district effective during the audit period, showing employee names and position titles
3. Organization charts for the division or units handling the mandated cost program effective during the audit period, showing employee names and position titles
4. Chart of accounts
5. Worksheets that support the productive hourly rate used, including support for benefit rates
6. Documentation that supports the indirect cost rate proposals (ICRP)
7. Employee time sheets or time logs
8. Access to payroll records showing employee salaries and benefits paid during the audit period
9. Access to general ledger accounts that support disbursements
10. Documentation that supports amounts received from other funding sources
11. Copies of invoices and other documents necessary to support costs claimed
12. Copy of claims filed for the mandated cost program
13. District budgets for 2003-04, 2004-05, and 2005-06

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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 21, 2015, I served the:

**Claimant Comments**

*Health Fee Elimination, 09-4206-I-22*

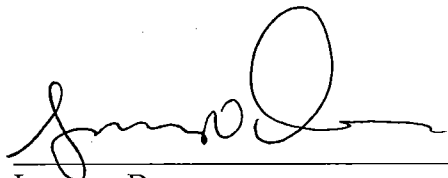
Education Code Section 76355, Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

Long Beach 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 21, 2015 at Sacramento, California.



Lorenzo Duran  
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:** 09-4206-I-22

**Matter:** Health Fee Elimination

**Claimant:** Long Beach Community College District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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