STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

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December 8, 2015

Mr. Keith B. Petersen
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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: **Decision**
Notification of Truancy, 10-904133-I-09
Education Code Section 48260.5
Statutes 1983, Chapter 498
Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006
San Juan Unified School District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

On December 3, 2015, the Commission on State Mandates adopted the decision on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Education Code Section 48260.5 Statutes 1983, Chapter 498 Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006 San Juan Unified School District, Claimant	Case No.: 10-904133-I-09 *Notification of Truancy* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted December 3, 2015*) (*Served December 8, 2015*)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on December 3, 2015.

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 the proposed decision to approve the IRC on consent, with Commission members Chivaro, Hariri, Morgan, and Ortega voting to adopt the consent calendar. Commission members Olsen, Ramirez, and Saylor were not present at the hearing.

Summary of the Findings

This IRC addresses reductions of $132,847 made by the State Controller's Office (Controller) to reimbursement claims filed by San Juan Unified School District (claimant) for fiscal years 2002-2003 through 2005-2006, for the *Notification of Truancy* program.

The Commission finds that the final audit report, issued September 4, 2009, is the date that the Controller completed the audit, which falls outside the two year deadline to complete an audit with respect to all claim years, based on the entrance conference letter confirming a conversation on or before the date of the letter, August 27, 2007, which is determined to be the date the audit commenced. Because the Commission finds that the audit was not timely completed, it is void, and all reductions must be reinstated. As a result, the Controller's reasons for the reductions are not analyzed below, in accordance with the Commission's determination.

Accordingly, the Commission approves this IRC, and directs the Controller to reinstate all costs reduced in the amount of $132,847.

COMMISSION FINDINGS

I. Chronology

01/14/2005	Claimant filed its fiscal year 2002-2003 annual reimbursement claim.[1]
01/10/2006	Claimant filed its fiscal year 2003-2004 annual reimbursement claim.[2]
01/10/2006	Claimant filed its fiscal year 2004-2005 annual reimbursement claim.[3]
09/11/2006	Controller paid the 2002-2003, 2003-2004, and 2004-2005 annual reimbursement claims.[4]
01/11/2007	Claimant filed its fiscal year 2005-2006 annual reimbursement claim.[5]
08/27/2007	Controller sent the entrance conference letter to claimant.[6]
09/11/2007	The entrance conference was held.[7]
08/06/2009	Controller issued the draft audit report.[8]
08/19/2009	Claimant notified Controller of disputed adjustments.[9]
09/04/2009	The Controller issued the final audit report.[10]
10/06/2010	Claimant filed this IRC.[11]
10/03/2014	The Controller filed late comments on the IRC.[12]
09/24/2015	Commission staff issued the draft proposed decision.[13]
10/15/2015	Claimant filed comments on the draft proposed decision.[14]

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[1] Exhibit B, Controller's Late Comments on IRC, page 23.

[2] Exhibit B, Controller's Late Comments on IRC, page 23.

[3] Exhibit B, Controller's Late Comments on IRC, page 23.

[4] Exhibit B, Controller's Late Comments on IRC, page 23.

[5] Exhibit A, Incorrect Reduction Claim, page 109.

[6] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 17.

[7] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 17.

[8] Exhibit A, Incorrect Reduction Claim, page 65.

[9] Exhibit A, Incorrect Reduction Claim, page 65.

[10] Exhibit A, Incorrect Reduction Claim, page 60.

[11] Exhibit A, Incorrect Reduction Claim, page 1.

[12] Exhibit B, Controller's Late Comments on IRC, page 1.

[13] Exhibit C, Draft Proposed Decision.

[14] Exhibit D, Claimant's Comments on Draft Proposed Decision.

10/28/2015 Controller filed late comments on the draft proposed decision.[15]

II. Background

The *Notification of Truancy* Program

Under California's compulsory education laws, children between the ages of six and 18 are required to attend school full-time, with a limited number of specified exceptions.[16] Once a pupil is designated a truant, as defined, state law requires schools, districts, counties, and the courts to take progressive intervention measures to ensure that parents and pupils receive services to assist them in complying with the compulsory attendance laws.

The first intervention is required by Education Code section 48260.5, as added by the test claim statute.[17] As originally enacted, section 48260.5 specified:

> (a) Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following:
>
> (1) That the pupil is truant.
>
> (2) That the parent or guardian is obligated to compel the attendance of the pupil at school.
>
> (3) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.
>
> (b) The district also shall inform parents or guardians of the following:
>
> (1) Alternative educational programs available in the district.
>
> (2) The right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

On November 29, 1984, the Board of Control, predecessor to the Commission, determined that Education Code section 48260.5, as added by Statutes 1983, chapter 498, imposed a reimbursable state-mandated program to develop notification forms and provide written notice to the parents or guardians of the truancy. The decision was summarized as follows:

> The Board determined that the statute imposes costs by requiring school districts to develop a notification form, and provide written notice to the parents or guardians of students identified as truants of this fact. It requires that notification contain other specified information and, also, to advise the parent or guardian of their right to meet with school personnel regarding the truant pupil. The Board

[15] Exhibit E, Controller's Late Comments on Draft Proposed Decision.

[16] Education Code section 48200.

[17] Education Code section 48260.5, Statutes 1983, chapter 498.

> found these requirements to be new and not previously required of the claimant.[18]

The original parameters and guidelines were adopted on August 27, 1987, and authorized reimbursement for the one-time activities of planning implementation, revising school district policies and procedures, and designing and printing the notification forms. Reimbursement was also authorized for ongoing activities to identify pupils to receive the initial notification and prepare and distribute the notification by first class mail or other reasonable means.

The Commission amended the parameters and guidelines on July 22, 1993, effective July 1, 1992, to add a unit cost of $10.21, adjusted annually by the Implicit Price Deflator, for each initial notification of truancy distributed in lieu of requiring the claimant to provide documentation of actual costs to the Controller. The parameters and guidelines further provide that "school districts incurring unique costs within the scope of the reimbursable mandated activities may submit a request to amend the parameters and guidelines to the Commission for the unique costs to be approved for reimbursement."[19] These are the parameters and guidelines applicable to this claim.[20]

The Legislature enacted Statutes 2007, chapter 69, effective January 1, 2008, which was sponsored by the Controller's Office to require the Commission to amend the parameters and guidelines, effective July 1, 2006, to modify the definition of a truant and the required elements to be included in the initial truancy notifications in accordance with Statutes 1994, chapter 1023, and Statutes 1995, chapter 19.[21] These statutes required school districts to add the following information to the truancy notification: that the pupil may be subject to prosecution under Section 48264, that the pupil may be subject to suspension, restriction, or delay of the pupil's driving privilege pursuant to Section 13202.7 of the Vehicle Code, and that it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day. The definition of truant was also changed from a pupil with unexcused instances of absence or tardiness for "more than three days" to a pupil with unexcused instances of absence or tardiness for "three days." In 2008, the Commission amended the parameters and guidelines, for costs incurred beginning July 1, 2006, as directed by the Legislature. However, reimbursement for the program under the amended parameters and guidelines remained fixed at a unit cost of $10.21, adjusted annually by the Implicit Price Deflator ($19.63 for fiscal year 2013-14).

<u>The Controller's Audit and Summary of the Issues</u>

The September 4, 2009 audit report determined that $791,710 in claimed costs for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006 was allowable and $132,847 was

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[18] Exhibit F, Brief Written Statement for Adopted Mandate issued by the Board of Control on the *Notification of Truancy* test claim (SB 90-4133).

[19] Exhibit F, Parameters and Guidelines for *Notification of Truancy* program, amended July 22, 1993.

[20] The parameters and guidelines as amended in 2008 are not applicable to this IRC.

[21] Exhibit F, Controller's Letter on AB 1698, dated July 17, 2007.

unallowable.[22] The Controller reviewed a sample of 883 notices issued by the elementary and secondary schools within the district, out of the 64,641 notices claimed. The Controller found that 162 notices included in the sample were not reimbursable for the following reasons:

- There was no documentation to support four notices within the sample and, thus, the Controller concluded that those pupils did not have the required number of unexcused absences and, thus, costs were claimed beyond the scope of the mandate.[23]
- 18 notices were sent to pupils that had fewer than three absences.
- 89 notices were sent to pupils that had three, but not four absences as stated in the parameters and guidelines.
- 51 notices were sent to pupils under the age of six and over the age of 18 who were not subject to the compulsory education requirements of the Education Code.[24]

The Controller reached the total dollar amount reduced ($132,847) by using an audit methodology known as "statistical sampling." The Controller examined a random sample of initial truancy notices distributed by the claimant,[25] with the calculation of the "sample size based on a 95% confidence level," and determined that 162 of those notices claimed were beyond the scope of the mandate, as described above.[26] The total number of unallowable notifications within the sample for each fiscal year was then calculated as an error percentage, and extrapolated to the total number of notifications issued and identified by the claimant in those fiscal years, to approximate the total number of unallowable notifications claimed. The number of unallowable notices was then multiplied by the unit cost for each fiscal year to calculate the total reduction for the audit period.

III. Positions of the Parties

San Juan Unified School District

The claimant challenges the disallowance of notifications for insufficient documentation, arguing that while not specifically identified in the audit report, the audit disallowed four of the notices in the audit sample for lack of supporting documentation. The claimant asserts that the documentation criterion was not discussed in the audit report and there is no stated basis for the finding. The claimant states that it complied with Part VI. A., of the parameters and guidelines by reporting the number of notices distributed, and that there is no requirement that claimants maintain a copy of each notification or provide attendance records to support the number of notifications distributed. The claimant asserts that the Controller's apparent selection of

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[22] Exhibit A, Incorrect Reduction Claim, page 63.

[23] Exhibit B, Controller's Late Comments on the IRC, page 19.

[24] Exhibit A, Incorrect Reduction Claim, page 68; Exhibit B, Controller's Late Comments on IRC, page 18.

[25] The sample sizes for elementary schools and the sample sizes for secondary schools that were reviewed by the Controller each fiscal year ranged from 143 to 149. (Exhibit A, Incorrect Reduction Claim, page 68 (final audit report); Exhibit B, Controller's Late Comments on IRC, page 26).

[26] Exhibit B, Controller's Late Comments on IRC, pages 18, 26.

attendance records as the only source of support for documentation and statutory compliance for purposes of the audit, is an unenforceable policy preference of the Controller.[27] The claimant argues in its comments on the draft proposed decision that it is unknown at this time, ten years after the reimbursement claim was submitted, what other business records were offered in support of the claim. However, the claimant states that it is clear the auditor would not have considered these records because they were not attendance records.[28]

The claimant also asserts that "16 notices in the audit sample for elementary school …and 2 notices in the audit sample for secondary schools" were reduced because "the District documented fewer than three accumulated unexcused absences or tardies."[29] However, the claimant's IRC filing does not raise any arguments as to why this is an incorrect basis for reduction. In response to the draft proposed decision, the claimant states it no longer disputes the reduction of 18 notices in the sample for less than three absences/tardies.[30]

The claimant also challenges the disallowance of notifications for fewer than four unexcused absences or tardies. The claimant notes the inconsistency between the definition of truant included in the parameters and guidelines (four or more unexcused absences or instances of tardiness) and the Education Code, as amended in 1994 and 1995 (three unexcused absences or instances of tardiness, or any combination thereof). The claimant argues:

> The parameters and guidelines specifically reference that the source of the definition of a truant is Section 48260. Therefore, any amendment of Section 48260 would independently and unilaterally change the essential requirements for the initial notice of truancy without the need for an amendment by the Commission on State Mandates. The Controller has decided to enforce the definition of a truant as it was stated in the parameters and guidelines prior to that amendment, even though it contradicts a statute in effect during the audit period. …. The District properly complied with state law when it issued truancy notifications upon three absences….The parameters and guidelines reimburse the mandated costs based on the number of initial notifications issued, not when the notices are issued. The Controller's disallowance of those notices with three unexcused absences or tardies is without legal authority.[31]

The claimant additionally challenges the Controller's disallowance of notifications sent to pupils under age six and over age 18 arguing that these should be allowed because the Education Code allows these students to attend school and requires school districts to provide educational services to these pupils.[32] In comments on the draft proposed decision, the claimant states that it no longer disputes the reduction of 51 notices in the sample for students that were

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[27] Exhibit A, Incorrect Reduction Claim, pages 19-20.

[28] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 6.

[29] *Id.*, page 21.

[30] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 5.

[31] *Id.*, pages 22-23.

[32] *Id.*, pages 23-28.

younger than six years of age or older than 18 years of age when they accrued one or more of the requisite absences or occurrences of tardiness.[33]

The claimant also asserts that the use of statistical sampling should be rejected, that the extrapolation of findings is void, and that the audit findings can only pertain to documentation actually reviewed.[34] The claimant argues that there is no "statutory or regulatory authority to allow the Controller to reduce claimed reimbursement based on extrapolation of a statistical sample."[35] The claimant attacks the statistical reliability and accuracy of the Controller's methodology, arguing that "[t]esting to detect the rate of error within tolerances is the purpose of sampling, but it is not a tool to assign an exact dollar amount to the amount of the error, which the Controller has inappropriately done so here."[36] The claimant further states that the risk of extrapolating findings from a sample is that the conclusions obtained from the sample may not be representative of the universe.[37] The claimant contends that the sampling technique used by the Controller is also quantitatively non-representative because less than two percent of the total number of notices were audited and that "[t]he expected error rate is stated to be 50%, which means the total amount adjusted $132,847 is really just a number exactly between $66,424 (50%) and $100,27 [sic] ($150%)" and that there is no legal or factual basis cited by the Controller "that would allow the midrange of an interval to be used as a finding of absolute actual cost."[38] Claimant asserts that the Controller should comply with the Administrative Procedure Act, should it wish to enforce audit standards other than "excessive or unreasonable."[39] The claimant continues to assert these arguments in comments on the draft proposed decision.[40]

Claimant also asserts that the audit changed the amount paid for the 2002-2003, 2003-2004, and 2004-2005 fiscal years without a finding in the report;[41] however this allegation will not be addressed because it does not result in a reduction to the district's claim.

And, finally, in comments on the draft proposed decision, the claimant, for the first time, argues that the audit was not timely completed pursuant to Government Code section 17558.5 and is, therefore, void. The claimant has submitted documentary evidence, attached to the claimant's comments, to support this allegation.[42] The final audit report was issued on September 4, 2009,

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[33] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 4.

[34] *Id.*, page 11.

[35] *Id.*

[36] *Id.*, page 15.

[37] *Id.*, page 15.

[38] *Id.*, page 17.

[39] *Id.*, pages 17-18.

[40] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 7.

[41] *Id.*, pages 28-29.

[42] Exhibit D, Claimant's Comments on Draft Proposed Decision, pages 2-3, 17.

which the claimant argues is two years and one week after the audit was initiated via the entrance conference letter dated August 27, 2007, and is therefore not timely.[43]

State Controller's Office

The Controller disagrees with the need to separately identify the four unallowable notifications based on lack of documentation.[44] The Controller asserts that they "requested that the district provide attendance records showing that the students accumulated the minimum number of unexcused absences or tardiness occurrences…[and that] if the district provided no records, then the audit conclusion is that the student did not have the required unexcused absences." The Controller argues that since the district provided attendance record documentation for 879 of the 883 sampled students, they are well versed on the required documentation. The Controller asserts that the district's attendance records are the "obvious source documentation to validate that the students did in fact qualify as truant." The Controller further asserts that the claimant has not provided, offered, or identified any alternative documentation to support the four unallowable initial truancy notifications claimed.[45]

With respect to the reduction based on the number of absences and tardies, the Controller argues that the parameters and guidelines identify the reimbursable costs and state that "a student shall be initially classified as truant upon the fourth unexcused absence…." The Controller asserts that the claimant "confuses the difference between its statutory responsibility versus mandate-related reimbursable costs identified by the parameters and guidelines." The Controller argues that the "parameters and guidelines clearly state that initial truancy notifications are reimbursable under the mandated program for students who accumulated four or more unexcused absences or tardiness occurrences." Further the Controller notes that the claimant did not comment regarding students who accumulated fewer than three unexcused absences or tardiness occurrences, except as discussed above.[46]

The Controller also asserts that claimant is not entitled to claim reimbursement for notices sent for students who were under age six or over age 18 when they accrued one or more of the requisite absences or tardiness occurrences as these students were not subject to compulsory full time education, as defined in Education Code section 48200, and are thus not part of the mandated program.[47]

In response to the claimant's challenge to the statistical sampling methodology, the Controller asserts that the Government code supports the use of statistical sampling. The Controller argues that Government Code section 17561(d)(2)(B) provides authority for statistical sampling in that this section allows the Controller to reduce "excessive" claims. The Controller continues that a claim that exceeds what is proper is excessive, that the district's claims were improper because they included non-reimbursable notifications, and that "the statistical samples…identified a reasonable estimate of the non-reimbursable initial truancy notifications, thus properly reducing

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[43] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 3.

[44] Exhibit B, Controller's Late Comments on IRC, page 19.

[45] *Id.*, page 19.

[46] Exhibit B, Controller's Late Comments on IRC, page 21.

[47] *Id.*, page 22.

the claims for the unreasonable costs claimed."[48] The Controller further asserts that the audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), and the GAGAS specifically provide that "[w]hen a representative sample is needed, the use of statistical sampling approaches generally results in stronger evidence…."[49] The Controller also asserts that there is no statutory requirement that they publish an audit manual or audit program for mandated costs program audits and that the Administrative Procedure Act is not applicable.[50]

The Controller filed late comments on the draft proposed decision, agreeing with the staff finding upholding the Controller's reductions based on insufficient documentation, notifications for pupils who were under the age of six and over the age of 18 at the time that they incurred some of the requisite occurrences of absence or tardiness, notifications issued for pupils with fewer than three absences, and extrapolation of the reductions through statistical sampling.[51] The Controller did not agree with the staff finding in the draft proposed decision that the reductions based on pupils with three but not four absences or tardies were incorrect.[52]

IV. Discussion

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to 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 Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[53] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[54]

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[48] *Id.*, pages 12, 17.

[49] *Id.*, page 13.

[50] *Id.*, pages 13, 17.

[51] Exhibit E, Controller's Late Comments on Draft Proposed Decision, page 1.

[52] Exhibit E, Controller's Late Comments on Draft Proposed Decision, page 2.

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

[54] *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of*

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.[55] 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." [Citation.]' "[56]

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.[57] In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[58]

The Final Audit Report for the 2002-2003 Through 2005-2006 Fiscal Year Reimbursement Claims Was Not Completed Within the Two Year Statutory Deadline in Government Code Section 17558.5, and the Audit Is Therefore Void.

In comments on the draft proposed decision, the claimant argues that the Controller did not timely complete the audit of the reimbursement claims pursuant to Government Code section 17558.5(a) and, therefore, the audit is void.

Effective January 1, 2005, Government Code section 17558.5(a) was amended 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."[59] Courts have ruled that when a deadline is for the protection of a person or class of persons, and the language of the statute as a whole indicates the Legislature's intent to enforce the deadline, the deadline is mandatory.

California (1996) 45 Cal.App.4th 1802, 1817.

[55] *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.

[56] *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th 534, 547-548.

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

[58] 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.

[59] Statutes 2004, chapter 890 (emphasis added).

> [T]he intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or the failure to the particular act at the required time. (Citation.) When the provision is to serve some public purpose, the provision may be held directory or mandatory as will best accomplish that purpose (citation)….[60]

Here, the plain language of section 17558.5 provides that "[i]n any case, an audit *shall* be completed not later than two years after the date that the audit is commenced." Because the structure and purpose of the statute suggests that it is mandatory, an audit not completed by the deadline must be held void.

The claimant argues in this case that the audit was initiated with an August 27, 2007 letter sent by the Controller confirming the date of the entrance conference for the audit, and since the Controller issued the final audit report on September 4, 2009, more than two years later, the audit is not timely.[61] The claimant filed the August 27, 2007 entrance conference letter with the Commission and argues that the letter is relevant evidence to show when the audit commenced under the statute, and that its interpretation is consistent with the Commission's decision on *Collective Bargaining and Collective Bargaining Agreement Disclosure*, 09-4225-I-17 and 10-4225-I-18.[62]

While the Controller has not specifically addressed this issue, the Controller's original comments on the IRC assert that the field audit commenced on September 11, 2007 (the date the entrance conference was held) and ended on July 29, 2009.[63]

Although the field work ended on July 29, 2009, the record shows that communication continued between the Controller and the claimant concerning the audit findings after that date. A draft audit report was issued on August 6, 2009, after which a letter dated August 19, 2009, from the claimant to the Controller was sent disputing the audit findings.[64] On September 4, 2009, the final audit report was issued by the Controller.[65] The Commission finds that the final audit report constitutes the Controller's final determination on the subject claims and provides written notice of the claim components adjusted, the amounts adjusted, and the reasons for the adjustment, as required by Government Code section 17558.5(c), allowing the claimant to

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[60] *People v. McGee* (1977) 19 Cal.3d 948, 962, citing *Morris v. County of Marin* (1977) 18 Cal.3d 901, 909-910.

[61] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 3.

[62] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 3, referring to the Commission's decision adopted March 27, 2015, on *Collective Bargaining and Collective Bargaining Agreement Disclosure*, 09-4225-I-17 and 10-4225-I-18.

[63] Exhibit B, Controller's Late Comments on IRC, page 5.

[64] Exhibit A, Incorrect Reduction Claim, pages 65 and 74.

[65] Exhibit A, Incorrect Reduction Claim, page 60.

thereafter file an IRC.[66] The issuance of the final audit report, therefore, constitutes the completion of the audit.

However, the event that constitutes the initiation or commencement of the audit needs further analysis. Based on the date of the final audit report, September 4, 2009, the Controller's audit of the fiscal year 2002-2003 through 2005-2006 reimbursement claims, had to be commenced on or after September 4, 2007, to meet the completion deadline in Government Code section 17558.5. Thus, the Commission is called upon to make a finding whether the entrance conference itself or some earlier occurrence constitutes the commencement of an audit for purposes of section 17558.5, because here the difference between whether the audit commenced on September 11, 2007 (the date of the entrance conference), or on or before August 27, 2007 (the date of the letter confirming the date of the entrance conference), is dispositive of the question whether the Controller met the two-year completion deadline of section 17558.5.

For the reasons below, the Commission finds that the Controller's audit of the claimant's fiscal year 2002-2003 through 2005-2006 reimbursement claims was commenced on or before August 27, 2007, and was therefore not timely completed when the final audit report was issued on September 4, 2009.

As stated above, Government Code section 17558(a) requires the Controller to complete an audit no later than two years after the date the audit is commenced. The Legislature, however, did not specifically define the event that commences the audit and the parties assert that the audit was commenced on different dates. Unlike other agencies that conduct audits and have adopted formal regulations to make it clear when the audit beings (which are afforded great deference by the courts) the Controller has not adopted a regulation for the audits of state-mandate reimbursement claims.[67] Thus, the Commission cannot, as a matter of law, state the act or event that commences an audit in all cases. Rather, for purposes of applying the two-year completion requirement of section 17558.5, the Commission must determine when the audit was commenced based on the evidence in the record.

The commencement of an audit requires a unilateral act of the Controller and, as stated above, the Controller's failure to timely complete the audit within the two-year deadline after the audit is commenced, is a jurisdictional bar to any reductions made by the Controller to the claimant's reimbursement claims. Like the requirement to complete an audit within the statutory deadline,

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[66] Government Code section 17558.5(c) states the following: "The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review." See also, California Code of Regulations, title 2, section 1185.1(c), stating that an IRC must "be filed no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim."

[67] See, e.g., regulations adopted by the California Board of Equalization (title 18, section 1698.5, stating that an "audit engagement letter" is a letter "used by Board staff to confirm the start of an audit or establish contact with the taxpayer").

the Controller's unilateral act to commence or initiate an audit is also subject to deadlines imposed by Government Code section 17558.5.

At the time the claimant filed the reimbursement claims in this case, Government Code section 17558.5(a) required the Controller to initiate an audit no later than three years after the date the reimbursement claim was filed or last amended. However, if no funds are appropriated or no payment on the claim is made to the claimant for the fiscal year for which the claim is filed, the Controller's deadline to audit was three years after the date of initial payment of the claim. The initiation provisions of Government Code section 17558.5 function as a statute of repose, where the statute provides a period during which an audit may be initiated, and after which the claimant may enjoy repose, dispose of any evidence or documentation to support their claims, and assert a defense that the audit is not timely and therefore void.[68] Because it is the Controller's authority to audit that must be exercised within a specified time, it must be within the Controller's exclusive control to demonstrate by documentary evidence that a timely audit is in progress, and that the claimant is on notice of the audit and may be required to produce documentation to support its claims.

In this case, the Commission finds that the Controller's entrance conference letter dated August 27, 2007, and not the entrance conference on September 11, 2007 itself, was the act that commenced the audit. The entrance conference letter is addressed to "Sharon Rew, Internal Auditor for San Juan Unified School District," and states the following:

> This letter **confirms** that Marie Salvacion **has scheduled an audit** of San Juan Unified School District's legislatively mandated Notification of Truancy Program cost claims filed for fiscal year (FY) 2002-03, 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 Tuesday, September 11, 2007, at 10:30 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.[69]

The Controller's August 27, 2007 entrance conference letter to the claimant verifies the first unilateral act by the Controller to exercise its audit authority consistent with the plain language of section 17558.5. This letter establishes evidence of an "independent, objectively determined and verifiable event" supporting the date the audit was initiated. The plain language of the letter

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[68] *Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305 (unlike an ordinary statute of limitations which begins running upon accrual of the claim, [the] period contained in a statute of repose begins when a specific event occurs, regardless of whether a cause of action has accrued or whether any injury has resulted." [citations] A statute of repose thus is harsher than a statute of limitations in that it cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has been invaded.); *Inco Development Corp. v. Superior Court* (2005), 131 Cal.App.4th 1014 (the characteristics of a statute of repose include that it is "not dependent upon traditional concepts of accrual of a claim, but is tied to an independent, objectively determined and verifiable event…".)

[69] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 17 (emphasis added).

"confirms" that an audit of the mandated program "has been scheduled," thus implying a conversation between the parties about the scheduling of an entrance conference *before* the August 27, 2007 date of the letter, and that the claimant was given actual notice of the commencement of the audit on or before that date. While the letter is addressed to Ms. Rew, an Internal Auditor for the claimant, rather than an the district superintendent or other official, the letter did provide a courtesy copy to Michael Dencavage, Associate Superintendent of Business Services for San Juan Unified School District.[70] Both Ms. Rew and Mr. Dencavage were copied on the September 4, 2007 transmittal letter with the final audit report from the Controller.[71] Further, the response to the draft audit report was signed by Mr. Dencavage, with a courtesy copy to Ms. Rew.[72] Moreover, it is the claimant that filed this letter as evidence of when the audit commenced, and there is no other conflicting evidence or argument that the claimant did not receive this letter or previously schedule the entrance conference.

Under the Commission's regulations, the Commission has the authority to take official notice of any fact which may be judicially noticed by the courts.[73] Pursuant to Evidence Code section 452(c), the court may take judicial notice of the official records and files of the executive branch of state government, including the official records of the Controller.[74] The courts have also held that letters issued by a state agency may be judicially noticed pursuant to Evidence Code section 452(c).[75] Thus, pursuant to this authority, the Commission takes official notice of the Controller's August 27, 2007 entrance conference letter to the claimant, and finds that the audit was initiated no later than the date of the letter, August 27, 2007, confirming the audit conference that had already been scheduled. Since the audit was completed on September 4, 2009, more than two years after the audit was commenced, it is not timely.

Accordingly, the Commission finds that this audit was not timely completed, in accordance with section 17558.5, and is void.[76]

V. Conclusion

Based on the foregoing, the Commission approves this IRC and requests that the Controller reinstate all costs reduced totaling $132,847, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations.

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[70] Exhibit D, Claimant's Comments on Draft Proposed Decision, page 19.

[71] Exhibit A, Incorrect Reduction Claim, page 61.

[72] Exhibit A, Incorrect Reduction Claim, page 76.

[73] California Code of Regulations, title 2, section 1187.5(c); Government Code section 11515.

[74] See also, *Chas L. Harney, Inc. v. State* (1963) 217 Cal.App.2d 77, 86.

[75] *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 607-608, where the court took judicial notice of letters issued by the Department of Insurance.

[76] This conclusion is also consistent with the Commission's decision on *Health Fee Elimination*, 05-4206-I-06, adopted March 27, 2015, where it was determined that an entrance conference letter issued by the State Controller's Office, which documented the parties' earlier agreement on the scheduling of an entrance conference, was sufficient evidence to verify the date the audit was initiated.

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RE: **Decision**

Notification of Truancy, 10-904133-I-09
Education Code Section 48260.5
Statutes 1983, Chapter 498
Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006
San Juan Unified School District, Claimant

On December 3, 2015, the foregoing decision of the Commission on State Mandates was adopted on the above-entitled matter.

for

Heather Halsey, Executive Director

Dated: December 8, 2015

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 December 8, 2015, I served the:

Decision
Notification of Truancy, 10-904133-I-09
Education Code Section 48260.5
Statutes 1983, Chapter 498
Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006
San Juan Unified School 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 December 8, 2015 at Sacramento, California.

Jill Magee

Jill L. Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/29/15

Claim Number: 10-904133-I-09

Matter: Notification of Truancy

Claimant: San Juan Unified School 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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