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March 11, 2015

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

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

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

Re: **Proposed Decision**
Health Fee Elimination, 05-4206-I-10
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 1999-2000, 2000-2001, and 2001-2002
Foothill-De Anza Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

Hearing

This matter is set for hearing on **Friday, March 27, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey
Executive Director

Hearing Date: March 27, 2015
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ITEM 8

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

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

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

Health Fee Elimination

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

05-4206-I-10

Foothill-De Anza Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses reductions made by the State Controller's Office (Controller) to Foothill-De Anza Community College District's (claimant's) reimbursement claims for fiscal years 1999-2000 through 2001-2002 under the *Health Fee Elimination* program. Over the three fiscal years in question, the Controller reduced claimed costs by a total of $1,817,357. The following issues are in dispute in this IRC:

- The statutory deadlines applicable to the audit of the 1999-2000 and 2000-2001 reimbursement claims;
- Reduction in salary and benefit costs, based on the assertion that claimant did not conduct a time study for the estimated costs claimed for counseling, or failed to show that the employees performed the mandated activities;
- Reduction in service and supply costs, based on the assertions that some costs claimed go beyond the scope of the mandate and are not reimbursable, or that claimant failed to show that the costs claimed directly relate to the mandated program or were provided in the base year;
- Reduction of costs claimed based on the claimant's development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed $7.50 for each semester or $5 for each quarter or summer

[1] Statutes 1993, chapter 8.

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

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

In 1987,[6] the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.[7] In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than $7.50 for each semester, or $5 for each quarter or summer semester.[8] As a result, beginning January 1, 1988, all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.[9]

Procedural History

Claimant filed reimbursement claims with the Controller for the 1999-2000 fiscal year on January 5, 2001, and for the 2000-2001fiscal year on December 21, 2001.The claim for the 2001-2002 fiscal year was mailed on January 13, 2003. The claims are for actual costs incurred under the *Health Fee Elimination* program. On January 16, 2003, the Controller conducted its

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

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

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

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

[6] Statutes 1987, chapter 1118.

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

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

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

entrance conference. On March 10, 2004, the Controller issued its final audit report, concluding that claimant overstated its costs for the program.

Claimant filed this IRC on September 15, 2005.[10] On March 12, 2008, the Controller submitted comments on the IRC, reiterating the audit findings and asserting that its adjustments were correct. On July 13, 2009, claimant filed rebuttal comments. On October 3, 2014, the Commission requested additional information from the Controller on the indirect cost rate findings. On October 14, 2014, the Controller provided additional information.

Commission staff issued the draft proposed decision on the IRC on December 22, 2014.[11] On December 30, 2014, the Controller filed comments supporting the draft proposed decision.[12] On January 12, 2015, claimant filed comments on the draft proposed decision, continuing to assert that the Controller incorrectly reduced the costs claimed.[13]

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[14] 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."[15]

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

[10] Exhibit A, IRC.

[11] Exhibit F, Draft Proposed Decision.

[12] Exhibit G, Controller Comments filed December 30, 2014.

[13] Exhibit H, Claimant Comments filed January 12, 2015.

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

[15] *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[16]

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[17] In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[18]

Claims

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

Subject	Description	Staff Recommendation
Statutory deadlines applicable to the audit of claimant's1999-2000 and 2000-2001annual reimbursement claims.	At the time the underlying reimbursement claims were filed, Government Code section 17558.5 stated: "A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim." Claimant asserts that the claim was no longer *subject to audit* at	*The audit was not time-barred by any statutory or common law limitation* – Staff finds that the plain language of Government Code section 17558.5, at the time the reimbursement claims were filed, did not require the Controller to complete an audit within any specified period of time, and that a subsequent amendment to the statute demonstrates that "subject to audit" means "subject to the initiation of an audit." The audit was completed less than one year after it was initiated and, under the facts of this case, within a reasonable period of time. In addition, there is no evidence that the claimant was prejudiced by the audit process.

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

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

[18] 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.

	the time the final audit report was issued.	
Reduction in employee salary and benefit costs.	Claimant asserts that the Controller should not have reduced claimed costs for salaries, benefits and related indirect costs even though, for each fiscal year, claimant estimated a percentage of time spent on counseling activities and did not provide actual documentation of hours worked or a time study as required by the parameters and guidelines. Costs were also claimed for additional employees who were not identified by name or classification and whose activities were not supported by documentation attributing their claimed activities to the mandated program.	*Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support* – Staff finds that there is no evidence in the record that the costs claimed relate to the mandate. In addition, the claimant did not provide supporting documentation as required by the parameters and guidelines or conduct a time study for the "estimated" costs claimed for counseling.
Reduction in service and supply costs.	Claimant asserts that the Controller arbitrarily reduced service and supply costs for each fiscal year. For each fiscal year, claimant claimed the costs of a bad debt reserve fund for uncollected student fees and a health fee reserve account, sports coverage insurance, refreshments, sunflower seeds, chewing gum, breath mints, key tags, and lunch. Claimant also claimed costs for attendance at a speech, IPJC-STD-001 instructor training, hotel expenses for a contraceptive study, costs to evaluate the program, and student accident insurance in fiscal years 2000-2001 and 2001-2002.	*Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support* – Staff finds that the reduction of costs claimed for bad debt and health fee reserve funds, sports coverage insurance, refreshments, sunflower seeds, chewing gum, breath mints, key tags, lunch, attendance at a speech, IPCJ-STD-001 instructor training, expenses for a contraceptive technology conference, costs to evaluate the program, and student accident insurance in fiscal years 2000-2001 and 2001-2002 either go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year..
Reduction in student accident insurance	Claimant asserts that the Controller's reduction in costs	*Incorrect as a matter of law and arbitrary and capricious* –

costs in fiscal year 1999-2000.	for student accident insurance in fiscal year 1999-2000 is incorrect as the costs were adequately supported with documentation.	Staff finds that the Controller's reduction of costs by $30,527 for student accident insurance in fiscal year 1999-2000 is incorrect since the costs are supported by source documents that meet the requirements of the parameters and guidelines. Staff recommends that the Commission request the Controller to reinstate $30,527 to the claimant.
Reduction based upon asserted flaws in the development of indirect cost rates for calculation of the indirect cost rate.	Claimant asserts the Controller incorrectly reduced indirect costs. For each fiscal year, claimant did not obtain federal approval of its proposed indirect cost rate under the OMB Circular A-21 method. The Controller recalculated the indirect costs using the Form FAM 29-C as authorized in the claiming instructions.	*Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support* – Claimant did not comply with the parameters and guidelines, claiming instructions, and the OMB Circular A-21 when calculating indirect costs because it did not obtain federal approval of its rates or use costs from the same fiscal year. The Controller recalculated the indirect cost rate using the Form FAM 29-C which is expressly authorized in the claiming instructions.
Recalculation of offsetting fee revenues.	Claimant asserts that the Controller incorrectly recalculated enrollment fee revenue. The Controller found that the claimant over reported and deducted too much offsetting revenue, by $1,109,627, and, thus, used that extra revenue to reduce unallowable costs.	*The Commission does not have jurisdiction to determine this issue, since there was no reduction associated with recalculation.* As the Controller's recalculation of offsetting revenue resulted in a benefit to claimant and not a reduction in costs, the Commission lacks jurisdiction to make findings on the way the Controller calculated offsetting fee revenue.

Staff Analysis

A. The Audit of the Reimbursement Claims for 1999-2000 and 2000-2001 is Not Barred by the Deadlines Found in Government Code Section 17558.5.

Government Code section 17558.5, as added by Statutes 1995, chapter 945 (operative July 1, 1996) provides that a reimbursement claim "is subject to audit by the Controller *no later than*

two years after the calendar year in which the reimbursement claim is filed or last amended."[19] The 1999-2000 reimbursement claim was filed on January 5, 2001 and the 2000-2001 reimbursement claim was filed on December 21, 2001. Thus, both claims were "subject to audit" by the plain language of section 17558.5 until December 31, 2003.

Claimant does not dispute that the entrance conference timely initiated the audit on March 12, 2003. However, claimant asserts that "subject to" requires the Controller to *complete* the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. The Controller did not complete its final audit of this claim until nearly three months later, on March 10, 2004, when the Controller issued the final audit report.

The plain language of the first sentence in Government Code section 17558.5, as added in 1995, does not require the Controller to "complete" the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are "subject to audit" within two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This interpretation is consistent with the 2002 amendment to the first sentence of section 17558.5, which clarified that "subject to audit" means "subject to the initiation of an audit." In this case, the audit of the reimbursement claims filed for fiscal years 1999-2000 and 2000-2001 had to be initiated by December 31, 2003. Since the audit began no later than March 12, 2003, when the entrance conference was conducted, the audit was timely initiated.

Moreover, section 17558.5 was amended in 2004 (after the completion of this audit) to establish, for the first time, the requirement to "complete" the audit two years after the audit is commenced. Nevertheless, the Controller was still required under common law to complete the audit within a reasonable period of time. The audit was completed less than one year after it was initiated and, under the facts of this case, within a reasonable period of time. In addition, there is no evidence that the claimant was prejudiced by the audit process.

Based on the above analysis, staff finds that the audit of the 1999-2000 and 2000-2001 reimbursement claims was timely.

B. Claimant did not Comply with the Parameters and Guidelines in Claiming Salary and Benefit Costs and, Thus, the Controller's Reduction of These Costs is Correct as a Matter of Law and is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller found that the claimant overstated salary and benefit costs, and related indirect costs, by $3,143,440 as described below.

1. <u>The reduction of costs claimed for "counseling" is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.</u>

For all three fiscal years, reimbursement was claimed for the following services: Wellness Program, Counseling, Psychological Services, Health Fees Reserve, Health Fees, and Health "Svcs-Psych." Claimant estimated that 15 percent of the cost for providing these services was for "counseling." The Controller reduced all costs claimed for counseling on the ground that the

[19] Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11) [emphasis added].

claimant was unable to support the 15 percent allocation with time logs or time studies documenting the actual time spent on the activity. In addition, claimant was unable to show that counselors performed activities related to the mandated program.

Staff finds that the reduction of costs for counseling is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Claimant failed to comply with the parameters and guidelines, which require a claimant to identify each employee and the employee's classification, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. When claiming costs based on the average number of hours, the parameters and guidelines require that the number of hours reported must be supported by a "documented time study." Claimant did not comply with these requirements and admits it did not conduct a time study for the fiscal years at issue. Thus, there is no evidence in the record supporting the costs claimed for counseling in any of the fiscal years.

2. The reduction of costs claimed for additional counselors, general assistants, secretaries, clerks, custodians, and other employees, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

Additionally, the Controller reduced a portion of salary and benefit costs claimed for counselors, general assistants, secretaries, clerks, custodians, and other employees because claimant did not support the costs claimed with time logs or time studies, and did not demonstrate that these employees performed mandated activities.

The parameters and guidelines require claimants to identify the employees and their classifications, a description of the mandated functions performed by each employee, and the actual number of hours devoted to each function in their reimbursement claims.[20] In addition, for employee salaries and benefits, the parameters and guidelines require the claimant to maintain and provide, upon request of the Controller, source documentation to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate.[21]

The reimbursement claims, themselves, do not identify this information; they only identify total program costs. There is no evidence in the record describing the mandated functions performed by each employee or the actual number of hours devoted to each function. Nor is there evidence that claimant provided source documentation to the Controller to show that the costs claimed for these other employees are valid and relate to the mandated program. Thus, claimant did not comply with the requirements in the parameters and guidelines in claiming these costs for salary and benefits, and has not rebutted the findings of the Controller.

C. The Controller's Reduction of Costs Claimed for Services and Supplies is Partially Correct as a Matter of Law; However, Costs of $30,527 for Student Accident Insurance Claimed for 1999-2000 Were Incorrectly Reduced.

The Controller also found that claimant overstated costs for services and supplies, and related indirect costs, resulting in a $593,175 reduction, as described below.

[20] Exhibit A, IRC, Exhibit C, at p. 40.

[21] Exhibit A, IRC, Exhibit C, at p. 40.

1. The reduction of costs related to a bad debt reserve fund and a health fee reserve fund are correct as a matter of law, since these costs go beyond the scope of the mandate and are not eligible for reimbursement.

Claimant claimed costs totaling $293,785 for services and supplies to establish a bad debt reserve fund and a health fees reserve account. The Controller reduced these costs to $0, on the ground that the reserve fee account costs are not eligible for reimbursement.

Staff finds that these costs go beyond the scope of the mandate and are not reimbursable. The mandate is to provide health supervision and services to students, direct and indirect medical and hospitalization services to students, and the operation of student health centers, to the extent the community college provided these services in fiscal year 1986-1987. The formation of a bad debt reserve fund and a health fee reserve fund are not activities or costs identified in the parameters and guidelines as eligible for reimbursement.

2. The reduction of costs for other services and supplies is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support because these costs go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year.

The Controller also reduced costs for the following services and supplies identified in a spreadsheet prepared by the Controller as follows:

- Counseling expenses claimed in all fiscal years. No documentation or time study to support the estimate of 15 percent of the total expenses.
- Costs claimed in fiscal year 1999-2000 for refreshments for 160 people at $8.00 each. These costs are not reimbursable.
- Costs supported by a receipt from Costco, which indicated purchases in fiscal year 2001-2002 for sunflower seeds, chewing gum, and breath mints. These costs are not reimbursable.
- Costs claimed for a luncheon provided by Foothill Café in 2001-2002 for a nutritionist speech. This cost is not reimbursable.
- No documentation or other evidence was provided showing that the costs claimed for a speech by Naomi Tutu, "Searching for Common Ground," in fiscal year 2001-2002 were related to the mandated program.
- Costs claimed for "IPCJ-STD-001 Instructor Training" for De Anza College in fiscal year 2001-2002. No evidence that training was health services related.
- Costs claimed for custom-printed key tags with whistle purchased from Brown & Bigelow (vendor) in fiscal year 2001-2002. These costs are not reimbursable.
- Hotel expenses from Hyatt Hotels claimed in fiscal year 2001-2002 for Sandra Gonsalces for a contraceptive technology conference. Claimant provided no documentation to support the costs claimed.

- Costs to evaluate health center operations, activities, and programs are not reimbursable because these services were not provided in the base year of 1986-1987.[22]

Staff finds that the Controller's reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The parameters and guidelines allow reimbursement for only those "expenditures which can be identified as a direct cost of the mandate" to provide health services to students. The parameters and guidelines also require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs," including "documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort."

The costs claimed for employee or instructor training and for the evaluation of the program are not identified in the parameters and guidelines as reimbursable costs and, thus, go beyond the scope of the mandate. Moreover, the claimant has not provided any documentation or evidence to support any of the costs claimed, or documentation to show that the services were provided in the base year. Thus, the Controller's findings are consistent with the parameters and guidelines.

3. The reduction of costs for sports coverage insurance is correct as a matter of law because such costs are not eligible for reimbursement; but the reduction for costs claimed for student accident insurance is only partially correct.

The Controller reduced costs claimed by $90,527 for student accident insurance because the student accident insurance policy included unallowable sports accident coverage and claimant did not show that the costs for the insurance relate to the mandated program.[23]

a) Costs relating to sports accident insurance go beyond the scope of the mandate and are not eligible for reimbursement.

Claimant argues that the full amount claimed for student accident insurance, including those amounts attributable to sports coverage, is reimbursable. Claimant agrees that the test claim statute, Education Code section 76355(d), prohibits any health fees collected to be used for athletic insurance. However, claimant asserts that the prohibition only applies to the expenditure of health fee funds, and does not apply to the health services provided by the districts and the costs eligible for reimbursement. Claimant further contends that the parameters and guidelines expressly include student insurance as a reimbursable cost, as long as the insurance service was provided in the base year.

Staff finds that the cost of providing athletic insurance (or "sports coverage") is not reimbursable. The Commission's test claim decision and parameters and guidelines state that the mandated program is imposed only on those community college districts that "*provided health services for which it was authorized to charge a fee in fiscal year 1983-1984*." By law, community college districts were not authorized to charge a general fee on students for athletic insurance coverage.[24] Thus, Section V. of the parameters and guidelines, which describes the reimbursable costs, authorizes reimbursement only for "on-campus accident, voluntary, and

[22] Exhibit B, Controller's Comments filed March 12, 2008 (Tab 4), pages 34-38.

[23] See Exhibit A, IRC, Exhibit E, Finding 2 in Final Audit Report.

[24] Education Code section 76355(d)(2).

insurance inquiry/claim administration" expenses. The cost of providing athletic insurance is not listed as a reimbursable cost.

b) Sufficient documentation was provided by claimant to show evidence of the validity of the mandate-related costs for student accident insurance in fiscal year 1999-2000 and, thus, the reduction of those costs are incorrect. However, there is no evidence of supporting documentation provided for the costs claimed in fiscal years 2000-2001 and 2001-2002 as required by the parameters and guidelines.

The Controller also reduced all costs claimed for student accident insurance because the documentation submitted by claimant does not show how the district calculated the mandate-related costs.

Staff finds, however, that claimant provided sufficient documentation to show evidence of the validity of the mandate-related costs for student accident insurance in fiscal year 1999-2000 and, thus, the reduction of those costs are incorrect.

The record indicates that costs were claimed for student accident insurance for fiscal years 1999-2000, 2000-2001 and 2001-2002, and the reimbursement claims, signed under penalty of perjury, show that "on-campus accident, voluntary, and insurance inquiry/claim administration" expenses were incurred in the base year.[25]

Claimant responded to the draft audit report on January 21, 2004, and attached are the following documents that support the costs incurred for student accident insurance in fiscal year 1999-2000:

- A memo from the claimant's Risk Management Department, dated November 23, 1998, apportioning insurance costs.][26]
- An invoice from the insurance company, Andreini & Company, dated January 11, 2000, for the total premium costs of $118,000.00 for "student accident coverage 8/1/99 to 7/31/00." The invoice also identifies the coverage as "sports accident" in the upper left corner.[27]
- Claimant issued a "request for check" for $118,000.00 payable to Andreini & Company on January 26, 2000, "for renewal of Student Accident Policy for 8/1/1999 to 7/31/2000." The request was approved, and $24,437.00 and $6,090.00 were designated to account code 2112645050 (account code for student accident insurance).[28]
- A computer printout showing the transaction for "INS-STUD ACCIDENT Fiscal Year: 00" identifying the payment to Andreini & Company of $6,090.00 from account code 2112645050 (account code for student accident insurance).[29]

[25] Exhibit A, IRC, at pp. 118, 135 and 175.

[26] Exhibit A, IRC, Exhibit E, p. 80.

[27] Exhibit A, IRC, Exhibit E, at p. 79.

[28] Exhibit A, IRC, Exhibit E, at p. 78.

[29] Exhibit A, IRC, Exhibit E, at p. 76.

The parameters and guidelines require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs." In *Clovis Unified*, the court interpreted similar language and determined that employee declarations and certifications and average time or cost accountings are "methods [that] can be deemed akin to worksheets" that properly show evidence of the validity of such costs.[30] The documents provided in this case meet that standard and support the validity of the costs incurred for student accident insurance in fiscal year 1999-2000 in the amount of $30,527 ($24,437.00 and $6,090.00 for Foothill and De Anza colleges), as required by the parameters and guidelines. Thus, staff finds that the reduction of costs in the amount of $30,527 is incorrect and should be reinstated to claimant.

However, there is no evidence in the record of any documentation provided to support the student accident insurance costs claimed in fiscal years 2000-2001 and 2001-2002 as required by the parameters and guidelines. Therefore, for those two fiscal years, the Controller's reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support

D. Claimant did Not Comply With the Parameters and Guidelines and Controller's Claiming Instructions in preparing its Indirect Cost Rate and, Thus, the Controller's Reduction of These Costs is Correct as a Matter of Law.

The Controller also reduced indirect costs claimed on the ground that claimant did not obtain federal approval of its proposed indirect cost rate calculated under OMB Circular A-21, and did not develop the rates based on costs incurred in the fiscal years within the audit period. During the audit, claimant recalculated indirect costs using the FAM 29-C method, but the Controller found that the indirect costs did not support the revised rates claimed. The Controller recalculated indirect costs using the FAM 29-C method, which slightly increased the rates revised by claimant. The difference between the original claimed rate of 36.48 percent for all three years, and the revised rates of 15.23 percent in fiscal year 1999-2000, 15.72 percent in fiscal year 2000-2001, and 17.3 percent in fiscal year 2001-2002, result in a reduction of $442,402.

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 the federal OMB guidelines (which require federal approval) or by using the state Form FAM 29-C.[31]

Staff finds that claimant did not comply with the requirements in the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate, since it did not obtain federal approval for the rate as required by the OMB guidelines. Therefore, the reduction is correct as a matter of law. Staff further finds that the Controller's use of the Form FAM 29-C is authorized by the parameters and guidelines and the claiming instructions and, thus, was not arbitrary, capricious, or entirely lacking in evidentiary support.

[30] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 804.

[31] Exhibit A, IRC, Exhibit C, p. 40.

E. The Controller's Recalculation of Offsetting Fee Revenue Benefitted Claimant by Increasing Allowable Reimbursement Costs and, Thus, Without a Reduction, the Commission does not Have Jurisdiction to Make Findings on the Controller's Audit Findings Relating to this Issue.

Finally, the audit found that claimant over reported and deducted $1,109,627 in offsetting fee revenue for the three fiscal years at issue in this case. The Controller recalculated offsetting revenues authorized to be charged and reduced the amount of offsetting revenue deducted from the claims. The overstated amounts were then used to reduce the unallowable costs. Although the audit findings benefit claimant, claimant continues to disagree with how the Controller recalculated the offsetting revenue and requests a finding by the Commission on this issue. In this respect, claimant asserts that offsetting revenues shall be deducted to the extent the fees are collected, and not deducted to the extent authorized by statute.

Staff finds that the Commission does not have jurisdiction to make findings on this issues. The plain language of section 17551, which directs the Commission to hear IRCs in the first instance, applies only to claims that are reduced. Since there is no reduction resulting from the Controller's recalculation of offsetting fee revenue, the Commission does not have jurisdiction over this issue.

Conclusion

The Controller's reduction of costs by $30,527 for student accident insurance in fiscal year 1999-2000 is *incorrect* since the costs are adequately supported by source documents for that fiscal year. However, the following reductions are therefore *correct* as matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of costs claimed for salaries and benefits, on the ground that there is no evidence in the record that the costs claimed relate to the mandate. In addition, claimant did not provide supporting documentation as required by the parameters and guidelines or conduct a time study for the "estimated" costs claimed for counseling.
- The reduction of the costs claimed for bad debt and health fee reserve funds, sports coverage insurance, refreshments, sunflower seeds, chewing gum, breath mints, key tags, lunch, attendance at a speech, IPCJ-STD-001 instructor training, expenses for a contraceptive technology conference, costs to evaluate the program, and student accident insurance in fiscal years 2000-2001 and 2001-2002 either go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year.
- The reduction of costs resulting from the Controller's recalculation of indirect costs, on the ground that claimant did not comply with the parameters and guidelines and claiming instructions when preparing its indirect cost rate under the OMB Circular A-21, and the Controller's recalculation of the indirect cost rate using the FAM 29-C is expressly authorized by claiming instructions.

Staff further finds that the Commission does not have jurisdiction to make findings on the way the Controller recalculated offsetting fee revenue.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to partially approve the IRC, and, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, to request that the Controller reinstate $30,527 to claimant. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM ON: Former Education Code Section 72246 (Renumbered as 76355) Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336) Fiscal Years 1999-2000, 2000-2001, and 2001-2002 Foothill-De Anza Community College District, Claimant.	Case Nos.: 05-4206-I-10 *Health Fee Elimination* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (*Adopted March 27, 2015*)

DECISION

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

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

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

Summary of the Findings

This analysis addresses reductions made by the State Controller's Office (Controller) to Foothill-De Anza Community College District's (claimant's) reimbursement claims for fiscal years 1999-2000 through 2001-2002 under the *Health Fee Elimination* program. Over the three fiscal years in question, the Controller reduced costs totaling $1,817,357. The Controller found that claimant overstated employee salaries and benefits, and services and supplies. The Controller also found that claimant incorrectly calculated the indirect cost rates for the three fiscal years. In addition, the Controller found that claimant over reported and deducted too much offsetting revenue, by $1,109,627, and, thus, used that extra revenue to reduce unallowable costs.

The Commission concludes that the Controller conducted the audit of the 1999-2000 and 2000-2001 reimbursement claims within the deadlines imposed by Government Code section 17558.5.

Based on the plain language of the parameters and guidelines and the evidence in the record, the Commission partially approves this IRC. Pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Commission concludes that the Controller's reduction of costs by $30,527 for student accident insurance in fiscal year 1999-2000 is *incorrect*

since the costs are adequately supported by source documents for that fiscal year. Therefore, $30,527 should be reinstated to claimant.

However, the reductions listed below are consistent with the parameters and guidelines and the evidence in the record. These reductions are therefore *correct* as matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission denies this IRC with respect to the following reductions:

- The reduction of costs claimed for salaries and benefits, on the ground that there is no evidence in the record that the costs claimed relate to the mandate. In addition, claimant did not provide supporting documentation as required by the parameters and guidelines or conduct a time study for the "estimated" costs claimed for counseling.
- The reduction of the costs claimed for bad debt and health fee reserve funds, sports coverage insurance, refreshments, sunflower seeds, chewing gum, breath mints, key tags, lunch, attendance at a speech, IPCJ-STD-001 instructor training, expenses for a contraceptive technology conference, costs to evaluate the program, and student accident insurance in fiscal years 2000-2001 and 2001-2002 either go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year.
- The reduction of costs resulting from the Controller's recalculation of indirect costs, on the ground that claimant did not comply with the parameters and guidelines and claiming instructions when preparing its indirect cost rate under the OMB Circular A-21, and the Controller's recalculation of the indirect cost rate using the FAM 29-C is expressly authorized by claiming instructions.

The Commission further finds that it does not have jurisdiction to make findings on the way the Controller calculated offsetting fee revenue since there was no resulting reduction of costs. Rather, the recalculation of offsetting fee revenue resulted in an increase of allowable costs of $1,109,627.

The Commission hereby remands the reimbursement claims to the Controller, and requests that the Controller reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

COMMISSION FINDINGS

I. Chronology

01/05/01	Claimant filed its reimbursement claim for fiscal year 1999-2000[32]
12/21/01	Claimant filed its reimbursement claim for fiscal year 2000-2001.[33]
01/13/03	Claimant submitted its reimbursement claim for fiscal year 2001-2002.[34]
03/12/03	The entrance conference for the audit of the 1999-2000, 2000-2001, and 2001-2002 reimbursement claims was held.[35]

[32] Exhibit A, IRC, Exhibit G, Claimant's Reimbursement Claim for FY 1999-2000.

[33] Exhibit A, IRC, Exhibit G, Claimant's Reimbursement Claim for FY 2000-2001.

[34] Exhibit A, IRC, Exhibit G, Claimant's Reimbursement claim for FY 2001-2002.

12/19/03	The Controller issued a draft audit report.
01/21/04	Claimant submitted comments on the draft audit report.[36]
08/10/04	The Controller issued the final audit report.[37]
09/15/05	Claimant filed this IRC.[38]
09/20/05	The Commission issued the Notice of Complete Filing and Request for Comments.
03/12/08	The Controller filed comments on the IRC.[39]
07/13/09	Claimant filed rebuttal comments.[40]
10/03/14	Commission staff issued a Request for Additional Information[41]
10/15/14	The Controller filed its Response to the Request for Additional Information.[42]
12/22/14	Commission staff issued the draft proposed decision.[43]
12/30/14	The Controller filed comments on the draft proposed decision.[44]
01/12/15	Claimant filed comments on the draft proposed decision.[45]

II. Background

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed $7.50 for each semester or $5 for each quarter or summer session, to fund these services.[46] In 1984, the Legislature repealed the community colleges' fee

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[35] Exhibit B, Controller's Comments filed March 12, 2008, p. 15.

[36] Exhibit A, IRC, Exhibit F.

[37] Exhibit A, IRC, Exhibit E.

[38] Exhibit A, IRC.

[39] Exhibit B, Controller Comments filed March 12, 2008.

[40] Exhibit C, Claimant Rebuttal Comments filed July 13, 2009.

[41] Exhibit D, Request for Additional Information issued October 3, 2014.

[42] Exhibit E, Controller Response to Request for Additional Information filed October 15, 2014.

[43] Exhibit F, Draft Proposed Decision issued December 22, 2014.

[44] Exhibit G, Controller Comments filed December 30, 2014.

[45] Exhibit H, Claimant Comments filed January 12, 2015.

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

authority for health services.[47] However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at $7.50 for each semester (or $5 for quarter or summer semester).[48]

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.[49] As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987,[50] the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.[51] In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than $7.50 for each semester, or $5 for each quarter or summer semester.[52] As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with a limited fee authority to offset the costs of those services.[53] In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.[54]

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

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

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

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

[50] Statutes 1987, chapter 1118.

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

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

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

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

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

Controller's Audit and Summary of the Issues

The claimant submitted reimbursement claims for 1999-2000, 2000-2001, and 2001-2002, claiming costs totaling $1,817,357. Following a field audit, the Controller reduced all costs claimed to $0 as follows:

- For each fiscal year, the claimant claimed 15 percent of the total salaries and benefits identified as counseling costs, but was unable to support the 15 percent allocation with time logs or time studies documenting the actual time spent on the activity. In addition, the claimant was unable to show that counselors performed activities related to the mandated program.[55]
- The claimant also claimed reimbursement for additional counselors, general assistants, secretaries, clerks, custodians, and other employees, but was unable to support the costs claimed with time logs or time studies, and was unable to show that these employees performed the mandated activities.[56]

The Controller also found that the claimant overstated costs for services and supplies, and related indirect costs, resulting in a $593,175 reduction as follows:

- Unallowable program costs were claimed. These costs include the costs for a bad debt reserve account for uncollected student health fees, a Health Fee Reserve account, and various expenditures unrelated to health services required by the mandate.[57]
- The claimant also claimed reimbursement under services and supplies for counseling costs and student accident insurance, but was unable to show that these costs related to the mandated program. In addition, the student accident insurance policy included unallowable sports accident coverage.[58]

The Controller also reduced indirect costs claimed on the ground that the claimant did not obtain federal approval of its proposed indirect cost rate calculated under OMB Circular A-21, and did not develop the rates based on costs incurred in the fiscal years within the audit period. During the audit, the claimant recalculated indirect costs using the FAM 29-C method, but the Controller found that the indirect costs did not support the revised rates claimed as claimant could not document all costs used to calculate the indirect cost rate. The Controller recalculated indirect costs using the FAM 29-C method, which slightly increased the rates revised by the claimant under that method. The difference between the original claimed rate of 36.48 percent for all three years under the OMB A-21 method as calculated by claimant, and the revised rates of

[55] Exhibit A, IRC, Exhibit E, at p. 56.

[56] Exhibit A, IRC, Exhibit E, at p. 56.

[57] Exhibit A, IRC, Exhibit E, at p. 57

[58] Exhibit A, IRC, Exhibit E, at pp. 57-58.

15.23 percent for 1999-2000, 15.72 percent for 2000-2001, and 17.3 percent for 2001-2002 as recalculated by the Controller under the FAM 29- method, result in a reduction of $442,402.[59]

Finally, the audit found that claimant over reported and deducted offsetting revenue by $1,109,627 for the three fiscal years at issue in this case.[60] The Controller recalculated offsetting revenues authorized to be charged and reduced the amount of offsetting fee revenue deducted from the claims. The overstated amounts were then used to reduce the unallowable costs.[61] The claimant, however, disagrees with how the Controller recalculated the offsetting revenue and requests a finding by the Commission on this issue.

III. Positions of the Parties

A. Foothill-De Anza Community College District

Claimant asserts that the Controller incorrectly reduced all costs claimed in fiscal years 1999-2000, 2000-2001, and 2001-2002, totaling $1,817,357, and requests that the entire amount be reinstated. Specifically, claimant asserts it correctly claimed a percentage of salaries and benefits for counseling and that all claimed salaries and benefits related to mandated activities. Claimant asserts its claims for services and supplies related to mandated activities. Claimant also asserts that it correctly calculated its indirect cost rate. Claimant further asserts that the only offsetting revenue to be calculated is offsetting revenue actually received. Claimant further contends that the audit of the 1999-2000 and 2000-2001 reimbursement claims was not timely and, therefore, the audit is void with respect to those claims.[62] In its comments on the draft proposed decision, filed January 12, 2015, claimant continues to assert that all costs reduced were incorrectly reduced and the audit of the 1999-2000 and 2000-2001 reimbursement claims was untimely and therefore the audit is void with respect to those claims.[63]

B. State Controller's Office

The Controller argues that, pursuant to Government Code section 17558.5, it timely conducted the audit of the fiscal year 1999-2000 and 2000-2001 reimbursement claims.[64] The Controller also contends that it correctly reduced the costs in this case for a percentage of the salaries and benefits claimed for counseling, other salaries and benefits claimed. The Controller argues that the claimed costs for services and supplies did not relate to the mandated program. The Controller further contends that claimant did not correctly calculate its indirect cost rate. The Controller also asserts that the correct calculation of offsetting revenue is all offsetting health service fee revenue authorized by statute. In comments on the draft proposed decision, filed December 30, 2014, the Controller concurred with the analysis and findings.[65] The Controller

[59] Exhibit A, IRC, Exhibit E, at p. 59.

[60] Exhibit A, IRC, Exhibit E, at p. 60.

[61] Exhibit A, IRC, Exhibit E, at p. 60.

[62] Exhibit A, IRC, at pp.20-25.

[63] Exhibit H, Claimant Comments filed January 12, 2015.

[64] Exhibit B, Controller Comments filed March 12, 2008, at pp. 24-25.

[65] Exhibit G, Controller Comments filed December 30, 2014.

agreed to reinstate costs claimed for student accident insurance for fiscal year 1999-2000. In all other respects, the Controller asserts the IRC should be denied.

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[66] 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."[67]

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.[68] 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.]' "[69]

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

[67] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

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

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

The Commission must review also the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant. [70] In addition, section 1185.2(c) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record. [71]

A. The Audit of the Reimbursement Claims for 1999-2000 and 2000-2001 is not Barred by the Deadlines Found in Government Code Section 17558.5.

Claimant contends that the audit of the 1999-2000 and 2000-2001 reimbursement claims was not timely and, therefore, the audit is void with respect to those claims.

When the 1999-2000 and 2000-2001 claims were filed in 2001, Government Code section 17558.5, as added in 1995, stated the following:

> A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. [72]

Claimant contends that funds were appropriated for this program for each fiscal year subject to the audit and, thus, the first sentence of section 17558.5 applies. [73] The first sentence states that a reimbursement claim is "subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended." Since the 1999-2000 reimbursement claim was filed on January 5, 2001 and the 2000-2001 reimbursement claim was filed on December 21, 2001, both claims were subject to audit by the plain language of section 17558.5 until December 31, 2003. [74] The parties agree that the audit was timely initiated on March 12, 2003, when the entrance conference was held. However, claimant asserts that "subject to" requires the Controller "to complete" the audit no later than two years after the end of the calendar year that the reimbursement claim was filed. Applying claimant's argument in this case would require the completion of the audit for the 1999-2000 and 2000-2001 reimbursement claims by December 31, 2003. The Controller did not complete its final audit of

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

[71] 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.

[72] Government Code section 17558.5 (Stats. 1995, ch. 945, (SB11)). Former Government Code section 17558.5 was originally added by the Legislature by Statutes 1993, chapter 906, effective January 1, 1994. The 1993 statute became inoperative on July 1, 1996, and was repealed on January 1, 1997 by its own terms.

[73] Exhibit A, IRC, at p. 22.

[74] Exhibit A, IRC at p. 20.

this claim until nine months later, on March 10, 2004, when the Controller issued the final audit report.

The Controller argues that claimant's reading of Government Code section 17558.5 is based on an erroneous interpretation that attempts to rewrite that section, adding a deadline for completion of the audit where none exists. The Controller asserts that the "subject to audit" language in section 17558.5, as added in 1995, refers to the time the audit is initiated. The March 13, 2003 entrance conference, which initiated the audit, was within the "two years after the end of the calendar year in which the claim is filed" pursuant to section 17558.5. Alternatively, the Controller argues that a 2002 amendment to section 17558.5, which became effective on January 1, 2003, enlarges the period of time to initiate an audit to three years since the audit period for the 2000-2001 reimbursement claim was still open when that provision became effective. In this regard, the Controller states the following:

> More important is the fact that the 2000-01 audit was subject to the provisions of Section 17558.5 that were effective on January 1, 2003, not the 1996 version. Unless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred. [Citing, *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465; 43 Cal.Jur.3d., Limitation of Actions, § 8.] Under the 1996 version, the claims were subject to audit until December 31, 2003, well after the January 1, 2003, effective date. Therefore, the 2003 provisions of Section 17558.5, which provide that an audit must be initiated no later than three years after the claim is filed or last amended, are applicable to the claim. In this case, those provisions required that the 2000-01 audit be initiated by December 19, 2004. Since the audit was initiated no later than December 15, 2003, when the entrance conference was held, it is valid and enforceable.[75]

The Commission finds that the audit of the 1999-2000 and 2000-2001 reimbursement claims was timely under Government Code section 17558.5, as added by Statutes 1995, chapter 945.

The plain language of the first sentence in Government Code section 17558.5, as added in 1995, does not require the Controller to "complete" the audit within any specified period of time. The plain language of the statute provides that reimbursement claims are "subject to audit" within two years after the end of the calendar year that the reimbursement claim was filed. The phrase "subject to audit" does not require the completion of the audit, but sets a time during which a claimant is on notice that an audit of a claim may occur. This reading is consistent with the plain language of the second sentence, which establishes a longer period of time to initiate the audit when no funds are appropriated for the program as follows:

> . . . . However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

While one rule of statutory construction states that the use of differing language in otherwise parallel statutory provisions (like the use of the word "initiate" in the second sentence, but not in

[75] Exhibit B, Controller Comments on the IRC filed March 12, 2008, at p. 2.

the first sentence) supports an inference that a difference in meaning was intended by the Legislature, the Commission finds that this inference does not apply to this statute.[76]

Section 17558.5(a) is not a model of clarity. However, a careful reading of the language of the first and second sentences reveals that the primary difference between the two is whether an appropriation has been made for the program. The use of the word "however" to begin the second sentence, signals the contrast between when funds are appropriated versus when they are not. There is nothing about the structure or language of the two sentences to suggest that the Legislature intended any other substantive differences between these two parallel sentences. In each situation, when there is an appropriation and when there is not, the Controller must perform some activity within a two-year period. The use in the second sentence of the phrase "the time for the Controller to initiate an audit" refers back to "the time" defined in the first sentence, namely two years. Similarly, the use of "initiate" in the second sentence refers to what the Controller is required to do within the two-year period. Read in this way, the two sentences are parallel. In the first sentence, when there is an appropriation, the time to initiate an audit is two years. In the second sentence, when there is no appropriation, the time to initiate an audit is also within two years of the first appropriation. The only difference is the triggering event of an appropriation, which determines when the two-year period to initiate an audit begins to run.

The Commission further finds that this interpretation is consistent with the 2002 amendment to the first sentence of section 17558.5, which clarified that "subject to audit" means "subject to the initiation of an audit" as follows:[77]

> A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than ~~two~~ three years after the ~~end of the calendar year in which 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.[78]

Therefore, in this case, the 1999-2000 and 2000-2001 reimbursement claims were subject to audit "no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended;" in this case, before December 31, 2003. Since the audit began no later than March 12, 2003, when the entrance conference was conducted, the audit was timely initiated.

The Controller also contends that the 2002 amendment to section 17558.5, which enlarged the period of time to initiate the audit to three years after the date the actual reimbursement claim is filed or last amended, applies in this case and gave the Controller additional time to initiate the

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[76] *Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, 62.

[77] See, *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, where the court stated that an amendment to a statute that clarifies the law is merely a statement of what the law has always been.

[78] Statutes 2002, chapter 1128.

audit in this case.[79] The Commission agrees an expansion of a statute of limitations applies to matters pending but not already barred, based in part on the theory that a party has no vested right in the running of a statutory period prior to its expiration.[80] . However, that expansion is not relevant here and does not need to be applied since the audit was timely initiated within two years of the filing of the reimbursement claims under the 1995 statute.

Moreover, section 17558.5 was amended in 2004 to establish, for the first time, the requirement to "complete" the audit two years after the audit is commenced. As amended and effective beginning January 1, 2005, it reads as follows in underline and strikeout:

> 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 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 filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.[81]

The 2004 amendment became effective *after* the completion of the audit of the reimbursement claims for fiscal years 1999-2000 and 2000-2001 and, thus, does not apply to the audit in this case.

Although the statute in effect at the time the reimbursement claims were filed did not expressly fix the time for which an audit must be completed, the Controller was still required under common law to complete the audit within a reasonable period of time. Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant.[82] In its January 12, 2015 comments on the draft proposed decision, claimant asserts that the Commission "need not rely on laches,"[83] and indeed the Commission does not. Claimant was on notice of the audit when the entrance conference was conducted on March 13, 2003; the field audit was completed on October 16, 2003;[84] the draft audit report was issued on December 19, 2003;

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[79] Statutes 2002, chapter 1128.

[80] *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; see also, *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 465

[81] Statutes 2004, chapter 313.

[82] *Cedar-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 985-986. In that case, the court determined that the hospital failed to establish an unreasonable delay in audits conduct by Department of Health Services, since the Department conducted audits two years or less after the end of the fiscal period that it was auditing, which was less than the three-year period permitted by statute. See also, *Steen v. City of Los Angeles* (1948) 31 Cal.2d 542, 546, where the court held that laches applies in quasi-adjudicative proceedings.

[83] Exhibit H, Claimant Comments filed January 12, 2015, pp. 2-3.

[84] Exhibit B, Controller Comments filed March 12, 2008, Tab 1, Declaration of Jim Spano, Chief Compliance Audits Bureau, at p.1.

claimant replied to the draft audit report on January 21, 2004; and the final audit report was issued March 10, 2004.[85] There is no evidence that claimant here was prejudiced by the audit process. The audit was completed less than one year after it was started and, under the facts of this case, within a reasonable period of time.

Based on the foregoing, the Commission finds that the audit of claimant's reimbursement claims for fiscal years 1999-2000 and 2000-2001was timely initiated and completed.

B. Claimant did not Comply With the Parameters and Guidelines in Claiming Salary and Benefit Costs and, Thus, the Controller's Reduction of These Costs is Correct as a Matter of Law and is not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller found that claimant overstated salary and benefit costs, and related indirect costs, by $3,143,440 as follows:

- For each fiscal year, the claimant claimed 15percent of the total costs for salaries and benefits for "counseling," but was unable to support the 15percent allocation with time logs or time studies documenting the actual time spent on the activity. In addition, the claimant was unable to show that counselors performed activities related to the mandated program.
- The claimant also claimed reimbursement for additional counselors, general assistants, secretaries, clerks, custodians, and other employees, but was unable to support the costs claimed with time logs or time studies, and was unable to show that these employees performed the mandated activities.[86]

1. <u>The parameters and guidelines specify the requirements for claiming employee salary and benefit costs.</u>

Parameters and guidelines adopted by the Commission are required to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program, and also identify the supporting documentation required to be retained during the period subject to audit.[87] The reimbursement claims filed by the claimants are required as a matter of law to be filed in accordance with the parameters and guidelines.[88]

The parameters and guidelines for the *Health Fee Elimination* program provide a long list of services, which are "reimbursable to the extent they were provided by the community college district in fiscal year 1986-87." The claiming instructions contain the same list of services, and provide a form (HFE-2) with columns for the reimbursement year and the 1986-87 fiscal year (the base year). Claimants are required to mark in those columns the services provided in the

[85] See Exhibit A, IRC, Exhibit E, Final Audit Report for the dates of the draft audit report and the claimant's letter in response to the draft audit report.

[86] See Exhibit A, IRC, Exhibit E, Finding 1 of the final audit report, at page 56.

[87] Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

[88] Government Code sections 17561(d)(1); 17564(b); and 17571; *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th794, 801, where the court ruled that parameters and guidelines adopted by the Commission are regulatory in nature and are "APA valid."

claim year, and the services provided in the base year; only those services marked in both columns are reimbursable. Those forms, as a part of the reimbursement claim, are submitted under penalty of perjury.

In addition, the parameters and guidelines provide that in order to claim reimbursement for employee salaries and benefits, the claimant is required to identify the employee and the employee(s) classification, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.[89]

In addition, the parameters and guidelines require that the costs claimed "shall be traceable to source documents and/or worksheets that show evidence of the validity of such costs."[90] Although contemporaneous source documentation is not required under these parameters and guidelines, claimants are required to provide some type of source documentation upon request of the Controller to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate.

2. The reduction of costs claimed for "counseling" is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

For all of the fiscal years at issue, costs were claimed for the following services: Wellness Program, Counseling, Psychological Services, Health Fees Reserve, Health Fees, and Health "Svcs-Psych." Claimant estimated that 15 percent of the cost for providing these services was for "counseling." The 15 percent estimate was provided by the health services coordinators and the dean of counseling for each college within the district, with statements attached to the reimbursement claim form that said the following: "Per [employee's name], Foothill Health Services Coordinator, Counseling provides ≈ 15% health related guidance."[91] Claimant also included, in each reimbursement claim, a year-end account statement for "Counseling" (with account code 1-41248 for Foothill College, and account code 1-42248 for De Anza College). The statements identify year-end balances for salaries and benefits for certificated and classified employees working in "Counseling," as well as expenses for materials and supplies and operations.[92] There is no description of the type of counseling service provided or dates the services were provided on these supporting documents. In addition, the 1999-2000 reimbursement claim does not include form HFE-2 that identifies the services provided in the base year and the services provided in the claim year. The reimbursement claims for fiscal years 2000-2001 and 2001-2002 do include that form and report that counseling services were

[89] Exhibit A, IRC, Exhibit C, Parameters and Guidelines at page 40.

[90] *Id.*

[91] Exhibit A, IRC, at p. 108 (Health Fee Elimination Worksheet – Mandated Costs for Fiscal Year 1999-2000); p. 130 (Health Fee Elimination Worksheet – Mandated Costs for Fiscal Year 2000-2001); and p. 171 (Health Fee Elimination Worksheet – Mandated Costs for Fiscal Year 2001-2002).

[92] Exhibit A, IRC, at pp. 112-119.

provided in the base year and the claim year, including stress counseling, crisis intervention, and child abuse and reporting and counseling services.[93]

The Controller reduced all costs claimed for counseling on the ground that claimant did not support the 15 percent allocation with time logs or time studies documenting the actual time spent on the activity. In addition claimant did not show that counselors performed activities related to the mandated program.

Claimant contends that the Controller incorrectly reduced all costs claimed for counseling and argues that it provided documentation to show that personal counseling services were provided as follows:

> This finding disallowed all costs related to counselors providing personal counseling services to students. The district provided schedules that showed which counselors were on duty for crisis counseling at De Anza and written materials showing personal counseling services provided at both colleges. Although the district did not provide contemporaneous hand written logs of actual counseling hours spent on personal counseling, we contend that we did show evidence that personal counseling activities did take place and were appropriately attributable to Health Services. We are unaware of any legal requirements that substantiating documentation needs to be contemporaneous or in any particular form/format. We contest the disallowance of all costs when some were clearly appropriate. Our estimate of 15% was based on the considered judgment of our Health Services Directors and Deans of Counseling. We are in the process of a time study currently that we believe will substantiate that judgment.[94]

Alternatively, claimant suggests that a time study the claimant conducted after the fiscal years at issue in this case be used as sufficient evidence to support the costs claimed for counseling.[95] In this respect, claimant sent a letter to the Controller on May 13, 2004, after the final audit report was issued, stating that it completed a time study for the Fall 2003 quarter for counseling costs, which determined that 3.2 percent of the scheduled appointment time was directly attributable to health/crisis counseling as follows:

> At the request of the SCO auditors, we conducted a detailed time study of counselor assignments for the Fall 2003 quarter. Each counselor kept a record of the type of appointment and categorized them as either 1) Health/Crisis counseling, 2) Academic/Career counseling, or 3) Drop-in Counseling. Based on this study, we determined that 3.2% of the scheduled appointment time was directly attributable to health/crisis counseling.[96]

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[93] Exhibit A, IRC, at pp. 141- 146 (Form HFE-2 for fiscal year 2000-2001); pp. 159-164 (Form HFE-2 for fiscal year 2001-2002).

[94] Exhibit B, Controller Comments on IRC filed March 12, 2008, p. 192 (claimant's letter dated January 21, 2004, in response to draft audit report).

[95] Exhibit C, Claimant Rebuttal Comments filed July 13, 2009, pp. 4-5.

[96] Exhibit C, Claimant Rebuttal Comments filed July 13, 2009, p. 5.

Claimant's rebuttal comments further state that a time study for counseling costs was conducted for fiscal years 2002-2003 through 2005-2006, which yielded average rates of 8.5 and 5.4 percent of the costs for De Anza and Foothill colleges. Claimant states that the Controller approved this time study in a second audit of claimant's *Health Fee Elimination* claims in 2009 and determined that this time study adequately supported the time spent performing the mandate-related activities for those subsequent fiscal years.[97] In its January 12, 2015 comments on the draft proposed decision, claimant also asserts that the Controller "could have applied the subsequent time studies retroactively."[98]

The Commission finds that the reduction of costs for counseling is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. As stated above, the parameters and guidelines require claimant to provide source documentation to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate. Although claimant contends, that it "provided schedules that showed which counselors were on duty for crisis counseling at De Anza and written materials showing personal counseling services provided at both colleges," that information is not reflected in the record before the Commission. There are no supporting documents in the record to show that the "counseling" costs claimed were incurred as a result of the health services mandate, or whether the costs result from other types of counseling services provided by claimant, like academic or career counseling, which are not eligible for reimbursement.

Moreover, claimant did not comply with the supporting documentation requirements of the parameters and guidelines when claiming employee costs. The parameters and guidelines provide that in order to claim reimbursement for employee salaries and benefits, claimant is required to identify the employees, show the classification of the employees involved, describe the mandated functions performed, and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. Claimant did not comply with those instructions, and instead estimated counseling costs at 15 percent. However, the parameters and guidelines require that when claiming costs based on the average number of hours, the number of hours reported must be supported by a "documented time study." The claimant admits it did not conduct a time study for the fiscal years at issue. In addition, claimant's request to have the time study later approved by the Controller retroactively applied to the reimbursement claims at issue here is not authorized by the plain language of the parameters and guidelines. The parameters and guidelines require that each claim for reimbursement must be supported by source documentation or a time study for that claim year. Thus, there is no evidence in the record supporting the costs claimed for counseling in fiscal years 1999-2000, 2000-2001, and 2001-2002.

Based on these facts, the Commission finds that claimant did not comply with the parameters and guidelines in claiming salary and benefit costs for counseling and, thus, the Controller's reduction of these costs is correct as a matter of law and is not arbitrary, capricious or entirely lacking in evidentiary support.

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[97] Exhibit C, Claimant Rebuttal, Comments filed July 13, 2009, p. 5.

[98] Exhibit H, Claimant Comments filed January 12, 2015, p. 5.

3. The reduction of costs claimed for additional counselors, general assistants, secretaries, clerks, custodians, and other employees, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

Additionally, the Controller reduced a portion of salary and benefit costs claimed for counselors, general assistants, secretaries, clerks, custodians, and other employees on the basis that claimant did not support the costs claimed with time logs or time studies, and did not demonstrate that these employees performed mandated activities.[99] Before the draft audit report was issued, the Controller, on October 23, 2003, sent claimant a spreadsheet analysis listing employee names and titles, the amount of costs determined in the audit to be unallowable, and the reason for the reduction for each fiscal year at issue.[100] Claimant contends, however, that the spreadsheet only accounts for $517,566 in disallowed salaries, and not all costs reduced by the Controller. Claimant also argues that it has "no basis to judge if the final adjustment amount in the audit report . . . is proper because there is no detail to support the lump sum."[101]

The Commission finds that the reduction of costs claimed for these employees is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

In order to receive reimbursement for employee salaries and benefits, the parameters and guidelines require the claimant to provide, upon request of the Controller, source documentation to show evidence that the time spent by employees on the program and the costs claimed are valid and relate to the mandate. The parameters and guidelines further require claimants to identify the employees and their classifications, provide a description of the mandated functions performed by each employee, and the actual number of hours devoted to each function.[102] The reimbursement claims do not identify this information; they only identify total program costs. And while the Controller's spreadsheet provides a listing of some of claimant's employees and their titles, which indicates that claimant provided additional information to the Controller during the audit, there is no evidence in the record describing the mandated functions performed by each employee or the actual number of hours devoted to each function. Nor is there evidence that claimant provided source documentation to the Controller to show that the costs claimed for these other employees are valid and relate to the mandated program. Thus, the claimant did not comply with the requirements in the parameters and guidelines in claiming these costs for salary and benefits, and has not rebutted the findings of the Controller.

Accordingly, the Commission finds that the Controller's reduction is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

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[99] Exhibit A, IRC, Exhibit E, at p. 56.

[100] Exhibit B, Controller filed March 12, 2008 (Tab 4), pp. 34-38.

[101] Exhibit C, Claimant Rebuttal Comments filed July 13, 2009, p. 5.

[102] In its January 12, 2015 comments on the draft proposed decision, claimant attempts to shift the burden for providing documentation to the Controller on the basis that the Controller did not identify each individual activity for which costs were reduced. (Exhibit H, p. 6.) However, the initial burden of providing evidence for a claim of reimbursement lies with the claimant. (Gov. Code, §§ 17560, 17561(d); *Advanced Choices, Inc. v. Department of Health Services* (2010) 182 Cal.App.4th 1661, 1669.) Once claimant fails to provide such documentation, the Controller is authorized to reduce costs that cannot be attributed to the reimbursable activities.

C. The Controller's Reduction of Costs Claimed for Services and Supplies is Partially Correct as a Matter of Law; However, Costs of $30,527 for Student Accident Insurance Claimed for 1999-2000 were incorrectly reduced.

The Controller also found that claimant overstated costs for services and supplies, and related indirect costs, resulting in a $593,175 reduction as follows:

- Unallowable program costs were claimed. These costs include the costs for a bad debt reserve account for uncollected student health fees, a Health Fee Reserve account, and various expenditures unrelated to health services required by the mandate.
- Claimant also claimed reimbursement under services and supplies for counseling costs and student accident insurance, but was unable to show that these costs related to the mandated program. In addition, the student accident insurance policy included unallowable sports accident coverage.[103]

1. The parameters and guidelines specify the requirements for claiming services and supplies.

The parameters and guidelines for the *Health Fee Elimination* program authorize reimbursement for the costs of providing health supervision and services and direct and indirect medical and hospitalization services to students, and the operation of student health centers, to the extent the community college provided these services in fiscal year 1986-1987. Section V of the parameters and guidelines describe the reimbursable costs, and provides that:

> Eligible community college districts shall be reimbursed for the costs of providing a health services program. Only services provided in the 1986-87 fiscal year may be claimed.

Section V. lists the types services and costs that are eligible for reimbursement to the extent they were provided in fiscal year 1986-1987as follows: accident reports; appointments (with a physician, nurse, lab); assessment, intervention, and counseling; examinations; health talks or fairs –information; first aid; first aid kits (filled); immunizations; insurance (insurance inquiry/claim administration); laboratory tests; physicals; medications (dispensed "OTC for misc. illnesses"); parking cards/elevator keys (including temporary handicapped parking permits); referrals to outside health agencies; medical tests; miscellaneous (absence excuses/PE waiver, allergy injections, bandaids, pamphlets, dressing change, rest, suture removal, temperature, weigh, report/form, wart removal); safety, environmental, and disaster planning committees; safety data sheets; x-rays services; communicable disease control; body fat measurements; minor surgeries; self-esteem groups; mental health crisis; AA group; adult children of alcoholics group; and workshops (test anxiety, stress management, communication skills, weight loss, assertiveness skills).

Section VI.B.2 of the parameters and guidelines, which governs Claim Preparation for services and supplies, states:

[103] See Exhibit A, IRC, Exhibit E, Finding 2 in Final Audit Report.

> Only expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.[104]

And, Section VII governs the supporting data for the claim, which states the following:

> For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller of his agent.

2. The reduction of costs related to a bad debt reserve fund and a health fee reserve fund are correct as a matter of law since these costs go beyond the scope of the mandate and are not eligible for reimbursement.

Claimant claimed costs totaling $293,785 for services and supplies to establish a bad debt reserve fund and a health fees reserve account.[105] Claimant argues that these costs are reimbursable since the reserve funds cover uncollected student health fees and are necessary for the purpose of reporting the amount of fee revenue collected and to comply with state financial reporting requirements and generally accepted accounting principles.[106] The Controller reduced these costs to $0, because the reserve fee account costs are not eligible for reimbursement.

The Commission finds that these costs go beyond the scope of the mandate and are not reimbursable. The mandate is to provide specified health supervision and services to students, direct and indirect medical and hospitalization services to students, and the operation of student health centers, to the extent the community college provided those services in fiscal year 1986-1987. The formation of a bad debt reserve fund and a health fee reserve fund are not activities or costs identified in the parameters and guidelines as eligible for reimbursement.

Therefore, the Controller's reduction of these costs is correct as a matter of law.

3. The reduction of costs for other services and supplies is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support because these costs go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year.

The Controller also reduced costs for various other services and supplies that are either beyond the scope of the mandate, or for which claimant failed to provide documentation that demonstrated that the services and supplies claimed were directly attributable to the mandated activities.[107] Claimant argues that the final audit report does not indicate what these costs are, or

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[104] Exhibit A, IRC, Exhibit C, Parameters and Guidelines, p. 35.

[105] Exhibit A, IRC, Exhibit E, Final Audit Report at pp. 58-59.

[106] Exhibit A, IRC at pp. 13-14.

[107] Exhibit B, Controller filed March 12, 2008, p. 7.

why they are unallowable and, thus, argues it does not have enough information to evaluate the finding. However, the costs that were reduced and the Controller's reason for the reduction are contained in a spreadsheet prepared by the Controller, which was provided to claimant on October 23, 2003, before the final audit report was issued.[108] The reductions identified in the spreadsheet are summarized as follows:

- Counseling services totaling $50,312, claimed in all fiscal years. No documentation or time study was provided to support the estimate of 15 percent of the total expenses.
- Costs claimed in fiscal year 1999-2000 for refreshments for 160 people at $8.00 each, totaling $1,280. These costs are not reimbursable.
- Costs supported by a receipt from Costco, which indicated purchases in fiscal year 2001-2002 for sunflower seeds, chewing gum, and breath mints, totaling $157. These costs are not reimbursable.
- Costs of $777 claimed for a luncheon provided by Foothill Café in 2001-2002 for a nutritionist speech. This cost is not reimbursable.
- No documentation or other evidence was provided showing that the costs claimed for a speech by Naomi Tutu, "Searching for Common Ground," in fiscal year 2001-2002, totaling $5,000 were related to the mandated program.
- Costs of $10,358 claimed for "IPCJ-STD-001 Instructor Training" for De Anza College in fiscal year 2001-2002. No evidence that training was health services related.
- Costs claimed for custom-printed key tags with whistle purchased from Brown & Bigelow ($2,787) and BizGifts ($2,858) in fiscal year 2001-2002. These costs are not reimbursable.
- Hotel expenses totaling $931 from Hyatt Hotels claimed in fiscal year 2001-2002 for Sandra Gonsalces for a contraceptive technology conference. Claimant provided no documentation to support the costs claimed.
- Costs of $3,360 to evaluate health center operations, activities, and programs are not reimbursable because these services were not provided in the base year of 1986-1987.[109]

The claimant filed additional comments on these reductions in response to the draft proposed decision. These reductions and the claimant's comments are analyzed below.

a) Counseling expenses totaling $50,312 are correctly reduced.

The Controller reduced costs for counseling on the ground that no documentation or time study was provided by the claimant to verify that the costs incurred for counseling services were actually 15 percent of the total expenses for the program. In response to the draft proposed decision, claimant states that it agrees there is no time study for the audit period.[110]

[108] Exhibit B, Controller filed March 12, 2008, p. 16.

[109] Exhibit B, Controller filed March 12, 2008 (Tab 4), pp. 37-38.

[110] Exhibit H, Claimant Comments filed January 12, 2015, p. 8.

The Commission finds that the reduction of costs claimed for counseling is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The parameters and guidelines allow reimbursement for only those "expenditures which can be identified as a direct cost of the mandate." The parameters and guidelines also require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs," including "documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort." The Controller found that claimant did not provide documentation to support the costs claimed for counseling expenses, and the record for this IRC does not contain any supporting documentation for these costs.

Accordingly, the Commission finds that the Controller's reduction of $50,312 for counseling services is correct as a matter of law and is not arbitrary, capricious, or lacking in evidentiary support.

b) Miscellaneous costs claimed for refreshment expenses ($1,280); sunflower seeds, chewing gum, and breath mints purchased at Costco ($157); and printed key tags ($2,787 and $2,858) are correctly reduced.

The Controller reduced these miscellaneous items on the ground that these expenses go beyond the scope of the mandate and are not reimbursable.

Claimant now alleges that these expenses were incurred for promotional activities within the scope of "Health Talks or Fairs," which is specifically included in the parameters and guidelines as a reimbursable cost.[111] In addition, claimant argues that section 54702(d) of the implementing regulations includes "health education and promotion" as a cost that may be paid by the student health services fee.[112] Claimant states the following:

> Since the Commission and the Board of Governors have determined that health fairs and promotional activities are reimbursable, and since the District provided health fairs in the base year 1986-87, then the health fairs must be continued pursuant to [the test claim statute]. Because there is no legal question that the health fair and health promotion activities are appropriate, and no assertion or evidence that the costs were excessive, the adjustment should not be approved by the Commission.[113]

The parameters and guidelines authorize reimbursement for "Health Talks or Fairs – Information" for "Sexually Transmitted Disease, Drugs, Aids, Child Abuse, Birth Control/Family Planning, Stop Smoking, Etc., Library-videos and cassettes," only if the expenditures "can be identified as a direct cost of the mandate" and only to the extent these services were provided by the claimant in the 1986-1987 base year. The parameters and guidelines also require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs," including "documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort."

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[111] Exhibit H, Claimant Comments filed January 12, 2015, p. 11.

[112] *Ibid.*

[113] *Ibid.*

Although the costs for refreshments, sunflower seeds, chewing gum, breath mints, and key tags could be related to claimant's health program, claimant has provided no supporting documentation or evidence to show that these costs were incurred as a direct result of the mandate to provide health services to students, or were provided by the claimant in the base year. The allegation that these costs were incurred for health promotions or fairs is not supported by any evidence in the record and is therefore hearsay.[114] The Commission's regulations require that assertions of fact must be supported by testimonial evidence under oath or affirmation, or documentary evidence signed under penalty of perjury by someone who is authorized and competent to make the assertion, and based on the declarant's personal knowledge, information or belief. Hearsay evidence may be used "for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Cal. Code Regs., tit. 2, §§ 1185.1(f)(3); 1187.5.)

Based on this record, the Controller's reduction of these miscellaneous costs is correct as a matter of law and is not arbitrary, capricious, or lacking in evidentiary support.

c) Costs claimed for a speech ($5,000) and luncheon ($777) are correctly reduced.

The Controller's spreadsheet shows the following reductions to the 2001-2002 reimbursement claim:

- Costs of $777 claimed for a luncheon provided by Foothill Café in 2001-2002 for a nutritionist speech. This cost is not reimbursable.
- No documentation or other evidence was provided showing that the costs claimed for a speech by Naomi Tutu, "Searching for Common Ground," in fiscal year 2001-2002, totaling $5,000 were related to the mandated program.[115]

Claimant now alleges that these costs (totaling $5,777) were incurred for a single event and were used to pay a fee for a speaker on nutrition and catering costs for the lunch. Claimant argues that these costs are eligible for reimbursement because a speech on nutrition is health-related, and the parameters and guidelines do not exclude consulting or training expenses. Claimant argues that the training falls within the scope of "Health Talks of Fairs," which is a reimbursable cost in the parameters and guidelines. In addition, claimant argues that section 54708 of the regulations identifies consultant costs and health education training as costs that are funded by the student health services fee.[116]

The Commission finds that these costs were correctly reduced. If these expenses were incurred to provide employee training, reimbursement is not required. The parameters and guidelines authorize reimbursement only to provide health services to students. The parameters and guidelines do not authorize reimbursement for employee training.

If, however, these costs were incurred as part of a "health talk or fair" for students, the costs are still correctly reduced. The parameters and guidelines authorize reimbursement for "Health

[114] Hearsay is defined as an out-of-court statement, not made under oath or affirmation, that is offered for the truth of the matter stated. (Evid. Code, § 1200.)

[115] Exhibit B, Controller Comments filed March 12, 2008 (Tab 4), p. 38.

[116] Exhibit H, Claimant Comments filed January 12, 2015, p. 9.

Talks or Fairs – Information" for "Sexually Transmitted Disease, Drugs, Aids, Child Abuse, Birth Control/Family Planning, Stop Smoking, Etc., Library-videos and cassettes," only if the expenditures "can be identified as a direct cost of the mandate" and only to the extent these services were provided by the claimant in the 1986-1987 base year. The parameters and guidelines also require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs," including "documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort." The claimant, however, has provided no supporting documentation or evidence to show that these costs were incurred as a direct result of the mandate to provide health services to students, or were provided by the claimant in the base year. The allegation that these costs were incurred for health promotions or fairs is not supported by any evidence in the record and is therefore hearsay. The Commission's regulations require that assertions of fact must be supported by testimonial evidence under oath or affirmation, or documentary evidence signed under penalty of perjury by someone who is authorized and competent to make the assertion, and based on the declarant's personal knowledge, information or belief. Hearsay evidence may be used "for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." (Cal. Code Regs., tit. 2, §§ 1185.1(f)(3); 1187.5.)

Based on this record, the Controller's reduction of the costs for the luncheon and the speech is correct as a matter of law and is not arbitrary, capricious, or lacking in evidentiary support.

d) Costs claimed for instructor training ($10,358) are correctly reduced.

The Controller reduced the costs claimed for "IPCJ-STD-001 Instructor Training" for De Anza College in fiscal year 2001-2002 on the ground that there was no evidence the training was health services related.

The claimant contends that the reduction is incorrect as follows:

> On its face, the expense could qualify as Title 5, Section 54708, subdivision (a) supervision, subdivision (b) administrative salaries, (g) staff salaries, or subdivision (d) consultant expense. The adjustment is without objective merit and incorrect.[117]

The Commission finds that these costs were correctly reduced. The parameters and guidelines authorize reimbursement only to provide health services to students. The parameters and guidelines do not authorize reimbursement for employee training.

The parameters and guidelines also require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs," including "documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort." There is no evidence in the record to show that "IPCJ-STD-001 Instructor Training" is related to this mandate.

Accordingly, the Controller's reduction of instructor training costs is correct as a matter of law and is not arbitrary, capricious, or lacking in evidentiary support.

e) Costs claimed for a contraceptive technology conference are correctly reduced.

[117] Exhibit H, Claimant's Comments on Draft Proposed Decision filed January 12, 2015, p. 10.

The Controller reduced costs claimed in the amount of $931 paid for an instructor to attend a contraceptive technology conference on the ground that the claimant provided no documents to support the costs claimed.

The claimant now argues that the reduction is incorrect as follows:

> The subject matter of the activity is within the parameters and guidelines list of health services activities. On its face, the expense could qualify as Title 5, Section 54708, subdivision (a) planning, or subdivision (d) consultant, or subdivision (i) travel expense. The adjustment is without objective merit and incorrect.[118]

The Commission finds that these costs were correctly reduced. The parameters and guidelines authorize reimbursement only to provide health services to students. These services include health talks or fairs that provide information to students about birth control and family planning. The parameters and guidelines, however, do not authorize reimbursement for employee or consultant training.

The parameters and guidelines also require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs," including "documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort." The claimant has provided no documentation to support the costs claimed.

Accordingly, the Controller's reduction of costs for the contraceptive technology conference is correct as a matter of law and is not arbitrary, capricious, or lacking in evidentiary support.

f) Costs claimed to evaluate health center operations, activities, and programs are correctly reduced.

The Controller reduced $3,360 claimed to evaluate health center operations, activities, and programs because these services were not provided in the base year of 1986-1987.

The claimant contends that the reduction is incorrect, contending that the evaluations are not ongoing student clinical services that are measured against the maintenance of effort requirement, but are administrative activities that occur when needed. The claimant asserts that the expenses are reimbursable pursuant to section 54708(a) and (d) of the implementing regulations that authorize the use of the student health fee for evaluation and consulting expenses.

The Commission finds that the Controller's reduction of these costs is correct. The parameters and guidelines authorize reimbursement only for those costs and services that were provided by a district in the 1986-1987 base year. While there are some administrative activities that are listed in the parameters and guidelines as reimbursable costs (i.e., insurance; issuing parking cards and elevator keys; providing absence excuses), evaluating the student health program is not listed as a reimbursable cost.

Moreover, the parameters and guidelines provide that only those cost items that were provided in the base year (fiscal year 1986-1987) are eligible for reimbursement. The Controller found that the costs claimed to evaluate health center operations, activities, and programs are not reimbursable because these services were not provided by the claimant in the 1986-1987 base

[118] *Id.*

year. Claimant has not rebutted this finding or provided any evidence to support the claim for these costs.

Therefore, the Controller's reduction of these costs is correct as a matter of law and is not arbitrary, capricious, or lacking in evidentiary support.

4. The reduction of costs for sports coverage insurance is correct as a matter of law because such costs are not eligible for reimbursement; but the reduction for costs claimed for student accident insurance is only partially correct.

The Controller reduced $90,527 in costs claimed for student accident insurance because the claimant was unable to show that these costs relate to the mandated program. In addition, the Controller found that the student accident insurance policy included unallowable sports accident coverage.[119] The Controller states the following:

> For the audit period, the district claimed student accident insurance premiums totaling $90,527. The SCO did not "substitute its own allocation" for these costs; the entire amount claimed is unallowable. The district did not provide any documentation showing how it calculated mandate-related costs. In its response to the SCO's draft audit report, the district submitted an internal memorandum with amounts noted as "sports coverage" and "student accident" (Tab 6). However, the documentation submitted does not show how the district calculated the mandate-related costs. Parameters and Guidelines states, "Only expenditures which can be identified as a direct cost of the mandate can be claimed."[120]

The dispute raises two issues, which are fully addressed below.

a) Costs relating to sports accident insurance go beyond the scope of the mandate and are not eligible for reimbursement.

Claimant argues that the full amount claimed for student accident insurance policy, including those amounts attributable to sports coverage, is reimbursable. Claimant agrees that the test claim statute, Education Code section 76355(d), prohibits any health fees collected to be used for athletic insurance. However, claimant asserts that the prohibition only applies to the expenditure of health fee funds, and does not apply to the health services provided by the districts and the costs eligible for reimbursement. Claimant further contends that the parameters and guidelines expressly include student insurance as a reimbursable cost, as long as the insurance service was provided in the base year. Claimant states the following:

> The Controller disallowed $90,527 for student accident insurance premiums. The Controller's response (Tab 2; p. 7) states that the amount was disallowed because no support was provided for the method used to allocate the premiums to mandated activities. This is based on the assumption by the Controller (Tab 4; notes in detail schedules) that premiums for sports accident insurance are not reimbursable because they are not an authorized expenditure under Education Code Section 76355(d). However, no allocation is even required because the full

[119] See Exhibit A, IRC, Exhibit E, Finding 2 in Final Audit Report.

[120] Exhibit B, Controller's Comments filed March 12, 2008, p. 16.

> amount of the premiums is reimbursable under the Health Fee Elimination mandate.
>
> Education Code section 76355, subdivision (a), permits the collection of student fees for health services. Subdivision (d)(1) requires that these fees, if collected, be deposited in a designated fund and be expended only as authorized. Subdivision (d)(2) prohibits expenditures from the fund for athletic insurance. The prohibition only applies to the expenditure of funds from the special account into which the student fees are deposited. By approving the Health Fee Elimination test claim, the Commission concluded that the health fees collected from students are insufficient to cover the total mandate requirements. Thus, all expenditures for the mandate are not subject to the requirements of Section 76355, subdivision (d)(2).
>
> [¶]
>
> The Parameters and Guidelines control the scope of reimbursement under the Health Fee Elimination mandate, and they expressly include student insurance costs, so long as these services were provided in the base year. Therefore, a restriction on the use of fees collected cannot be used to support an adjustment that is in direct contradiction with the Parameters and Guidelines. Since the entire premium is reimbursable, and no allocation is required, the Controller cannot disallow these costs on the basis that no support was provided for the allocation.[121]

Claimant misinterprets the scope of the mandated program. The cost of providing athletic insurance (or "sports coverage") is not reimbursable.

Education Code section 76355(a), as amended by the test claim statute, authorizes a community college district to charge students a fee for providing health supervision and services, which may include direct or indirect medical and hospitalization services and the operation of a student health center. Section 76355(d)(1) provides that all fees collected shall be deposited in a special fund, and shall be expended only to provide the health services specified in regulations adopted by the board of governors in California Code of Regulations, title 5, section 54700, et seq. These regulations authorize the expenditure of the funds for "student health insurance," but specify that the "when the burden of supporting a student health program is shared by all students through a general fee, the programs and services for which the funds are expended must be sufficiently broad to meet health care needs of the general student body."[122] In this regard, Education Code section 76355(d)(2) states that the authorized expenditures "*shall not include* … athletic trainers' salaries, *athletic insurance*, medical supplies for athletes, physical examinations for intercollegiate athletics, ambulance services, the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, *or any other expense that is not available to all students*." (Emphasis added.) Education Code section 76355(e) then requires any community college district that provided health services in fiscal year

[121] Exhibit C, Claimant's Rebuttal Comments filed July 13, 2009, pp. 6-7.

[122] California Code of Regulations, title 5, sections 54702(d) and 54706.

1986-87, to maintain health services at the level provided during the 1986-87 base year and each fiscal year thereafter.

The Commission's test claim decision and parameters and guidelines state that the mandated program is imposed only on those community college districts that "*provided health services for which it was authorized to charge a fee in fiscal year 1983-1984*." As stated above, the statute and regulations did not authorize community college districts to use the health fee funds to provide athletic insurance, or any other service that was not available to the general student body. Services provided that are not covered by the health fee are discretionary, and not included in the mandated maintenance of effort requirement. Thus, Section V. of the parameters and guidelines, which describe the reimbursable costs, authorizes reimbursement only for "on-campus accident, voluntary, and insurance inquiry/claim administration" expenses. The cost of providing athletic insurance is not listed as a reimbursable cost.

Accordingly, the Controller's reduction of the costs claimed for athletic insurance or sports coverage is correct as a matter of law.

b) Sufficient documentation was provided by claimant to show evidence of the validity of the mandate-related costs for student accident insurance in fiscal year 1999-2000 and, thus, the reduction of those costs are incorrect. However, there is no evidence of supporting documentation provided for the costs claimed in fiscal years 2000-2001 and 2001-2002 as required by the parameters and guidelines.

The Commission also finds that the Controller's reduction of costs claimed for student accident insurance premiums is partially correct. The Controller reduced all costs claimed for student accident insurance because the documentation submitted by claimant does not show how the district calculated the mandate-related costs. The Controller states the following:

> The district did not provide any documentation showing how it calculated mandate-related costs. In its response to the SCO's draft audit report, the district submitted an internal memorandum with amounts noted as "sports coverage" and "student accident" (Tab 6). However, the documentation submitted does not show how the district calculated the mandate-related costs. Parameters and Guidelines states, "Only expenditures which can be identified as a direct cost of the mandate can be claimed."[123]

For the reasons below, the Commission finds that claimant provided sufficient documentation to show evidence of the validity of the mandate-related costs for student accident insurance in fiscal year 1999-2000 and, thus, the reduction of those costs are incorrect.

The reimbursement claim for 1999-2000 does not contain the pages identifying the services provided in the base year and claim year. However, the record indicates that costs were claimed for student accident insurance for 1999-2000, 2000-2001, and 2001-2002, and the reimbursement claims, signed under penalty of perjury, show that "on-campus accident, voluntary, and insurance inquiry/claim administration" expenses were incurred in the base year.[124]

[123] Exhibit B, Controller's Comments filed March 12, 2008, p. 16.

[124] Exhibit A, IRC, at pp. 118, 135, and 175.

Claimant responded to the draft audit report on January 21, 2004, stating that it provided documentation to support the student accident insurance costs incurred in 1999-2000 as follows:

> Three invoices for student accident insurance were disallowed because the policy included unallowable sports accident coverage. The invoice for Andreini for 1999-2000 is attached showing that the cost of the sports accident coverage was not charged to Health Services and instead was charged to a different fund. The other years were charged similarly.[125]

The record for this claim does not contain all "three invoices for student accident insurance" that are referenced in the letter. However, attached to the January 21, 2004 letter (as attachment 4) are the following documents that support the costs incurred for student accident insurance in fiscal year 1999-2000:

- A memo from the claimant's Risk Management Department, dated November 23, 1998, which states in relevant part the following:

  > Per our meeting on Thursday, November 19, 1998 in which we discuss the distribution of the premium calculations for the Student Accident Policy. In the meeting, we agreed to distribute the insurance premiums as follows:
  >
  > > $36,862.00 to be charged to Foothill Athletics 1417265050 [with the words "sports coverage" handwritten next to this text]
  > >
  > > $6,090.00 to be charged to Foothill Health Office 2112645050 [with the words "student accident" handwritten next to this text]
  > >
  > > $45,644.00 to be charged to De Anza Athletics 1427265050 [with the words "sports coverage" handwritten next to this text]
  > >
  > > $24,437.00 to be charged to De Anza Health Office 2122645050 [with the words "student accident" handwritten next to this text][126]

- An invoice from the insurance company, Andreini & Company, dated January 11, 2000, for the total premium costs of $118,000.00 for "student accident coverage 8/1/99 to 7/31/00." The invoice also identifies the coverage as "sports accident" in the upper left corner.[127]

- A claimant issued "request for check" for $118,000.00 payable to Andreini & Company, dated January 26, 2000, "for renewal of Student Accident Policy for 8/1/1999 to 7/31/2000." The request was approved, and $24,437.00 and $6,090.00 were designated to account code 2112645050 (account code for student accident insurance).[128]

[125] Exhibit A, IRC, Exhibit E, at pp. 77-80.

[126] Exhibit A, IRC, Exhibit E, p. 80.

[127] Exhibit A, IRC, Exhibit E, at p. 79.

[128] Exhibit A, IRC, Exhibit E, at p. 78.

- A computer printout showing the transaction for "INS-STUD ACCIDENT Fiscal Year: 00" identifying a payment to Andreini & Company of $6,090.00 from account code 2112645050 (account code for student accident insurance).[129]

It is true that these documents do not show *how* claimant divided the annual premium cost and attributed the amount to student accident insurance, as asserted by the Controller. However, the memo showing the division of the annual premium cost between student accident insurance and sports coverage was prepared by claimant's Risk Management Department before the first reimbursement claim was filed in this case. In addition, the accounting documents for the 1999-2000 expenditure were prepared in the normal course of business (the invoice, the request for the check for insurance, and the computer printout identifying the expenditure for the student accident insurance account code 2112645050), appear to be contemporaneous[130] (created at or near the same time the actual cost was incurred), and identify the amounts actually paid for student accident insurance in fiscal year 1999-2000, consistent with the 1998 Risk Management memo, in the amount of $30,527 ($24,437.00 and $6,090.00 for Foothill and De Anza colleges).

The parameters and guidelines require that all costs claimed "must be traceable to source documents and/or worksheets that show evidence of the validity of such costs." In *Clovis Unified*, the court interpreted similar language and determined that employee declarations and certifications and average time or cost accountings are "methods [that] can be deemed akin to worksheets" that properly show evidence of the validity of such costs.[131] The documents provided in this case meet that standard and support the validity of the costs incurred for student accident insurance in fiscal year 1999-2000 in the amount of $30,527 ($24,437.00 and $6,090.00 for Foothill and De Anza colleges), as required by the parameters and guidelines. Thus, the Commission finds that the reduction of costs in the amount of $30,527 is incorrect and should be reinstated to claimant.

With respect to the costs claimed in fiscal years 2000-2001 and 2001-2002, claimant contends that the supporting documentation provided for fiscal year 1999-2000 could have been applied by the Controller to these fiscal years.[132] However, claimant has provided no documentation to support that assumption. There is no evidence in the record of any documentation provided to support the student accident insurance costs claimed in fiscal years 2000-2001 and 2001-2002 as required by the parameters and guidelines. Therefore, for those two fiscal years, the Controller's reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

D. Claimant Did Not Comply With the Parameters and Guidelines and Controller's Claiming Instructions in Preparing its Indirect Cost Rate and, Thus, the Controller's Reduction of These Costs is Correct as a Matter of Law.

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[129] Exhibit A, IRC, Exhibit E, at p. 76.

[130] Not that contemporaneous source documents were required by the parameters and guidelines at the time the reimbursement claims at issue in this IRC were filed.

[131] *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794, 804.

[132] Exhibit H, Exhibit H, Claimant Comments on the Draft Proposed Decision filed January 12, 2015, page 5.

The parameters and guidelines state that "indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."[133] The Controller's claiming instructions provide two options for claiming indirect costs, the OMB Circular A-21 or the state's methodology in FAM-29C. The Controller reduced indirect costs claimed because claimant did not obtain federal approval of its proposed indirect cost rate calculated under OMB Circular A-21. The Controller also found that the rate was not developed based on the costs incurred in the fiscal years within the audit period, but instead on the costs incurred in fiscal year 1998-1999. During the audit, claimant recalculated indirect costs using the FAM 29-C method, but the Controller found that the costs used to calculate the indirect cost rate did not support the revised rates claimed. The Controller recalculated indirect costs also using the FAM 29-C method, which slightly increased the rates revised by the claimant. The difference between the original claimed rate of 36.48 percent for all three years under the OMB A-21 method, and the revised rates of 15.23 percent for 1999-2000, 15.72 percent for 2000-2001, and 17.3 percent for 2001-2002, result in a total reduction of $442,402. Although claimant did not contest the finding in response to the audit, claimant's IRC now asserts that the Controller incorrectly reduced the $442,402 originally claimed using the OMB Circular A-21.[134]

As discussed below, the Commission finds that claimant did not comply with the parameters and guidelines, Controller's claiming instructions, and OMB Guidelines in preparing its indirect cost rate, so the reduction and recalculation of these costs is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. 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 for an indirect cost rate to be developed in accordance with federal OMB Circular A-21 guidelines or by using the state Form FAM-29C.

Parameters and guidelines adopted by the Commission are required to provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program.[135] The reimbursement claims filed by the claimants are, likewise, required as a matter of law to be filed in accordance with the parameters and guidelines.[136] The parameters and guidelines for the *Health Fee Elimination* program provide that "*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions*."[137]

Claimant argues that it is not required to adhere to the claiming instructions.[138] Claimant also argues that the word "may" is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the SCO.[139] In addition,

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[133] Exhibit A, IRC, at p. 40.

[134] Exhibit A, IRC, at pp. 15-17.

[135] Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

[136] Government Code sections 17561(d)(1); 17564(b); and 17571.

[137] Exhibit A, IRC, Exhibit C, at p. 40.

[138] Exhibit A, IRC, at pp. 14-15.

[139] *Ibid.*

claimant argues that "[n]either state law nor the parameters and guidelines made compliance with the Controller's claiming instructions a condition of reimbursement."[140]

Claimant is incorrect. The parameters and guidelines plainly state that "indirect costs may be claimed in the manner described by the State Controller." 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 SCO's claiming instructions.

The claiming instructions specific to the *Health Fee Elimination* mandate, revised September 1997,[141] state that "college districts have the option of using a *federally approved rate* (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21), or the State Controller's methodology outlined in "Filing a Claim" of the Mandated Cost Manual for Schools."

In addition, the School Mandated Cost Manual, revised each year, and containing instructions applicable to all school and community college mandated programs,[142] provides as follows:

> 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 methodology outlined in the following paragraphs. *If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.*[143]

The reference in the parameters and guidelines to the SCO's claiming instructions necessarily includes the general provisions of the School Mandated Cost Manual (and later the Mandated Cost Manual for Community Colleges), and the manual provides ample notice to claimants as to how they may properly claim indirect costs. Claimant's assertion that "[n]either State law or the parameters and guidelines made compliance with the SCO's claiming instructions a condition of reimbursement"[144] is therefore not correct.[145] The parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions.

In this case, claimant used the OMB Circular A-21 to calculate indirect costs. The OMB Circular A-21 establishes principles for determining costs applicable to grants, contracts, and other agreements between the federal government and educational institutions. Section G(11) of the OMB Circular A-21 governs the determination and federal approval of indirect cost rates by

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[140] *Ibid.*

[141] Exhibit B, Controller's Comments filed March 12, 2008, at p. 28.

[142] Exhibit E, Controller's Response to Request for Additional Information Controller filed October 15, 2014, pp. 19-22, 24-27 (School Mandated Cost Manual Excerpts for fiscal years 1999-2000 through 2001-2002).

[143] *Ibid.*

[144] Exhibit A, IRC, at p. 17.

[145] Government Code section 17564(b) was amended by Statutes 2004, chapter 890, to require: "Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines and claiming instructions."

the "cognizant federal agency," which is normally either the Federal Department of Health and Human Services or the Department of Defense's Office of Naval Research.[146]

Claimant also argues that because the claiming instructions "were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are merely a statement of the ministerial interests of the SCO and not law."[147] In the *Clovis* case, the Controller's contemporaneous source document rule, or CSDR, was held to be an unenforceable underground regulation because it was applied generally against school districts and had never been adopted as a regulation under the APA.[148] Here, claimant implies the same fault in the claiming instructions with respect to indirect cost rates. But the distinction is that here the parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions. Claimant had notice of the requirement in the parameters and guidelines to comply with the claiming instructions and notice of the claiming instructions' requirements for claiming indirect costs, both prior to and during the claim years in issue and did not challenge the parameters and guidelines or the claiming instructions when they were adopted.[149]

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, requiring federal approval, or by using the state Form FAM-29C; and that claimant had notice of the parameters and guidelines and the claiming instructions, and did not challenge them when they were adopted.

2. Claimant did not comply with the requirements of the claiming instructions in developing and applying its indirect cost rate. Therefore, the Controller's reduction and recalculation of costs, applying the Form FAM-29C calculation to provide an indirect cost rate, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The claiming instructions specify that, to use the OMB Circular A-21 option, a claimant must obtain federal approval and calculate the rate based on costs incurred in the same fiscal year, which the claimant here did not do. Thus, claimant did not comply with the requirements of the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate. Therefore, the Controller's adjustment for overstated indirect costs is correct as a matter of law.

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[146] Exhibit I, OMB Circular A-21.

[147] Exhibit A, IRC, p. 17.

[148] *Clovis Unified School Dist., supra,* 188 Cal.App.4th at page 807.

[149] Exhibit E, Controller's Response to Request for Additional Information filed October 15, 2014., pp. 19-22, 24-27 (School Mandated Cost Manual Excerpts for fiscal years 1999-2000 through 2001-2002).

In its audit of claimant's reimbursement claims, the Controller recalculated the indirect cost rate using the alternative state procedure, the "FAM-29C method," outlined in the School Mandated Cost Manual.[150]

Claimant asserts that "the difference in the claimed and audited methods is in the determination of which of those cost elements are direct costs and which are indirect costs." Claimant continues:

> Indeed, federally 'approved' rates which the Controller will accept without further action, are 'negotiated' rates calculated by the district and submitted for approval to federal agencies which are the source of federal programs to which the indirect cost rate is to be applied, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used.[151]

Claimant argues that the Controller "made no determination as to whether the method used by the District was reasonable, but merely substituted its FAM-29C method for the method reported by the District." Claimant also argues that the Controller's decision to recalculate indirect costs by its own method "is an arbitrary choice of the Controller, not a 'finding' enforceable by fact or law."[152]

The Commission finds that the Controller's use of the FAM-29C method for calculating indirect costs is not arbitrary or capricious. The FAM-29C method is expressly authorized by the claiming instructions. Although claimant argues that this substitution of methods was arbitrary, based on the above analysis, claimant failed to comply with the requirements of the parameters and guidelines and claiming instructions with respect to the OMB method of calculating indirect cost rates that it used and failed to get that rate federally approved, as required. Claimant does not assert that the rate calculated by the Controller was arbitrary; only that it was arbitrary to substitute the state method outlined in the claiming instructions for the claimant's preferred but incorrectly executed method.

Based on the foregoing, the Commission finds that the Controller's reduction and recalculation of costs using the Form FAM-29C is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

E. The Controller's Recalculation of Offsetting Fee Revenue Benefitted Claimant by Increasing Allowable Reimbursement Costs and, Thus, Without a Reduction, the Commission Does not Have Jurisdiction to Make Findings on the Controller's Audit Findings Relating to This Issue.

Finally, the audit found that claimant over reported and deducted $1,109,627 in offsetting fee revenue for the three fiscal years at issue in this case. The Controller recalculated offsetting revenues authorized to be charged and reduced the amount of offsetting revenue deducted from the claims. The overstated amounts were then used to reduce the total amounts reduced. Although the audit findings benefit claimant, claimant continues to disagree with how the

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[150] Exhibit B, Controller's Comments filed March 12, 2008, at pp. 18-19.

[151] Exhibit A, IRC, p. 16.

[152] Exhibit A, IRC, p. 18.

Controller recalculated the offsetting revenue and requests a finding by the Commission on this issue. In this respect, claimant asserts that offsetting revenues shall be deducted to the extent the fees are collected, and not deducted to the extent authorized by statute.[153]

The plain language of section 17551, which directs the Commission to hear IRCs in the first instance, applies only to claims that are reduced. Government Code section 17551 provides that the Commission "shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district…" pursuant to an audit.

Here, the Controller reviewed enrollment data provided by claimant, compared it to enrollment data provided by claimant to the California Community College's Chancellor's Office,[154] and determined that claimant had over reported student enrollment and under reported the number of enrolled students who were exempt from health fees. In addition, for 2001-2002, the Controller determined that claimant had overstated the fee per student claimed.[155] The result of the Controller's recalculation was a decrease in offsetting revenues for all three fiscal years, which benefitted claimant by increasing allowable reimbursement costs by $1,109,627. [156]

Since there is no reduction resulting from the Controller's recalculation of offsetting fee revenue, the Commission does not have jurisdiction over this issue.

V. Conclusion

The Controller conducted the audit of the 1999-2000 and 2000-2001 reimbursement claims within the deadlines imposed by Government Code section 17558.5.

Additionally, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, the Controller's reduction of costs by $30,527 for student accident insurance in fiscal year 1999-2000 is *incorrect* since the costs are adequately supported by source documents for that fiscal year. Therefore, $30,527 should be reinstated to the claimant.

However, the reductions listed below are consistent with the parameters and guidelines and the evidence in the record. These reductions are therefore *correct* as matter of law, and are not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission denies this IRC with respect to the following reductions:

- The reduction of costs claimed for salaries and benefits, on the ground that there is no evidence in the record that the costs claimed relate to the mandate. In addition, claimant did not provide supporting documentation as required by the parameters and guidelines or conduct a time study for the "estimated" costs claimed for counseling.
- The reduction of the costs claimed for bad debt and health fee reserve funds, sports coverage insurance, refreshments, sunflower seeds, chewing gum, breath mints, key tags, lunch, attendance at a speech, IPCJ-STD-001 instructor training, expenses for a contraceptive technology conference, costs to evaluate the program, and student accident

[153] Exhibit A, IRC at p. 15.

[154] Exhibit A, IRC at p. 15.

[155] Exhibit B, Controller's Comments filed March 12, 2008, at p. 10.

[156] Exhibit B, Controller's Comments filed March 12, 2008, at p.10.

insurance in fiscal years 2000-2001 and 2001-2002 either go beyond the scope of the mandate, or were not supported by documentation to show the services and supplies directly relate to the mandate or were provided in the base year.

- The reduction of costs resulting from the Controller's recalculation of indirect costs, on the ground that claimant did not comply with the parameters and guidelines and claiming instructions when preparing its indirect cost rate under the OMB Circular A-21, and the Controller's recalculation of the indirect cost rate using the FAM 29-C is expressly authorized by claiming instructions.

The Commission further finds that it does not have jurisdiction to make findings on the way the Controller calculated offsetting fee revenue since the recalculation of offsetting fee revenue resulted in a $1,109,627 increase in allowable costs; not reduction of costs claimed.

The Commission hereby remands the reimbursement claims to the Controller, and requests that the Controller reinstate the incorrect reductions specified above, consistent with these findings, pursuant to section 1185.9 of the Commission's regulations.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 11, 2015, I served the:

Proposed Decision
Health Fee Elimination, 05-4206-I-10
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 1999-2000, 2000-2001, and 2001-2002
Foothill-De Anza Community College District, Claimant

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

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

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/3/15

Claim Number: 05-4206-I-10

Matter: Health Fee Elimination

Claimant: Foothill-De Anza 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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