

COMMISSION ON STATE MANDATES

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March 11, 2015

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

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

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

Re: **Proposed Decision**

Health Fee Elimination, 06-4206-I-13

Education Code Section 76355

Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

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

Pasadena Area 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,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 9
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

06-4206-I-13

Pasadena Area Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses reductions made by the State Controller's Office (Controller) to Pasadena Area Community College District's (claimant's) reimbursement claims for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Health Fee Elimination* program. Over the three fiscal years in question, the Controller reduced claimed costs by a total of \$375,941. 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 of costs claimed in fiscal years 2000-2001 and 2001-2002 based on claimant's development and application of indirect cost rates.
- The amount of offsetting revenue to be applied from health service fee revenue.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for the purpose of voluntarily providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers.² In 1984, the Legislature repealed the community colleges' fee authority for health services.³ However, the Legislature also reenacted

¹ Statutes 1993, chapter 8.

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].

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 district's 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 the district was previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988. As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁵ 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.⁶ 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 services fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁷

Procedural History

Claimant's 1999-2000 reimbursement claim was filed with the Controller on January 10, 2001. Claimant's 2000-2001 reimbursement claim was filed with the Controller on December 20, 2001. Claimant's 2001-2002 reimbursement claim was dated January 10, 2003. The Controller conducted an entrance conference on May 21, 2003, to initiate an audit of the claims. On March 17, 2004, the Controller issued its final audit report, concluding that claimant had overstated its indirect costs for the program and had inaccurately reported offsetting revenue collected. Claimant filed this IRC with the Commission on State Mandates (Commission) on July 3, 2006.⁸ On, January 7, 2008, the Controller submitted comments on the IRC.⁹

On January 9, 2015, a draft proposed decision on the IRC was issued for comment.¹⁰ On January 14, 2015, the Controller filed comments on the draft proposed decision.¹¹ On January 27, 2015, claimant filed comments on the proposed draft decision.¹²

⁴ Statutes 1984, 2nd Extraordinary session, chapter 1, section 4.5.

⁵ 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).

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

⁷ Education Code section 72246 (as amended, Stats. 1992, ch.753. In 1993, former Education Code section 72246 was renumbered as Education Code section 76355. (Stats. 1993, ch. 8.

⁸ Exhibit A, IRC.

⁹ Exhibit B.

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 6.¹³ 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."¹⁴

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.¹⁵

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.¹⁶ 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.¹⁷

¹⁰ Exhibit C.

¹¹ Exhibit D.

¹² Exhibit E.

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

¹⁴ *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.

¹⁵ *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.

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

¹⁷ 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

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.¹⁸ 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.¹⁹

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’s 1999-2000 and 2000-2001 annual reimbursement claims.	At the time costs were incurred and the 1999-2000 and 2000-2001 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 time the final audit report was issued.	<i>The audit was not time-barred by any statutory or common law limitation</i> - Staff finds that the plain language of section 17558.5, at the time the reimbursement claims were filed, did not require the Controller to 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.” Additionally, the audit was completed within a reasonable time and so is not barred by common law principles of laches.
Reduction based on asserted flaws in the	Claimant asserts that the Controller incorrectly reduced	<i>Correct as a matter of law and not arbitrary, capricious or entirely</i>

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.

¹⁸ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

<p>development of indirect cost rates.</p>	<p>indirect costs claimed for fiscal years 2000-2001 and 2001-2002 because the claimant used an indirect cost rate calculation that it was not a federally approved indirect cost rate, a rate calculated using the state Form FAM-29C, the default 7% rate, or a higher rate supported by documentation as required by the claiming instructions. Claimant asserts that the parameters and guidelines are permissive, allowing the claimant to calculate the indirect cost rate any way it chooses.</p>	<p><i>lacking in evidentiary support-</i> Claimant did not comply with the parameters and guidelines, which direct claimants to claim indirect costs consistently with the claiming instructions by using either of the four methods of calculation provided for in the claiming instructions; the state’s FAM-29C method, a federally approved OMB Circular A-21 method, a default 7%, or a higher rate if supported by documentation. Instead, claimant used an alternative method to claim indirect costs of 47.3% for fiscal year 2000-2001 and 47.8% in fiscal year 2001-2002 but did not provide documentation to support the rate used. Thus, the Controller’s reduction is correct as a matter of law. In addition, the Controller’s recalculation of indirect costs using a 30% federally approved rate under OMB A-21, which the claimant used in fiscal year 1999-2000, is not arbitrary, capricious, or entirely lacking in evidentiary support.</p>
<p>Reduction based on understated offsetting health service fee revenues.</p>	<p>Claimant asserts that the student enrollment fee information provided in the reimbursement claims is accurate. The Controller ‘s audit found claimant did not provide any documentation to support the enrollment data provided in the reimbursement claims and recalculated student enrollment fees collected based upon revenue data provided by claimant during the audit (GLD 144-02 printouts), increasing offsetting revenue.</p>	<p><i>Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support -</i> Staff finds that claimant did not provide any documentation to support the enrollment data used to calculate offsetting revenue, as required by the parameters and guidelines, and, thus, the Controller’s reduction is correct as a matter of law. Staff further finds that the Controller’s recalculation of student enrollment using revenue data provided by claimant during the audit was not arbitrary, capricious, or entirely lacking in evidentiary support.</p>

Staff Analysis

A. The audit of the reimbursement claims for fiscal years 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.”²⁰ The 1999-2000 reimbursement claim was filed on January 10, 2001 and the 2000-2001 reimbursement claim was filed on December 20, 2001. Thus, both claims were “subject to audit” by the plain language of section 17558.5 until December 31, 2003.

The Controller states that it met the December 31, 2003 deadline since it *initiated* the audit on May 21, 2003, when an entrance conference was held for this audit. The claimant does not dispute that the entrance conference initiated the audit. However, the 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 this claim until nearly three months later, on March 17, 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 May 21, 2003, when the entrance conference was conducted, the audit was timely initiated.

In addition, the 2002 amendment to section 17558.5 expanded the statutory period to *initiate an audit* to “three years after the date that the actual reimbursement claim is filed or last amended.”²¹ Pursuant to the *Douglas Aircraft* case, “[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.”²² Therefore, 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.²³ In this case, the 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which

²⁰ Government Code section 17558.5 (Stats. 1995, ch. 945 (SB 11) [emphasis added]).

²¹ Statutes 2002, chapter 1128 (AB 2834) (effective January 1, 2003).

²² *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, at p. 465.

²³ *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468.

enlarged the time to initiate the audit to three years after the date the reimbursement claim is filed or last amended controls, and gives the Controller additional time to initiate the audit. The Controller therefore had until January 10, 2004, to initiate the audit of the 1999-2000 reimbursement claim, and had until December 20, 2004, to initiate the 2000-2001 reimbursement claim. Since the audit was initiated no later than May 21, 2003, when the entrance conference was held and before the 2004 deadlines, the audit was timely initiated under section 17558.5, as amended in 2002.

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. The 2004 amendment became effective on January 1, 2005, *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. Nevertheless, the Controller was still required under common law to complete the audit within a reasonable period of time. Under appropriate circumstances, the defense of laches may operate to bar a claim by a public agency if there is evidence of unreasonable delay by the agency and resulting prejudice to the claimant.²⁴ 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. The Controller’s Recalculation and Reduction of Indirect Costs Claimed is Correct as a Matter of Law and Not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.

The Controller reduced indirect costs claimed for fiscal years 2000-2001 and 2001-2002 by \$157,273 because claimant did not follow the claiming instructions which provided for use of a federally approved rate, the state’s Form FAM-29C, a 7 percent default rate, or a higher rate if the claimant can support its allocation basis. For fiscal year 1999-2000, claimant used an indirect cost rate of 30 percent that was federally approved and the Controller did not reduce any indirect costs claimed for that year. In 2000-2001 and 2001-2002, claimant used an outside consultant to prepare its indirect cost rate and that rate exceeded the federally approved rate by 17.3 percent in 2000-2001 and 17.8percent in 2001-2002.²⁵ Claimant did not provide documentation to support use of the higher indirect cost rate. The Controller reduced the indirect cost rates for 2000-2001 and 2001-2002 to the federally approved rate of 30% concluding that the outside consultant’s rate exceeded the approved federal rate and therefore was not consistent with the parameters and guidelines and claiming instructions.

²⁴ *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-judicative proceedings.

²⁵ Exhibit A, IRC, Exhibit D, at p. 57.

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 one of four methods; the federal OMB guidelines, the state Form FAM-29C, a 7 percent default rate, or a higher rate if the claimant can support its allocation basis.

Staff finds claimant did not comply with the requirements in the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate for fiscal years 2000-2001 and 2001-2002 since it did not use its federally approved indirect cost rate, the state Form FAM-29C, a 7 percent default rate or a higher rate with adequate documentation to support its allocation. Therefore, the reduction is correct as a matter of law. Staff further finds that the Controller's recalculation of indirect costs using the federally approved rate of 30 percent is not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The Controller's Reduction for Understated Offsetting Revenues is Correct as a Matter of Law and not Arbitrary, Capricious, or Lacking in Evidentiary Support.

The Controller reduced costs for the three fiscal years by \$287,865 because claimant understated its offsetting health fee revenues.²⁶ The reduction was made because claimant did not provide documentation to support the student enrollment data used to calculate the health fees revenues reported in its reimbursement claims. The Controller recalculated student enrollment using revenue data claimant provided during the audit (GLD 144-02 printouts). This revenue data reflected more students paid health fees than claimant reported in its reimbursement claims.²⁷

The parameters and guidelines require claimants to demonstrate that "all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs."²⁸ As claimant did not provide adequate documentation to support its enrollment data, the Controller's reduction is correct as a matter of law. Staff further finds that the Controller's recalculation of student enrollment using revenue data provided by claimant during the audit was not arbitrary, capricious, or entirely lacking in evidentiary support. The documents are public records provided by the claimant in the normal course of business, and the claimant has provided no other documents to support enrollment data.

Conclusion

Pursuant to Government Code section 17551(d), staff concludes that the Controller's audit of the 1999-2000 and 2000-2001 reimbursement claims was timely, and that the reduction of the following costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of indirect costs claimed for fiscal years 2000-2001 and 2001-2002, in the amount of \$157,273.

²⁶ Exhibit B, Controller's Comments, Tab 1, at p. 7.

²⁷ Exhibit B, Controller's Comments, Tab 1, at pp. 7, 9.

²⁸ Exhibit A, IRC, Exhibit B, Parameters and Guidelines, at p. 32.

- The reduction of costs due to understated offsetting revenue in the amount of \$287,865.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny the IRC, and 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)²⁹

Statutes 1984, Chapter 1 (1983-1984 2nd Ex.
Sess.) (AB 1) and Statutes 1987, Chapter 1118
(AB 2336)

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

Pasadena Area Community College District,
Claimant.

Case Nos.: 06-4206-I-13

Health Fee Elimination

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

(Adopted March 27, 2015)

DECISION

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

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

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

Summary of the Findings

This decision addresses reductions made by the State Controller's Office (Controller) to Pasadena Area Community College District's (claimant's) reimbursement claims for fiscal years 1999-2000, 2000-2001, and 2001-2002 under the *Health Fee Elimination* program. Over the three fiscal years in question, the Controller reduced costs totaling \$375,941, finding that: (1) the claimant overstated indirect costs; and (2) understated offsetting health fee revenues that were collected by the claimant.

The Commission finds 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 and, therefore, the audit is not void with respect to these reimbursement claims.

²⁹ 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.]

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

- The reduction of indirect costs claimed for 2000-2001 and 2001-2002 of \$157,273. Claimant did not comply with the parameters and guidelines and Controller's claiming instructions in preparing its indirect cost rate for 2000-2001 and 2001-2002 and, thus, the Controller's reduction of these costs is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The reduction of costs due to understated offsetting revenue of \$287,865. Claimant did not provide the enrollment data used to calculate the offsetting revenue collected by the claimant as required by the parameters and guidelines and, thus, the Controller's reduction is correct as a matter of law. The Commission further finds that the Controller's recalculation of offsetting revenue collected, using revenue data provided by claimant during the audit, was not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

01/10/01	Claimant filed a reimbursement claim for fiscal year 1999-2000. ³⁰
12/20/01	Claimant filed a reimbursement claim for fiscal year 2000-2001. ³¹
01/10/03	Claimant submitted a reimbursement claim for fiscal year 2001-2002. ³²
05/21/03	The Controller conducted an entrance conference for the audits of the 1999-2000, 2000-2001 and 2001-2002 reimbursement claims.
01/21/04	The Controller issued a draft audit report.
03/17/04	The Controller issued a final audit report. ³³
07/03/06	Claimant filed this IRC. ³⁴
07/13/06	Commission staff issued a Notice of Complete Filing.
01/07/08	The Controller, Division of Audits, filed comments on the IRC. ³⁵
01/09/15	Commission staff issued the draft proposed decision for comment. ³⁶

³⁰ Exhibit A, IRC, Exhibit D, at pp. 64 *et seq.*.

³¹ Exhibit A, IRC, Exhibit D, at pp. 70 *et seq.*.

³² Exhibit A, IRC, Exhibit D, at pp.76 *et seq.*. Reimbursement claim for FY 2001-2002.

³³ Exhibit A, IRC.

³⁴ Exhibit A, IRC.

³⁵ Exhibit B, Controller's comments on IRC.

³⁶ Exhibit C, draft proposed decision.

01/14/15 The Controller, Division of Audits, filed comments on the draft proposed decision.³⁷

01/27/15 Claimant filed comments on the draft proposed decision.³⁸

II. Background

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for the purpose of voluntarily providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers.³⁹ In 1984, the Legislature repealed the community colleges' fee authority for health services.⁴⁰ However, the Legislature also reenacted section 72246 in order to reauthorize the fee, at \$7.50 for each semester (or \$5 for quarter or summer semester), which was to become operative on January 1, 1988.⁴¹

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 the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁴² 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 1987,⁴³ the Legislature amended former Education Code section 72246, which was to become 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, 1988.⁴⁴ 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.⁴⁵ As a result, beginning January 1, 1988 all community college districts were required

³⁷ Exhibit D, Controller's comments on draft proposed decision.

³⁸ Exhibit E, Claimant comments on draft proposed decision.

³⁹ Statutes 1981, chapter 763. Students with low-incomes, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

⁴⁰ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4 [repealing Education Code section 72246].

⁴¹ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4.5.

⁴² Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

⁴³ Statutes 1987, chapter 1118.

⁴⁴ 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).

⁴⁵ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

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.⁴⁶

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 Statutes 1987, chapter 1118.

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

Controller's Audit and Summary of the Issues

The claimant submitted reimbursement claims for 1999-2000, 2000-2001, and 2001-2002, claiming costs totaling \$678,460. Following a field audit, the Controller reduced the costs claimed by \$375,941, based on the following audit findings:

- Overstated indirect costs claimed in fiscal years 2000-2001 and 2001-2002 by \$157,273. Indirect cost rates of 47.3 percent for fiscal year 2000-2001 and 47.8 percent in fiscal year 2001-2002 were used by the claimant in those years. The claimant, however, did not calculate the indirect cost rates in accordance with OMB Circular A-21 or the three other alternative methodologies provided in the Controller's claiming instructions, Form FAM-29C, a flat rate of 7%, or another higher rate supported by adequate documentation. The Controller recalculated indirect costs using the claimant's federally approved rate of 30%, which was correctly used by the claimant in the fiscal year 1999-2000 reimbursement claim.⁴⁷
- Understated offsetting health fee revenue in all three fiscal years totaling \$287,865, based on an unsupported student attendance data used by the claimant to calculate the fees collected. This audit was one of the first performed on the *Health Fee Elimination* program and it occurred before the court's decision in *Clovis Unified School District v. Chiang*. Thus, in this case, the Controller did not consider the extent of the claimant's fee revenue *authorized* to be collected, but looked only at the revenue actually collected by the claimant, using the claimant's GLD 144-02 printouts. The Controller found that the claimant failed to provide the student attendance data it used to determine offsetting revenues received and, thus, the Controller recalculated offsetting revenues by using the

⁴⁶ 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).

⁴⁷ Exhibit B, Controller's comments on IRC, at pages 14 (Tab 2) and 166 (Finding 1, Final Audit Report).

printout of revenue collected by the claimant. The Controller's recalculation resulted in a finding that the claimant underreported fee revenue received during the audit period.⁴⁸

The claimant challenges these findings and also raises the issue of the statute of limitations applicable to the Controller's audit of the fiscal year 1999-2000 and 2000-2001 reimbursement claims. The claimant contends that the audit findings for these two years are void since the audit was not completed by the deadline required by Government Code section 17558.5.

In addition, the claimant originally questioned adjustments to the amounts owed based on two claim payments issued by the state to the claimant for fiscal years 1999-2000 and 2000-2001.⁴⁹ The claimant now states that this is not in dispute and, thus, no analysis is provided on this issue.⁵⁰

III. Positions of the Parties

Pasadena Area Community College District

Claimant asserts that the Controller incorrectly reduced costs claimed in fiscal years 1999-2000, 2000-2001, and 2001-2002 totaling \$375,941, and requests that the entire amount be reinstated. Specifically, claimant asserts that for fiscal years 1999-2000 and 2000-2001, the audit is barred by the statutory deadline of Government Code section 17558.5.⁵¹ Claimant also argues that the Controller inappropriately reduced indirect costs claimed.⁵² For fiscal years 2000-2001 and 2001-2002, claimant argues that the parameters and guidelines do not require claimant to use one of the two alternative formulas for computing indirect cost rates, specifically the federally approved rate that the claimant used for fiscal year 1999-2000.⁵³

Claimant further asserts that its reimbursement claims should not be reduced by the amount of fees authorized to be charged, but only by those actually collected.⁵⁴ In addition, claimant questions the Controller's use of the district's revenue ledgers (GLD 144-02 printouts) to calculate fee revenue collected. The claimant contends that the Commission has previously approved the Controller's calculation of offsetting revenue with the use of the Community College Chancellor's MIS enrollment data in a prior IRC, and until the Commission requires the Controller to use this approved method, the use of the GLD printouts is arbitrary, capricious, or lacking in evidentiary support.⁵⁵

⁴⁸ Exhibit B, Controller's comments on IRC, at pages 2 (letter from the Controller's Senior Staff Counsel) and 166 (Finding 2, Final Audit Report).

⁴⁹ Exhibit A, IRC, at p.18.

⁵⁰ Exhibit E, Claimant's comments on draft proposed decision, p. 11.

⁵¹ Exhibit A, IRC, at pp. 16-19.

⁵² Exhibit A, IRC, at pp. 9-10.

⁵³ Exhibit A, IRC, at, pp. 9-10.

⁵⁴ Exhibit A, IRC, at pp. 12-15. However, because the audit only addressed fees actually collected, this is not at issue in this IRC.

⁵⁵ Exhibit A, IRC, at p. 15; Exhibit E, Claimant's comments on the draft proposed decision, pp. 9-10.

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.⁵⁶ The Controller also contends that the reductions are correct and supported by the record.⁵⁷ In comments filed on January 14, 2015, the Controller concurred with the draft proposed decision.⁵⁸

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 6.⁵⁹ 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."⁶⁰

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.⁶¹ 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.'

⁵⁶ Exhibit B, Controller's comments on IRC, Cover Letter, at pp. 3-4.

⁵⁷ Exhibit B, Controller's comments on IRC.

⁵⁸ Exhibit D, Controller's comments on draft proposed decision.

⁵⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁶⁰ *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.

⁶¹ *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.

[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.]’ ”⁶²

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.⁶³ 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.⁶⁴

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

Claimant asserts 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.

In 2001 when claimant filed these two reimbursement claims, 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.⁶⁵

Claimant contends that funds were appropriated for this program for the 1999-2000 and 2000-2001 claim years and, thus, the first sentence of section 17558.5 applies.⁶⁶ Since the 1999-2000 reimbursement claim was filed on January 10, 2001 and the 2000-2001 reimbursement claim was filed on December 20, 2001, both claims were subject to audit by the plain language of section 17558.5 until December 31, 2003. The Controller states that it initiated the audit on May 21 2003, when an entrance conference was held for this audit and this fact is not in dispute.

⁶² *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

⁶³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁶⁴ 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.

⁶⁵ 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.

⁶⁶ Exhibit A, IRC, at p. 18.

However, claimant asserts that “subject to audit” 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. Claimant further argues that if the “subject to audit” language is interpreted as requiring the Controller to simply begin the audit before the deadline, it would lead to uncertainty for the claimant in knowing when the statute of limitations would expire.⁶⁷ 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 these claims until three months later, on March 17, 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. In this case, the Controller states that the audit of both the 1999-2000 and 2000-2001 claims was initiated at the entrance conference conducted on May 21, 2003, and that this date is within the two years after the end of the calendar year in which the claims were 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 statute of limitations to initiate an audit to three years, and that the later enacted statute applies here to give the Controller an additional year to initiate the audit since the audit period for the 1999-2000 and 2000-2001 was still open. In this regard, the Controller states the following:

“Moreover, Government Code section 17558.5 was subsequently amended while the District’s claims were still subject to audit. The amended Government Code section 17558.5 that was operative in 2003⁶⁸ applies to these claims. Under this amended statute, claims are “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.” It is well established that “...any legislative enlargement of the limitation period applies to pending matters not already barred.” (43 Cal Jur 3d, Limitations of Actions, section 8.⁶⁹

The Commission finds that the audit of the 1999-2000 and 2000-2001 reimbursement claims was timely initiated and completed under Government Code section 17558.5.

The plain language of 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:

⁶⁷ Exhibit A, IRC, at p. 19.

⁶⁸ Stats. 2002, chapter 1128 (Assembly Bill 2834), section 14.5, operative January 1, 2003.

⁶⁹ Exhibit B, Controller’s Comments filed January 7, 2008, Cover Letter, at p. 3.

...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 the 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 the first sentence) supports an inference that a difference in meaning was intended by the Legislature, the Commission finds that inference is not supportable in this case.⁷⁰ 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 second sentence clearly refers to situations where funds are *not* appropriated. It can reasonably be inferred from the context that the first sentence, in contrast, refers to situations where funds *are* appropriated. The use of the word “however” to begin the second sentence, signals the contrast between these two situations (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, 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 between the two situations is the triggering event of an appropriation that determines when the two-year period to initiate an audit begins to run.

The Commission further finds 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:

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.⁷¹

Therefore, in this case, the reimbursement claims filed for fiscal years 1999-2000 and 2000-2001 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

⁷⁰ *Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, 62.

⁷¹ Statutes 2002, chapter 1128.

the audit began no later than May 21, 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 audit in this case.⁷² The Commission agrees. Pursuant to the *Douglas Aircraft* case, “[u]nless a statute expressly provides to the contrary, any enlargement of a statute of limitations provision applies to matters pending but not already barred.”⁷³ The Court in *Douglas Aircraft* stated the general rule as follows:

The extension of the statutory period within which an action must be brought is generally held to be valid if made before the cause of action is barred. (*Weldon v. Rogers*, 151 Cal. 432.) The party claiming to be adversely affected is deemed to suffer no injury where he was under an obligation to pay before the period was lengthened. This is on the theory that the legislation affects only the remedy and not a right. (*Mudd v. McColgan*, 30 Cal.2d 463; *Davis & McMillan v. Industrial Acc. Com.*, 198 Cal. 631; 31 Cal.Jur.2d 434.) An enlargement of the limitation period by the Legislature has been held to be proper in cases where the period had not run against a corporation for additional franchise taxes (*Edison Calif. Stores, Inc. v. McColgan*, 30 Cal.2d 472), against an individual for personal income taxes (*Mudd v. McColgan*, *supra*, 30 Cal.2d 463), and against a judgment debtor (*Weldon v. Rogers*, *supra*, 151 Cal. 432). It has been held that unless the statute expressly provides to the contrary any such enlargement applies to matters pending but not already barred. (*Mudd v. McColgan*, *supra*, 30 Cal.2d 463.)⁷⁴

In *Mudd v. McColgan*, relied upon in *Douglas Aircraft*, the Court explained:

It is settled law of this state that an amendment which enlarges a period of limitation applies to pending matters where not otherwise expressly excepted. Such legislation affects the remedy and is applicable to matters not already barred, without retroactive effect. Because the operation is prospective rather than retrospective, there is no impairment of vested rights. [Citations.] Moreover, a party has *no vested right in the running of a statute of limitation prior to its expiration*. He is deemed to suffer no injury if, at the time of an amendment extending the period of limitation for recovery, he is under obligation to pay. In *Campbell v. Holt*, 115 U.S. 620, at page 628, it was said that statutes shortening the period or making it longer have always been held to be within the legislative power until the bar was complete.⁷⁵

And in *Liptak v. Diane Apartments, Inc.*, the Second District Court of Appeal, relying in part on *Mudd*, *supra*, reasoned:

⁷² Statutes 2002, chapter 1128.

⁷³ *Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, at p. 465.

⁷⁴ *Id.*, at page 465.

⁷⁵ *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468 [emphasis added].

A party does not have a vested right in the time for the commencement of an action. (*Mill and Lumber Co. v. Olmstead* (1890) 85 Cal. 80, 84-85.) Nor does he have a vested right in the running of the statute of limitations prior to its expiration. (*Mudd v. McColgan* (1947) 30 Cal.2d 463, 468; *Weldon v. Rogers* (1907) 151 Cal. 432, 434.) *A change in the statute of limitations merely effects a change in procedure and the Legislature may shorten the period, however, a reasonable time must be permitted for a party affected to avail himself of the remedy before the statute takes effect.* (*Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122; *Davis & McMillan v. Industrial Acc. Com.* (1926) 198 Cal. 631, 637; *Mill and Lumber Co. v. Olmstead, supra*, 85 Cal. at p. 84.)⁷⁶

Therefore, 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.⁷⁷ In this case, the 2002 amendment to section 17558.5 became effective on January 1, 2003, when the audit period for both reimbursement claims was still pending and not yet barred under the prior statute. The 2002 statute, which enlarged the time to initiate the audit to three years after the date the actual reimbursement claim is filed or last amended would control, and gives the Controller additional time to initiate the audit. The Controller therefore had until January 10, 2004, to initiate the audit of the 1999-2000 reimbursement claim, and had until December 20, 2004, to initiate the 2000-2001 reimbursement claim. Since the audit was initiated no later than May 21, 2003, when the entrance conference was held and before the 2004 deadline, the audit was timely initiated.

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. 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.⁷⁸ In its January 27, 2015 comments, claimant asserts that the Commission “need not rely on laches” and indeed the Commission does not. As described below, there is no evidence of unreasonable delay or prejudice to the claimant in this case.

⁷⁶ (1980) 109 Cal.App.3d 762, 773.

⁷⁷ *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468.

⁷⁸ *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.

Claimant argues that it would be “impossible” to know when the statute of limitations would expire under the Controller’s interpretation.⁷⁹ However, the claimant was on notice of the audit when the entrance conference was conducted on May 21, 2003; the field audit was completed on November 21, 2003;⁸⁰ the draft audit report was issued on January 21, 2004; and the final audit report was issued March 10, 2004.⁸¹ Moreover, there is no evidence that the claimant 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 2000-2001 was timely initiated and completed.

B. The Controller’s Recalculation and Reduction of Claimed Indirect Costs is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced indirect costs claimed by \$157,273 for fiscal years 2000-2001 and 2001-2002. Indirect cost rates of 47.3 percent for fiscal year 2000-2001 and 47.8 percent in fiscal year 2001-2002 were used by the claimant to claim reimbursement for indirect costs. The Controller states that it did not accept claimant’s calculation of its indirect cost rate for these fiscal years because claimant had a federally approved indirect cost rate of 30 percent and did not use that rate but instead used a rate calculated by an outside consultant that resulted in excessive claims for indirect costs.⁸² The Controller recalculated indirect costs for these two fiscal years using the claimant’s federally approved rate of 30 percent, which was correctly used by the claimant in the fiscal year 1999-2000 reimbursement claim.⁸³

Claimant disputes the Controller’s findings that the indirect cost rate proposal was incorrectly applied, charging that the Controller’s conclusions were without basis in the law.

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 developed in accordance with federal OMB Circular A-21 guidelines, the state Form FAM-29C, a 7 percent default rate, or a higher expense percentage “if the rate if the claimant can support its allocation basis.”*

If the Commission approves a test claim and determines there are costs mandated by the state, parameters and guidelines are required to be adopted to determine the amount to be subvended.⁸⁴ Parameters and guidelines, in addition to identifying the reimbursable activities, provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect

⁷⁹ Exhibit A, IRC at pp.22-23.

⁸⁰ Exhibit A, IRC, Exhibit D, p. 52.

⁸¹ See Exhibit A, IRC, Exhibit D, final audit report for the dates of the draft audit report.

⁸² Exhibit B, Controller’s comments filed January 7, 2008, p. 2.

⁸³ Exhibit B, Controller’s comments on IRC, at pages 14 (Tab 2) and 166 (Finding 1, Final Audit Report).

⁸⁴ Government Code section 17557.

costs of a state-mandated program.⁸⁵ The Commission’s adoption of parameters and guidelines is quasi-judicial and, therefore, the parameters and guidelines are final and binding on the parties unless set aside by a court pursuant to Government Code section 17559.⁸⁶ Claimants are required as a matter of law to file reimbursement claims in accordance with the parameters and guidelines.⁸⁷ Moreover, the parameters and guidelines cannot be amended by the Commission absent the filing of a request to amend the parameters and guidelines by a local government or state agency pursuant to Government Code section 17557. In this case, the parameters and guidelines for the *Health Fee Elimination* program have not been challenged, and no party has requested they be amended. The parameters and guidelines are therefore binding and must be applied to the reimbursement claims here.

Section VI of the parameters and guidelines provide that “*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.*”⁸⁸ Claimant argues that the word “may” in the indirect cost language of the parameters and guidelines is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.⁸⁹

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

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.”⁹⁰ In the *Clovis Unified* 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.⁹¹ 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 and are regulatory

⁸⁵ Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

⁸⁶ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: “[U]nless a party to a quasi-judicial proceeding challenges the agency’s adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.” [Citation omitted.]

⁸⁷ Government Code sections 17561(d)(1); 17564(b); and 17571. See also, *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799, finding that the parameters and guidelines are regulatory.

⁸⁸ Exhibit A, IRC, Exhibit C, p. 40.

⁸⁹ Exhibit A, IRC, Exhibit C, p 10.

⁹⁰ Exhibit A, IRC, p. 12; Exhibit D, p. 7.

⁹¹ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th at p. 807.

in nature, require compliance with the claiming instructions. As indicated above, the parameters and guidelines, never having been challenged or amended at the request of the parties, are binding.

The claiming instructions specific to the *Health Fee Elimination* mandate, revised September 1997,⁹² provide two options for claiming indirect costs as follows: “For claiming indirect costs 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 [i.e., FAM-29C].” The School Mandated Cost Manual is revised each year and contains claiming instructions applicable to all school and community college mandated programs. The cost manuals issued by the Controller’s Office in October 1998, September 2001, and September 2003, which govern the reimbursement claims filed for the fiscal year 2000-2001 and 2001-2002 reimbursement claims in this case, however, provide four options for claiming indirect costs, including an option for the claimant to develop its own methodology for calculating indirect costs as long as the claimant can support the allocation basis. The four options for claiming indirect costs are using the OMB Circular A-21, FAM-29C, a default rate of 7 percent, or “a higher expense percentage . . . if the college can support its allocation basis” as follows:⁹³

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.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. *Form FAM-29C* has been developed to assist the community college in computing an indirect cost rate for state mandates. . . .

[¶]

The [FAM-29C] computation is based on total expenditures as reported in “California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311).” Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several

⁹² Exhibit B, Controller’s comments on IRC, Tab 3 p. 25-29 and Tab 4 pp. 31-41.

⁹³ Exhibit F.

activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those indirect costs that do not provide administrative support to personnel who perform mandated costs activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified as indirect costs are: Planning and Policy Making, Fiscal Operations, General Administrative Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employee performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Services, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. ***The claimant has the option of using a 7% or a higher expense percentage is allowable if the college can support its allocation basis.***

The rate, derived by determining the ratio of total indirect expenses and total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. . . .⁹⁴

If the claimant uses the OMB Circular A-21 methodology, federal approval of the indirect cost rate is required. 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 of indirect cost rates and requires the federal approval of a proposed rate by 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.⁹⁵ If the claimant decides to use an expense percentage higher than the 7 percent default rate, the claimant is required to provide support for the allocation basis used. In this respect, the claiming instructions are consistent with Section VII of the parameters and guidelines, addressing supporting data for the claim, which plainly states that "all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs." Supporting documentation is also firmly required by Government Code section 17561, which authorizes the Controller to audit the records of any school district to "verify the actual amount of mandated costs," to reduce any claim determined

⁹⁴ Exhibit G, School Mandated Cost Manual, excerpts from fiscal years 1999-2000, 2000-2001 and 2002-2003, pp. 14, 12, and 17.

⁹⁵ Exhibit F, OMB Circular A-21.

to be excessive, and to require the Controller to pay “any eligible claim.” The burden of providing evidence for a claim of reimbursement lies with the claimant.⁹⁶

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, the state Form FAM-29C, the 7 percent default rate, or a higher expense percentage if the claimant can support its allocation basis.

2. *Claimant did not comply with the requirements of the parameters and guidelines and claiming instructions in developing and applying its indirect cost rates for 2000-2001 and 2001-2002. Therefore, the Controller’s reduction is correct as a matter of law and the recalculation of the indirect cost rate using claimant’s federally approved rate was not act arbitrary, capricious, or entirely lacking in evidentiary support.*

In its audit of claimant’s reimbursement claims for fiscal years 2000-2001 and 2001-2002, the Controller found that claimant “claimed indirect costs based upon an indirect cost rate of 47.3 percent and 47.8 percent respectively. The Controller found that this rate was prepared by an outside consultant allegedly “simplifying” the OMB Circular A-21 methodology.⁹⁷

To use the OMB Circular A-21 option, a claimant must obtain federal approval, which claimant received and used for fiscal year 1999-2000.⁹⁸ However, for fiscal years 2000-2001 and 2001-2002, claimant did not use its federally approved rate, and instead used a simplified methodology that increased the indirect cost rate. The claimant argues that the Controller is now required to prove that the methodology is unreasonable. The claimant is wrong. As described in the section above, if the claimant uses a methodology other than the OMB A-21 Circular, FAM-29C, or the 7 percent default rate, the claimant has the burden, as required by the parameters and guidelines, the claiming instructions, and the Government Code, to provide support for the allocation basis used to develop the rate claimed for indirect costs. In this case, however, there is no explanation or evidence in the record supporting the claimant’s use of an indirect cost rate of 47.3 percent and 47.8 percent.

Thus, since the claimant did not comply with the requirements of the parameters and guidelines and claiming instructions in developing and applying its indirect cost rate to the costs claimed in fiscal years 2000-2001 and 2001-2002, the reduction is correct as a matter of law.

The Commission further finds that the Controller’s recalculation of indirect costs using the 30 percent rate federally approved under the OMB guidelines is not arbitrary, capricious, or entirely lacking in evidentiary support. The methodology is expressly allowed by the claiming instructions and was used by the claimant in its fiscal year 1999-2000 reimbursement claim. The Controller could have used the 7 percent default rate, but chose to use the methodology actually used by the claimant the year before and the method that results in increased costs to the claimant.

⁹⁶ Government Code sections 17560, 17561(d); *Advanced Choices, Inc. v. Department of Health Services* (2010) 182 Cal.App.4th 1661, 1669.

⁹⁷ Exhibit A, IRC, Exhibit D, p.6; Exhibit B, Tab 1, p. 4.

⁹⁸ The Controller did not adjust indirect costs for fiscal year 1999-2000.

Though claimant is entitled to all of its costs mandated by the state for this program, all cost must be traceable to source documents and/or worksheets that show evidence of the validity of such costs – here they are not. As a result, the Controller acted reasonably in giving claimant the benefit of the federally approved rate for its indirect costs.

Accordingly, the Commission finds that the Controller’s reduction is correct as a matter of law and the recalculation of the indirect cost rate using claimant’s federally approved rate was not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The Controller’s Reduction for Understated Offsetting Revenues is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller reduced costs for the three fiscal years by \$287,865 based on unsupported student attendance data used by the claimant to calculate the fees collected. This audit was one of the first performed on the *Health Fee Elimination* program and it occurred before the court’s decision in *Clovis Unified School District v. Chiang*. Thus, in this case, the Controller did not consider the extent of the claimant’s fee revenue *authorized* to be collected, but looked only at the revenue actually collected by the claimant.⁹⁹ The Controller found that the claimant failed to provide the student attendance data it used to determine offsetting revenues received and, thus, the Controller recalculated offsetting revenues received by using revenue data provided by the claimant during the audit (the claimant’s GLD144-02 printouts).¹⁰⁰ The Controller’s recalculation resulted in a finding that the claimant underreported fee revenue received during the audit period.¹⁰¹ Claimant disputes the reduction.

The parameters and guidelines require claimants to report:

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal state, etc. shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) received from individuals other than

⁹⁹ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 812, where the court upheld the Controller’s use of the “Health Fee Rule” to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is as follows: “To the extent a local agency or school district ‘has the authority’ to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.”

¹⁰⁰ This documentation is in Tab 5 of Exhibit B, Controller’s comments on IRC, pp. 42-74.

¹⁰¹ Exhibit B, Controller’s comments on IRC, at pages 2 (letter from the Controller’s Senior Staff Counsel) and 166 (Finding 2, Final Audit Report).

students who are not covered by Education Code Section 72246 for health services.¹⁰²

Section VII also requires claimants to provide supporting data for auditing purposes as follows: “all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.”¹⁰³

Thus, the parameters and guidelines expressly require claimants to identify offsetting revenue from health service fees for each full-time student enrolled, and further require documentation to support the costs claimed. Full documentation of increased costs, which by definition would include documentation of any offsets, is required.¹⁰⁴ As claimant did not provide any documentation to support the fee revenue collected, as required by the parameters and guidelines, the Controller’s reduction is correct as a matter of law.

The Commission further finds that the Controller’s recalculation of offsetting revenues collected, using the district’s revenue ledgers (GLD 144-02 printouts), was not arbitrary, capricious, or entirely lacking in evidentiary support. These printouts show account collections posted during the reimbursement years at issue. The documents are public records maintained by claimant in the normal course of business, and claimant has provided no other documents to support the offsetting fee revenue collected for this program.

The claimant, in its comments on the draft proposed decision, contends that the Commission has previously approved the Controller’s calculation of offsetting revenue with the use of the Community College Chancellor’s MIS enrollment data in a prior IRC,¹⁰⁵ and until the Commission requires the Controller to use this approved method, the use of the GLD printouts is arbitrary, capricious, or lacking in evidentiary support. The claimant is correct in that in the earlier decision on seven consolidated *Health Fee Elimination* IRCs, the Commission found that the “Community College Chancellor’s MIS data” was a “reasonable and reliable source” for enrollment data, and use of such data was not arbitrary or capricious.¹⁰⁶ The claimant here points out that more recent audits have used “enrollment data from the CCCCCO,” but that for this audit, the enrollment statistics were not used by the Controller.¹⁰⁷ However, the Commission did not determine that the MIS data was the *only* reasonable and reliable source for the data. The claimant has not raised a specific objection to the revenue data being used in this case, other than that it is not the “MIS” data. The Commission finds that the Controller’s recalculation of fee revenue collected based on the claimant’s revenue ledgers that were available, was not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds that the Controller’s reduction for understated offsetting revenues collected is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

¹⁰² Exhibit F, Parameters and Guidelines at p. 7.

¹⁰³ Exhibit F, Parameters and Guidelines, p. 7.

¹⁰⁴ See Government Code sections 17514, 17557 and 17561(d)(C)(i).

¹⁰⁵ Exhibit E, Claimant’s comments on draft proposed decision, p. 10.

¹⁰⁶ Statement of Decision, Health Fee Elimination, 09-4206-I-19, p. 35.

¹⁰⁷ Exhibit E, Claimant’s comments on draft proposed decision, p. 10.

Conclusion

Pursuant to Government Code section 17551(d), the Commission concludes that the Controller's audit of the 1999-2000 and 2000-2001 reimbursement claims was timely, and that the reduction of the following costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- The reduction of indirect costs claimed for fiscal years 2000-2001 and 2001-2002 of \$157,273.
- The reduction of costs due to understated offsetting revenue of \$287,865 collected by the claimant during the audit period.

Accordingly, the Commission denies this IRC.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 11, 2015, I served the:

Proposed Decision

Health Fee Elimination, 06-4206-I-13

Education Code Section 76355

Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118

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

Pasadena Area 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
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/3/15

Claim Number: 06-4206-I-13

Matter: Health Fee Elimination

Claimant: Pasadena Area 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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