

ITEM 6
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Former Education Code Section 72246 (Renumbered as 76355)¹
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1); Statutes 1987,
Chapter 1118 (AB 2336)

Health Fee Elimination
Fiscal Years, 2003-2004, 2004-2005, and 2005-2006

09-4206-I-22

Long Beach Community College District, Claimant

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Excerpts from Office of Management and Budget, OMB Circular A-133 compliance
supplement 2014, part 3

¹ Statutes 1993, chapter 8.

SixTen and Associates

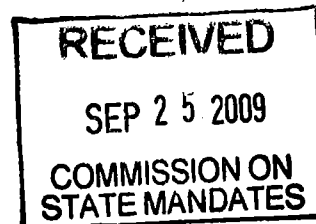
Mandate Reimbursement Services

KEITH B. PETERSEN, President
3270 Arena Blvd. Suite 400-363
Sacramento, CA 95834
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

September 24, 2009

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



RE: Long Beach Community College District
Health Fee Elimination
Fiscal Years: 2003-04 through 2005-06
Incorrect Reduction Claim

Dear Ms. Higashi:

Enclosed is the original and two copies of the above referenced incorrect reduction claim for Long Beach Community College District.

SixTen and Associates has been appointed by the District as its representative for this matter and all interested parties should direct their inquiries to me, with a copy as follows:

Ann-Marie Gabel, Vice-President Administrative Services
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808

Thank-you.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Petersen". The signature is fluid and cursive.

Keith B. Petersen

COMMISSION ON STATE MANDATES

1. INCORRECT REDUCTION CLAIM TITLE

1/84, 1118/87 Health Fee Elimination

2. CLAIMANT INFORMATION

Long Beach Community College District

Ann-Marie Gabel, Vice-President
Administrative Services
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808
Phone: 562-938-4406
Fax: 562-429-0278
E-Mail: agabel@lbcc.edu

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen, President
SixTen and Associates
3270 Arena Blvd., Suite 400-363
Sacramento, CA 95834
Voice: (916) 419-7093
Fax: (916) 263-9701
E-mail: Kbpsixten@aol.com

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Filing Date:

RECEIVED

SEP 25 2009

COMMISSION ON
STATE MANDATES

IRC #: 09-4206-F-22

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

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

5. AMOUNT OF INCORRECT REDUCTION

<u>Fiscal Year</u>	<u>Amount of Reduction</u>
2003-04	\$216,957
2004-05	\$163,350
2005-06	\$296,420
TOTAL:	\$676,727

6. NOTICE OF NO INTENT TO CONSOLIDATE

This claim is not being filed with the intent to consolidate on behalf of other claimants.

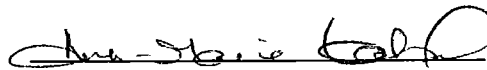
Sections 7-13 are attached as follows:

7. Written Detailed Narrative:	Pages 1 to 20
8. SCO Results of Review Letters:	Exhibit <u>A</u>
9. Parameters and Guidelines:	Exhibit <u>B</u>
10. SCO Claiming Instructions:	Exhibit <u>C</u>
11. SCO Audit Report:	Exhibit <u>D</u>
12. SCO Mandated Cost Manual:	Exhibit <u>E</u>
13. Annual Reimbursement Claims:	Exhibit <u>F</u>

14. CLAIM CERTIFICATION

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Ann-Marie Gabel, Vice-President
Administrative Services


Signature

9/2/09
Date

1 Claim Prepared by:
2 Keith B. Petersen
3 SixTen and Associates
4 3270 Arena Blvd. Suite 400-363
5 Sacramento, CA 95834
6 Voice: (916) 419-7093
7 Fax: (916) 263-9701
8 E-mail: kbpsixten@aol.com
9

10 BEFORE THE
11 COMMISSION ON STATE MANDATES
12 STATE OF CALIFORNIA

13 INCORRECT REDUCTION CLAIM OF:)

14) No. CSM _____
15)

16) Chapter 1, Statutes of 1984, 2nd E.S.
17) Chapter 1118, Statutes of 1987
18)

19 **LONG BEACH**
20 **Community College District,**

19) Education Code Section 76355
20)

21) **Health Fee Elimination**
22)

23 Claimant.)

23) Annual Reimbursement Claims:
24)

25) Fiscal Year 2003-04
26)

26) Fiscal Year 2004-05
27)

27) Fiscal Year 2005-06
28)

29 _____)
30 INCORRECT REDUCTION CLAIM FILING

31 PART I. AUTHORITY FOR THE CLAIM

32 The Commission on State Mandates has the authority pursuant to Government
33 Code Section 17551(d) to "hear and decide upon a claim by a local agency or school
34 district filed on or after January 1, 1985, that the Controller has incorrectly reduced
35 payments to the local agency or school district pursuant to paragraph (2) of subdivision
36 (d) of Section 17561." Long Beach Community College District (hereinafter "District" or

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 "Claimant") is a school district as defined in Government Code Section 17519.¹ Title 2,
2 California Code of Regulations (CCR), Section 1185(a), requires claimants to file an
3 incorrect reduction claim with the Commission.

4 This Incorrect Reduction Claim is timely filed. Title 2, CCR, Section 1185(b),
5 requires incorrect reduction claims to be filed no later than three years following the
6 date of the Controller's "written notice of adjustment notifying the claimant of a
7 reduction." A Controller's audit report dated June 26, 2009, has been issued. The audit
8 report constitutes a demand for repayment and adjudication of the claim. The Claimant
9 also received three "result of review" letters dated July 5, 2009. Copies of these letters
10 are attached as Exhibit "A."

11 There is no alternative dispute resolution process available from the Controller's
12 office. The audit report states that an Incorrect Reduction Claim should be filed with the
13 Commission if the claimant disagrees with the findings.

14 PART II. SUMMARY OF THE CLAIM

15 The Controller conducted a field audit of the District's annual reimbursement
16 claims for the actual costs of complying with the legislatively mandated Health Fee
17 Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and
18 Chapter 1118, Statutes of 1987) for the period of July 1, 2003 through June 30, 2006.

¹ Government Code Section 17519, added by Chapter 1459, Statutes of 1984:

"School district" means any school district, community college district, or county superintendent of schools.

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 As a result of the audit, the Controller determined that \$676,727 of the claimed costs
2 were unallowable:

3	Fiscal	Amount	Audit	SCO	Amount Due
4	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u><State> District</u>
5	2003-04	\$267,154	\$216,957	\$0	\$50,197
6	2004-05	\$305,960	\$163,350	\$0	\$142,610
7	2005-06	<u>\$296,420²</u>	<u>\$296,420</u>	<u>\$0</u>	<u>\$0</u>
8	Totals	\$869,534	\$676,727	\$0	\$192,807

9 Since the District has not been paid for these claims, the audit report concludes that
10 \$192,807 is due to the District.

11 PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

12 On September 1, 2005, the District filed an incorrect reduction claim for this
13 mandate program for fiscal years 2001-02 and 2002-03. The District is not aware of
14 any other incorrect reduction claims having been adjudicated on the specific issues or
15 subject matter raised by this incorrect reduction claim.

16 PART IV. BASIS FOR REIMBURSEMENT

17 1. Mandate Legislation

18 Chapter 1, Statutes of 1984, 2nd Extraordinary Session, repealed Education
19 Code Section 72246 and added new Education Code Section 72246, which authorized
20 community college districts to charge a student health services fee for the purposes of

² The FY 2005-06 annual claim amount is \$297,420 less a \$1,000 late filing penalty.

Incorrect Reduction Claim of Long Beach Community College District
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1 providing health supervision and services, and operating student health centers. This
2 statute also required that the scope of student health services provided by any
3 community college district during the 1983-84 fiscal year be maintained at that level in
4 the 1984-85 fiscal year and every year thereafter. The provisions of this statute were to
5 automatically repeal on December 31, 1987.

6 Chapter 1118, Statutes of 1987, amended Education Code Section 72246 to
7 require any community college district that provided student health services in fiscal
8 year 1986-87 to maintain student health services at that level in 1987-88 and each
9 fiscal year thereafter.

10 Chapter 753, Statutes of 1992, amended Education Code Section 72246 to
11 increase the maximum fee that community college districts were permitted to charge for
12 student health services. This statute also provided for future increases in the amount of
13 the authorized fees that were linked to the Implicit Price Deflator for State and Local
14 Government Purchase of Goods and Services.

15 Chapter 8, Statutes of 1993, repealed Education Code Section 72246, and
16 added Education Code Section 76355³ containing substantially the same provisions as

³ Education Code Section 76355, added by Chapter 8, Statutes of 1993, effective April 15, 1993, as last amended by Chapter 758, Statutes of 1995:

(a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health

center or centers, or both.

The governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

(b) If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):

(1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.

(2) Students who are attending a community college under an approved apprenticeship training program.

(3) Low-income students, including students who demonstrate financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid and students who demonstrate eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(d) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, 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. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(e) Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.

(f) A district that begins charging a health fee may use funds for startup costs

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 former Section 72246, effective April 15, 1993. Chapter 320, Statutes of 2005, effective
2 January 1, 2006, amended Education Code Section 76355 to remove the fee
3 exemption for low-income students under 76355(c)(3).

4 2. Test Claim

5 On November 27, 1985, Rio Hondo Community College District filed a test claim
6 alleging that Chapter 1, Statutes of 1984, 2nd Extraordinary Session mandated
7 increased costs within the meaning of California Constitution Article XIII B, Section 6, by
8 requiring the provision of student health services that were previously provided at the
9 discretion of the community college districts.

10 On November 20, 1986, the Commission on State Mandates determined that
11 Chapter 1, Statutes of 1984, 2nd Extraordinary Session, imposed a new program upon
12 community college districts by requiring any community college district that provided
13 student health services for which it was authorized to charge a fee pursuant to former
14 Section 72246 in the 1983-1984 fiscal year, to maintain student health services at that
15 level in the 1984-1985 fiscal year and each fiscal year thereafter.

16 At a hearing on April 27, 1989, the Commission on State Mandates determined
17 that Chapter 1118, Statutes of 1987, amended this requirement to apply to all
18 community college districts that provided student health services in fiscal year 1986-

from other district funds and may recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

(g) The board of governors shall adopt regulations that generally describe the types of health services included in the health service program.

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 1987, and required them to maintain that level of student health services in fiscal year
2 1987-1988 and each fiscal year thereafter.

3 3. Parameters and Guidelines

4 On August 27, 1987, the original parameters and guidelines were adopted. On
5 May 25, 1989, those parameters and guidelines were amended. A copy of the May 25,
6 1989, parameters and guidelines is attached as Exhibit "B."

7 4. Claiming Instructions

8 The Controller has periodically issued or revised claiming instructions for the
9 Health Fee Elimination mandate. A copy of the September 2003 revision of the claiming
10 instructions is attached as Exhibit "C." The September 2003 claiming instructions are
11 believed to be substantially similar to the version extant at the time the claims that are
12 the subject of this Incorrect Reduction Claim were filed. However, because the
13 Controller's claim forms and instructions have not been adopted as regulations, they
14 have no force of law and no effect on the outcome of this claim.

15 PART V. STATE CONTROLLER CLAIM ADJUDICATION

16 The Controller conducted an audit of the District's annual reimbursement claims
17 for fiscal years 2003-04, 2004-05, and 2005-06. The audit concluded that \$192,807 of
18 the District's costs claimed was allowable, and \$676,727 was unallowable. A copy of
19 the June 26, 2009, audit report and the District's response is attached as Exhibit "D."

20 PART VI. CLAIMANT'S RESPONSE TO THE STATE CONTROLLER

21 By letter dated May 8, 2009, the Controller transmitted a copy of his draft audit

1 report. The District objected to the proposed adjustments set forth in the draft audit
2 report by letter dated May 29, 2009. A copy of District's response is included in Exhibit
3 "D," the final audit report. The Controller issued the final audit report without making any
4 substantive changes.

5 PART VII. STATEMENT OF THE ISSUES

6 **Finding 1 - Overstated indirect cost rates**

7 The Controller asserts that the District overstated indirect costs by \$74,504 for
8 fiscal year 2003-04 because the District's indirect cost rate was not federally approved.

9 Parameters and Guidelines

10 No particular indirect cost rate calculation is required by law. The Controller
11 insists that the rate be calculated according to the claiming instructions. The
12 parameters and guidelines state that "[i]ndirect costs *may be claimed* in the manner
13 described by the State Controller in his claiming instructions." The District claimed these
14 indirect costs "in the manner" described by the Controller. The correct forms were used
15 and the claimed amounts were entered at the correct locations. Further, "may" is not
16 "shall"; the parameters and guidelines do not *require* that indirect costs be claimed in
17 the manner specified by the Controller. In the audit report, the Controller asserts that
18 because the parameters and guidelines specifically reference the claiming instructions,
19 the claiming instructions thereby become authoritative criteria. Since the Controller's
20 claiming instructions were never adopted as law, or regulations pursuant to the
21 Administrative Procedure Act, the claiming instructions are a statement of the

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 Controller's interpretation and not law.

2 The Controller's interpretation of Section VI of the parameters and guidelines
3 would, in essence, subject claimants to underground rulemaking at the direction of the
4 Commission. The Controller's claiming instructions are unilaterally created and modified
5 without public notice or comment. The Commission would violate the Administrative
6 Procedure Act if it held that the Controller's claiming instructions are enforceable as
7 standards or regulations. In fact, until 2005, the Controller regularly included a
8 "forward" in the Mandated Cost Manual for Community Colleges (September 30, 2003
9 version attached as Exhibit "E") that explicitly stated the claiming instructions were
10 "issued for the sole purpose of assisting claimants" and "should not be construed in any
11 manner to be statutes, regulations, or standards."

12 Neither State law nor the parameters and guidelines make compliance with the
13 Controller's claiming instructions a condition of reimbursement. The District has
14 followed the parameters and guidelines. The burden of proof is on the Controller to
15 prove that the product of the District's calculation is unreasonable, not to recalculate the
16 rate according to its unenforceable ministerial preferences.

17 Prior Year CCFS-311

18 The audit used the most recent CCFS-311 information available for the
19 calculation of the indirect cost rate. The District used the prior year CCFS-311. The
20 CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the
21 current budget year. While the audit report is correct that there is "no mandate-related

1 authoritative criteria” supporting the District’s method, there is also none that supports
2 the Controller’s method. As a practical matter, the CCFS-311 for the current year is
3 often not available at the time that mandate reimbursement claims are due. Therefore,
4 the District is unable to rely on that data and must determine its indirect cost rates
5 based on the prior year CCFS-311.

6 The audit report asserts that the Controller’s use of the most recent CCFS-311 is
7 supported by the need to claim only actual costs. However, this is inconsistent with the
8 parameters and guidelines and the Controller’s claiming instructions. The parameters
9 and guidelines do not specify any particular method of calculating indirect costs, nor do
10 they require any particular source for the data used in the computation. The Controller’s
11 claiming instructions, while not enforceable, are also silent as to whether the prior or
12 current year CCFS-311 should be used in the FAM-29C methodology. Additionally, the
13 claiming instructions for some mandate programs accept the use of a federally
14 approved rate or a flat 7% rate, which has no relationship at all to actual indirect costs
15 incurred.

16 As a practical example of the baselessness of the Controller’s position on prior
17 year CCFS-311 reports, note that federally approved indirect cost rates are approved
18 for periods of two to four years. This means the data from which the rates were
19 calculated can be from three to five years removed from the last fiscal year in which the
20 federal rate is used. The longstanding practice of the Controller prior to FY 2004-05 had
21 been to accept federally approved rates. The audit report provides no explanation as to

Incorrect Reduction Claim of Long Beach Community College District
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1 why using data from prior years to calculate indirect cost rates is acceptable for
2 federally approved rates but not acceptable for rates derived under its FAM29-C
3 method.

4 EXCESSIVE OR UNREASONABLE

5 The Controller did not conclude that the District's FY 2003-04 indirect cost rate
6 was excessive. The Controller is authorized to reduce a claim only if it determines the
7 claim to be excessive or unreasonable. Here, the District has computed its indirect cost
8 rates using the CCFS-311 report, and the Controller has disallowed it without a
9 determination of whether the product of the District's calculation is excessive,
10 unreasonable, or inconsistent with cost accounting principles.

11 The Controller has the burden to show that the indirect cost rate used by the
12 District is excessive or unreasonable, pursuant to Government Code Section
13 17561(d)(2). The audit report never asserts that the indirect cost rate claimed was
14 excessive, only that it was not federally approved, and the auditors decided to
15 recalculate the rate using their own preferred method.

16 Neither state law nor the parameters and guidelines make compliance with the
17 Controller's claiming instructions a condition of reimbursement. The District has
18 followed the parameters and guidelines. The burden of proof is on the Controller to
19 prove that the product of the District's calculation is unreasonable, not to recalculate the
20 rate according to its unenforceable ministerial preferences.

21 /

1 **Finding 2 - Understated authorized health service fees**

2 The audit report concludes that the District understated offsetting revenue by
3 \$639,989 for the audit period because it claimed student health service fees that were
4 actually collected, rather than those that were "authorized" as specified in the
5 Controller's claiming instructions. However, as previously discussed, the Controller's
6 claiming instructions are not enforceable because they are unilaterally adopted by the
7 Controller and do not comply with the Administrative Procedure Act. Therefore, they
8 cannot be the basis of an audit finding. The District complied with the parameters and
9 guidelines for the Health Fee Elimination mandate when it properly reported revenue
10 actually received from student health service fees.

11 The audit report states that it used data from the California Community Colleges
12 Chancellor's Office to calculate health service fees authorized for each of the fiscal
13 years, without explanation as to how this data, which is "extracted" from data reported
14 by the District, is more reliable or relevant than the District's own records. However, this
15 issue is not determinative of the outcome since the proper offset for health service fee
16 revenue is calculated by fees actually received in accordance with the parameters and
17 guidelines.

18 Parameters and Guidelines

19 The parameters and guidelines, which control reimbursement under the Health
20 Fee Elimination mandate, state:

21 Any offsetting savings that the claimant experiences as a direct result of this
22 statute must be deducted from the costs claimed. In addition, reimbursement for

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 this mandate received from any source, e.g., federal, state, etc., shall be
2 identified and deducted from this claim. This shall include the amount of [student
3 fees] as authorized by Education Code Section 72246(a)⁴.

4 In order for the District to “experience” these “offsetting savings” the District must
5 actually have collected these fees. Note that the student health fees are named as a
6 potential source of the reimbursement *received* in the preceding sentence. The use of
7 the term “any offsetting savings” further illustrates the permissive nature of the fees.
8 Student fees actually collected must be used to offset costs, but not student fees that
9 could have been collected and were not. Thus, the Controller’s conclusion is based on
10 an illogical interpretation of the parameters and guidelines.

11 The audit report claims that the Commission’s intent was for claimed costs to be
12 reduced by fees authorized, rather than fees received as stated in the parameters and
13 guidelines. It is true that the Department of Finance proposed, as part of the
14 amendments that were adopted on May 25, 1989, that a sentence be added to the
15 offsetting savings section expressly stating that if no health service fee was charged,
16 the claimant would be required to deduct the amount authorized. However, the
17 Commission declined to add this requirement and adopted the parameters and
18 guidelines without this language.

19 The fact that the Commission staff and the California Community College
20 Chancellors Office agreed with the Department of Finance’s interpretation does not

⁴ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, and was replaced by Education Code Section 76355.

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1 negate the fact that the Commission adopted parameters and guidelines that *did not*
2 include the additional language. It would be nonsensical if the Commission held that
3 every proposal that is discussed was somehow implied into the adopted document,
4 because the proposals of the various parties are often contradictory. Therefore, it is
5 evident that the Commission intends the language of the parameters and guidelines to
6 be construed as written, and only those savings that are *experienced* are to be
7 deducted.

8 Education Code Section 17556

9 The Controller continues to rely on Education Code Section 17556(d), while
10 neglecting its context and omitting a crucial clause. Section 17556(d) does specify that
11 the Commission on State Mandates shall not find costs mandated by the state if the
12 local agency has the authority to levy fees, but only if those fees are "*sufficient to pay*
13 *for the mandated program*" (emphasis added). Section 17556 pertains specifically to the
14 Commission's determination on a test claim, and does not concern the development of
15 parameters and guidelines or the claiming process. The Commission has already found
16 state-mandated costs for this program, and the Controller cannot substitute its
17 judgment for that of the Commission through the audit process.

18 The two court cases the audit report relies upon (*County of Fresno v. California*
19 (1991) 53 Cal.3d 482 and *Connell v. Santa Margarita* (1997) 59 Cal.App.4th 382) are
20 similarly misplaced. Both cases concern the approval of a test claim by the
21 Commission. They do not address the issue of offsetting revenue in the reimbursement

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1 stages, only whether there is fee authority *sufficient to fully fund* the mandate that would
2 prevent the Commission from finding costs mandated by the state.

3 In *County of Fresno*, the Commission had specifically found that the fee authority
4 was sufficient to fully fund the test claim activities and denied the test claim. The court
5 simply agreed to uphold this determination because Government Code Section
6 17556(d) was consistent with the California Constitution. The Health Fee Elimination
7 mandate, decided by the Commission, found that the fee authority is not sufficient to
8 fully fund the mandate. Thus, *County of Fresno* is not applicable because it concerns
9 the activity of approving or denying a test claim and has no bearing on the annual claim
10 reimbursement process.

11 Similarly, although a test claim had been approved and parameters and
12 guidelines were adopted, the court in *Connell* focused its determination on whether the
13 initial approval of the test claim had been proper. It did not evaluate the parameters and
14 guidelines or the reimbursement process because it found that the initial approval of the
15 test claim had been in violation of Section 17556(d).

16 **Statute of Limitations**

17 December 13, 2004	FY 2003-04 claim filed by the District
18 December 13, 2007	FY 2003-04 statute of limitations for audit expires
19 October 16, 2008	Audit entrance conference for all fiscal years

20 This was not an audit finding. The District asserts that the audit of the FY 2003-
21 04 annual reimbursement claim commenced after the time limitation for audit had

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1 passed. No payment was made to the District for this claim. However, the clause in
2 Government Code Section 17558.5 that delays the commencement of the time for the
3 Controller to audit to the date of initial payment is void because it is impermissibly
4 vague.

5 Applicable Time Limitation for Audit

6 Prior to January 1, 1994, no statute specifically governed the statute of
7 limitations for audits of mandate reimbursement claims. Statutes of 1993, Chapter 906,
8 Section 2, operative January 1, 1994, added Government Code Section 17558.5 to
9 establish for the first time a specific statute of limitations for audit of mandate
10 reimbursement claims:

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

17 Thus, there are two standards. A funded claim is "subject to audit" for four years after
18 the end of the calendar year in which the claim was filed. An unfunded claim must have
19 its audit initiated within four years of first payment.

20 Statutes of 1995, Chapter 945, Section 13, operative July 1, 1996, repealed and
21 replaced Section 17558.5, changing only the length of the period of limitations:

22 (a) A reimbursement claim for actual costs filed by a local agency or school
23 district pursuant to this chapter is subject to audit by the Controller no later than
24 two years after the end of the calendar year in which the reimbursement claim is
25 filed or last amended. However, if no funds are appropriated for the program for
26 the fiscal year for which the claim is made, the time for the Controller to initiate

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 an audit shall commence to run from the date of initial payment of the claim.

2 Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003

3 amended Section 17558.5 to state:

4 (a) A reimbursement claim for actual costs filed by a local agency or school
5 district pursuant to this chapter is subject to the initiation of an audit by the
6 Controller no later than three years after the ~~end of the calendar year in which~~
7 the date that the actual reimbursement claim is filed or last amended, whichever
8 is later. However, if no funds are appropriated or no payment is made to a
9 claimant for the program for the fiscal year for which the claim is made filed, the
10 time for the Controller to initiate an audit shall commence to run from the date of
11 initial payment of the claim.

12
13 The annual reimbursement claim for FY 2003-04 is subject to the three-year statute of
14 limitations established by Chapter 1128, Statutes of 2002 which requires the audit to be
15 "initiated" within three years of the date the actual claim is filed.

16 The amendment is pertinent because this is the first time that the factual issue of
17 the date the audit is "initiated" is introduced for mandate programs for which funds are
18 appropriated. This amendment also means that it is impossible for the claimant to know
19 when the statute of limitations will expire at the time the claim is filed, which is contrary
20 to the purpose of a statute of limitations. It allows the Controller's own unilateral delay,
21 or failure to make payments from funds appropriated for the purpose of paying the
22 claims, to control the tolling of the statute of limitations, which is also contrary to the
23 purpose of a statute of limitations.

24 Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended
25 Section 17558.5 to state:

26 (a) A reimbursement claim for actual costs filed by a local agency or school

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

1 district pursuant to this chapter is subject to the initiation of an audit by the
2 Controller no later than three years after the date that the actual reimbursement
3 claim is filed or last amended, whichever is later. However, if no funds are
4 appropriated or no payment is made to a claimant for the program for the fiscal
5 year for which the claim is filed, the time for the Controller to initiate an audit
6 shall commence to run from the date of initial payment of the claim. In any case,
7 an audit shall be completed not later than two years after the date that the audit
8 is commenced.

9 This amendment has no effect on the FY 2003-04 annual reimbursement claim
10 because it was effective after the date that claim was filed.

11 Vagueness

12 The version of Section 17558.5 applicable to the FY 2003-04 annual
13 reimbursement claim provides that the time limitation for audit "shall commence to run
14 from the date of initial payment" if no payment is made. However, this provision is void
15 because it is impermissibly vague. At the time a claim is filed, the claimant has no way
16 of knowing when payment will be made or how long the records applicable to that claim
17 must be maintained. The current billion-dollar backlog in state mandate payments,
18 which continues to grow every year, could potentially require claimants to maintain
19 detailed supporting documentation for decades. Additionally, it is possible for the
20 Controller to unilaterally extend the audit period by withholding payment or directing
21 appropriated funds only to those claims that have already been audited.

22 Therefore, the only specific and enforceable time limitation to commence an
23 audit is three years from the date the claim was filed, and the annual reimbursement
24 claim for FY 2003-04 was past this time period when the audit was commenced on
25 October 16, 2008. All adjustments to this fiscal year are void and should be withdrawn.

PART VIII. RELIEF REQUESTED

1
2 The District filed its annual reimbursement claims within the time limits
3 prescribed by the Government Code. The amounts claimed by the District for
4 reimbursement of the costs of implementing the program imposed by Chapter 1,
5 Statutes of 1984, 2nd E.S., Chapter 1118, Statutes of 1987, and Education Code
6 Section 76355 represent the actual costs incurred by the District to carry out this
7 program. These costs were properly claimed pursuant to the Commission's Parameters
8 and Guidelines. Reimbursement of these costs is required under Article XIII B, Section
9 6 of the California Constitution. The Controller denied reimbursement without any basis
10 in law or fact. The District has met its burden of going forward on this claim by
11 complying with the requirements of Section 1185, Title 2, California Code of
12 Regulations. Because the Controller has enforced and is seeking to enforce these
13 adjustments without benefit of statute or regulation, the burden of proof is now upon the
14 Controller to establish a legal basis for its actions.

15 The District requests that the Commission make findings of fact and law on each
16 and every adjustment made by the Controller and each and every procedural and
17 jurisdictional issue raised in this claim, and order the Controller to correct its audit report
18 findings therefrom.

19 /

20 /

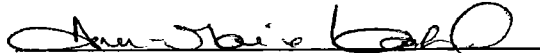
21 /

Incorrect Reduction Claim of Long Beach Community College District
1/84; 1118/87 Health Fee Elimination

PART IX. CERTIFICATION

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

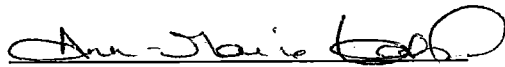
Executed on September 8 2009, at Long Beach, California, by



Ann-Marie Gabel, Vice-President Administrative Services
Long Beach Community College District
4901 East Carson Street
Long Beach, CA 90808
Phone: 562-938-4406
Fax: 562-429-0278
E-Mail: agabel@lbcc.edu

APPOINTMENT OF REPRESENTATIVE

Long Beach Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this incorrect reduction claim.



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

9/8/09
Date

Attachments:

Exhibit "A"	"Results of Review" letters dated July 5, 2009
Exhibit "B"	Parameters and Guidelines as amended May 25, 1989
Exhibit "C"	Controller's Claiming Instructions September 2003
Exhibit "D"	Controller's Audit Report and the District's response dated June 26, 2009
Exhibit "E"	Controller's Mandated Cost Manual Community Colleges Forward September 2003 version
Exhibit "F"	Annual Reimbursement Claims



JOHN CHIANG
California State Controller
Division of Accounting and Reporting
JULY 3, 2009

CC19250
00256
2009/07/05

BOARD OF TRUSTEES
LONG BEACH COMM COLL DIST
LOS ANGELES COUNTY
4901 E CARSON ST
LONG BEACH CA 90808

RECEIVED
2009 JUL -9 PM 12:13
LBCCD
HUMAN RESOURCES

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2003/2004 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		267,154.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	216,957.00
TOTAL ADJUSTMENTS		<u>216,957.00</u>
AMOUNT DUE CLAIMANT		<u><u>50,197.00</u></u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875



JOHN CHIANG
California State Controller
Division of Accounting and Reporting
JULY 5, 2009

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00234
2009/07/05

BOARD OF TRUSTEES
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LOS ANGELES COUNTY
4901 E CARSON ST
LONG BEACH CA 90808

RECEIVED
2009 JUL -9 PM 12:13
LBOCD
HUMAN RESOURCES

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2004/2005 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		305,960.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	163,350.00
TOTAL ADJUSTMENTS	-	163,350.00
AMOUNT DUE CLAIMANT		\$ 142,610.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875



JOHN CHIANG
California State Controller
Division of Accounting and Reporting
JULY 5, 2009

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2009/07/05

BOARD OF TRUSTEES
LONG BEACH COMM COLL DIST
LDS ANGELES COUNTY
4901 E CARSON ST
LONG BEACH CA 90808

RECEIVED
2009 JUL -9 PM 12:13
LBCCD
HUMAN RESOURCES

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2005/2006 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

297,420.00

AMOUNT CLAIMED

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS - 296,420.00

LATE CLAIM PENALTY - 1,000.00

297,420.00

TOTAL ADJUSTMENTS

\$ 0.00

AMOUNT DUE CLAIMANT

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875.

SINCERELY,

GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P O BOX 942850 SACRAMENTO, CA 94250-5875

PARAMETERS AND GUIDELINES
Chapter 1, Statutes of 1984, 2nd E.S. .
Chapter 1118, Statutes of 1987
Health Fee Elimination

I. SUMMARY OF MANDATE

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. This statute also required that health services for which a community college district charged a fee during the 1983-84 fiscal year had to be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community colleges districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 to require any community college district that provided health services in 1986-87 to maintain health services at the level provided during the 1986-87 fiscal year in 1987-88 and each fiscal year thereafter.

II. COMMISSION ON STATE MANDATES' DECISION

At its hearing on November 20, 1986, the Commission on State Mandates determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983-84 fiscal year to maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement applies to all community college districts which levied a health services fee in the 1983-84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983-84 fiscal year level.

At its hearing of April 27, 1989, the Commission determined that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to apply to all community college districts which provided health services in fiscal year 1986-87 and required them to maintain that level in fiscal year 1987-88 and each fiscal year thereafter.

III. ELIGIBLE CLAIMANTS

Community college districts which provided health services in 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1, Statutes of 1984, 2nd E.S., became effective July 1, 1984. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30th following a given fiscal year to establish for that fiscal year. The test claim for this mandate was filed on November 27, 1985; therefore, costs incurred on or after July 1, 1984, are reimbursable. Chapter 1118, Statutes of 1987, became effective January 1, 1988. Title 2, California Code of Regulations, section 1185.3(a) states that a parameters and guidelines amendment filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines; therefore, costs incurred on or after January 1, 1988, for Chapter 1118, Statutes of 1987, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim if applicable. Pursuant to Section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code Section 17564.

V. REIMBURSABLE COSTS

A. Scope of Mandate

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

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable to the extent they were provided by the community college district in fiscal year 1986-87:

ACCIDENT REPORTS

APPOINTMENTS

- College Physician - Surgeon
- Dermatology, Family Practice, Internal Medicine
- Outside Physician
- Dental Services
- Outside Labs (X-ray, etc.)
- Psychologist, full services
- Cancel/Change Appointments
- R.N.
- Check Appointments

ASSESSMENT, INTERVENTION & COUNSELING

- Birth Control
- Lab Reports
- Nutrition
- Test Results (office)
- VD
- Other Medical Problems
- CD
- URI
- ENT
- Eye/Vision
- Derm./Allergy
- Gyn/Pregnancy Services
- Neuro
- Ortho
- GU
- Dental
- GI
- Stress Counseling
- Crisis Intervention
- Child Abuse Reporting and Counseling
- Substance Abuse Identification and Counseling
- Aids
- Eating Disorders
- Weight Control
- Personal Hygiene
- Burnout

EXAMINATIONS (Minor Illnesses)

- Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

- Sexually Transmitted Disease
- Drugs
- Aids
- Child Abuse
- Birth Control/Family Planning
- Stop Smoking
- Etc.
- Library - videos and cassettes

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

- Diphtheria/Tetanus
- Measles/Rubella
- Influenza
- Information

INSURANCE

On Campus Accident
Voluntary
Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE

Inquiry/Interpretation
Pap Smears

PHYSICALS

Employees
Students
Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)

Antacids
Antidiarrhial
Antihistamines
Aspirin, Tylenol, etc.
Skin rash preparations
Misc.
Eye drops
Ear drops
Toothache - Oil cloves
Stingkill
Midol - Menstrual Cramps

PARKING CARDS/ELEVATOR KEYS

Tokens
Return card/key
Parking inquiry
Elevator passes
Temporary handicapped parking permits

REFERRALS TO OUTSIDE AGENCIES

Private Medical Doctor
Health Department
Clinic
Dental
Counseling Centers
Crisis Centers
Transitional Living Facilities (Battered/Homeless Women)
Family Planning Facilities
Other Health Agencies

TESTS

Blood Pressure
Hearing
Tuberculosis
 Reading
 Information
Vision
Glucometer
Urinalysis

Hemoglobin
E.K.G.
Strep A testing
P.G. testing
Monospot
Hemacult
Misc.

MISCELLANEOUS

Absence Excuses/PE Waiver
Allergy Injections
Band-aids
Booklets/Pamphlets
Dressing Change
Rest
Suture Removal
Temperature
Weigh
Misc.
Information
Report/Form
Wart Removal

COMMITTEES

Safety
Environmental
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety
Stress Management
Communication Skills
Weight Loss
Assertiveness Skills

VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a list of each item for which reimbursement is claimed under this mandate.

A. Description of Activity

1. Show the total number of full-time students enrolled per semester/quarter.
2. Show the total number of full-time students enrolled in the summer program.
3. Show the total number of part-time students enrolled per semester/quarter.
4. Show the total number of part-time students enrolled in the summer program.

B. Actual Costs of Claim Year for Providing 1986-87 Fiscal Year Program Level of Service

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) 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. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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.

3. Allowable Overhead Cost

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

VII. SUPPORTING DATA

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 or his agent.

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

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with;

and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

HEALTH FEE ELIMINATION

1. Summary of Chapters 1/84, 2nd E.S., and Chapter 1118/87

Chapter 1, Statutes of 1984, 2nd E.S., repealed Education Code § 72246 which authorized community college districts to charge a fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. The statute also required community college districts that charged a fee in the 1983/84 fiscal year to maintain that level of health services in the 1984/85 fiscal year and each fiscal year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community college districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987 amended Education Code § 72246 to require any community college district that provided health services in the 1986/87 fiscal year to maintain health services at that level in the 1986/87 fiscal year and each fiscal year thereafter. Chapter 8, Statutes of 1993, has revised the numbering of § 72246 to § 76355.

2. Eligible Claimants

Any community college district incurring increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to community college presidents.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a), Government Code, provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds \$200 per program per fiscal year.

5. Filing Deadline

- (1) Refer to item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim must be filed with the State Controller's Office and postmarked by November 30, of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30, of the following fiscal year regardless whether the payment was more or less than the actual costs. If the local agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the local agency may file a reimbursement

claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. (See item 3 above).

- (2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Components

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code § 76355.

After January 1, 1993, pursuant to Chapter 8, Statutes of 1993, the fees students were required to pay for health supervision and services were not more than:

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

The district may increase fees by the same percentage increase as the Implicit Price Deflator (IPD) for the state and local government purchase of goods and services. Whenever the IPD calculates an increase of one dollar (\$1) above the existing amount, the fees may be increased by one dollar (\$1).

7. Reimbursement Limitations

- A. If the level at which health services were provided during the fiscal year of reimbursement is less than the level of health services that were provided in the 1986/87 fiscal year, no reimbursement is forthcoming.
- B. Any offsetting savings or reimbursement the claimant received from any source (e.g. federal, state grants, foundations, etc.) as a result of this mandate, shall be identified and deducted so only net local costs are claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms HFE-1.0, HFE-1.1, and form HFE-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form HFE-2, Health Services

This form is used to list the health services the community college provided during the 1986/87 fiscal year and the fiscal year of the reimbursement claim.

B. Form HFE-1.1, Claim Summary

This form is used to compute the allowable increased costs an individual college of the community college district has incurred to comply with the state mandate. The level of health services reported on this form must be supported by official financial records of the community college district. A copy of the document must be submitted with the claim. The amount shown on line (13) of this form is carried to form HFE-1.0.

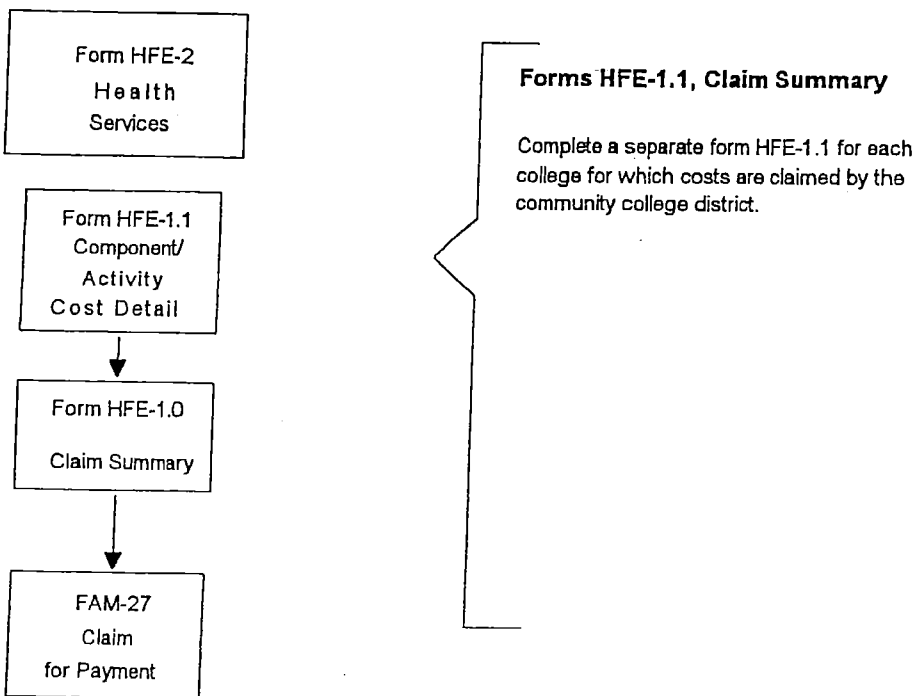
C. Form HFE-1.0, Claim Summary

This form is used to list the individual colleges that had increased costs due to the state mandate and to compute a total claimable cost for the district. The "Total Amount Claimed", line (04) on this form is carried forward to form FAM-27, line 13, for the reimbursement claim, or line (07) for the estimated claim.

D. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form HFE-1.0 and HFE 1.1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use Only (19) Program Number 00234 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	Program 234
--	---	---------------------------

LABEL HERE	(01) Claimant Identification Number	Reimbursement Claim Data	
	(02) Claimant Name	(22) HFE-1.0, (04)(b)	
	County of Location	(23)	
	Street Address or P.O. Box Suite	(24)	
	City State Zip Code	(25)	

Type of Claim	Estimated Claim	Reimbursement Claim	
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(26)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28)
			(29)
Fiscal Year of Cost	(06) 20__/20__	(12) 20__/20__	(30)
Total Claimed Amount	(07)	(13)	(31)
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(32)
Less: Prior Claim Payment Received		(15)	(33)
Net Claimed Amount		(16)	(34)
Due from State	(08)	(17)	(35)
Due to State		(18)	(36)

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer	Date
Type or Print Name	Title
(38) Name of Contact Person for Claim	Telephone Number () - Ext.
	E-Mail Address

Program 234	HEALTH FEE ELIMINATION Certification Claim Form Instructions	FORM FAM-27
------------------------------	---	------------------------------

- (01) Enter the payee number assigned by the State Controller's Office.
- (02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.
- (03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) Leave blank.
- (05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form HFE-1.1 and enter the amount from line (13).
- (08) Enter the same amount as shown on line (07).
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) Leave blank.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim from form HFE-1.1, line (13). The total claimed amount must exceed \$1,000.
- (14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or \$1,000, whichever is less.
- (15) If filing an actual reimbursement claim and an estimated claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., HFE-1.0, (04)(b), means the information is located on form HFE-1.0, block (04), column (b). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 7.548% should be shown as 8. Completion of this data block will expedite the payment process.
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the person whom this office should contact if additional information is required.

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents. (To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.) Use the following mailing addresses:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 3301 C Street, Suite 500
 Sacramento, CA 95816

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 19__/19__
---------------	--	------------------------------

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

	(a) Name of College	(b) Claimed Amount
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	

HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.0
--	-------------------------

- (01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.
- (02) Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which the expenses were/are to be incurred. A separate claim must be filed for each fiscal year.

Form HFE-1.0 must be filed for a reimbursement claim. Do not complete form HFE-1.0 if you are filing an estimated claim and the estimate is not more than 110% of the previous fiscal year's actual costs. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, forms HFE-1.0 and HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

- (03) List all the colleges of the community college district which have increased costs. A separate form HFE-1.1 must be completed for each college showing how costs were derived.
- (04) Enter the total claimed amount of all colleges by adding the Claimed Amount, line (3.1b) + line (3.2b) ... + (3.21b).

Program <b style="font-size: 24pt;">234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
--	--	-----------------

(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 20__/20__
---------------	--	--------------------------

(03) Name of College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986-87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost	Total
(05) Cost of health services for the fiscal year of claim			
(06) Cost of providing current fiscal year health services in excess of 1986-87			
(07) Cost of providing current fiscal year health services at 1986-87 level [Line (05) - line (06)]			

(08) Complete columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Students Enrolled	(b) Students Exempt per EC 76355(c)(1)	(c) Students Exempt per EC 76355(c)(2)	(d) Students Exempt per EC 76355(c)(3)	(e) Number of Students Subject to Health Fee (a)-(b)-(c)-(d)	(f) Unit Cost Per Student Per EC 76355	(g) Student Health Fees (e) x (f)
1. Per Fall Semester							
2. Per Spring Semester							
3. Per Summer Session							
4. Per First Quarter							
5. Per Second Quarter							
6. Per third Quarter							

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c))

(10) Subtotal [Line (07) - line (09)]

Cost Reduction

(11) Less: Offsetting Savings

(12) Less: Other Reimbursements

(13) Total Claimed Amount [Line (10) - (line (11) + line (12))]

Program 234	HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.1
-----------------------	---	-----------------

- (01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office (SCO) on behalf of its colleges.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.
- Form HFE-1.1 must be filed for a reimbursement claim. Do not complete form HFE-1.1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the name of the college or community college district that provided student health services in the 1986-87 fiscal year and continue to provide the same services during the fiscal year of claim.
- (04) Compare the level of services provided during the fiscal year of reimbursement to the 1986-87 fiscal year and indicate the result by marking a check in the appropriate box. If the "Less" box is checked, STOP and do not complete the remaining part of this claim form. No reimbursement is forthcoming.
- (05) Enter the direct cost, indirect cost, and total cost of health services for the fiscal year of claim on line (05). Direct cost of health services is identified on the college expenditure report authorized by Education Code §76355 and included in the Community College Annual Financial and Budget Report CCFS-311, EDP Code 6440, column 5. If the amount of direct costs claimed is different than that shown on the expenditure report, provide a schedule listing those community college costs that are in addition to, or a reduction to expenditures shown on the report. For claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, form FAM-29C, or a 7% indirect cost rate.
- (06) Enter the direct cost, indirect cost, and total cost of health services that are in excess of the level provided in the 1986-87 fiscal year.
- (07) Enter the difference of the cost of health services for the fiscal year of claim, line (05) and the cost of providing current fiscal year services that are in excess of the level provided in the 1986-87 fiscal year line (06).
- (08) Complete columns (a) through (g) to provide details on the number of students enrolled, the number of students exempt per EC Section 76355(c)(1), (2), and (3), and the amount of health service fees that could have been collected. After 05/01/01, the student fees for health supervision and services are \$12.00 per semester, \$9.00 for summer school, and \$9 for each quarter.
- (09) Enter the sum of student health fees that could have been collected, other than exempt students.
- (10) Enter the difference of the cost of providing health services at the 1986-87 level, line (07) and the total health fee that could have been collected, line (09). If line (09) is greater than line (07), no claim shall be filed.
- (11) Enter the total savings experienced by the school identified in line (03) as a direct cost of this mandate. Submit a detailed schedule of savings with the claim.
- (12) Enter the total of other reimbursements received from any source, (i.e., federal, other state programs, etc.) Submit a detailed schedule of reimbursements with the claim.
- (13) Subtract the sum of Offsetting Savings, line (11), and Other Reimbursements, line (12), from Total 1986-87 Health Service Cost excluding Student Health Fees.

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES		FORM HFE-2	
(01) Claimant:	(02) Fiscal Year costs were incurred:		
(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.		(a) FY 1986/87	(b) FY of Claim
Accident Reports			
Appointments College Physician, surgeon Dermatology, family practice Internal Medicine Outside Physician Dental Services Outside Labs, (X-ray, etc.) Psychologist, full services Cancel/Change Appointments Registered Nurse Check Appointments			
Assessment, Intervention and Counseling Birth Control Lab Reports Nutrition Test Results, office Venereal Disease Communicable Disease Upper Respiratory Infection Eyes, Nose and Throat Eye/Vision Dermatology/Allergy Gynecology/Pregnancy Service Neuralgic Orthopedic Genito/Urinary Dental Gastro-Intestinal Stress Counseling Crisis Intervention Child Abuse Reporting and Counseling Substance Abuse Identification and Counseling Acquired Immune Deficiency Syndrome Eating Disorders Weight Control Personal Hygiene Burnout Other Medical Problems, list			
Examinations, minor illnesses Recheck Minor Injury			
Health Talks or Fairs, Information Sexually Transmitted Disease Drugs Acquired Immune Deficiency Syndrome			

**MANDATED COSTS
HEALTH ELIMINATION FEE
HEALTH SERVICES**

**FORM
HFE-2**

(01) Claimant:

(02) Fiscal Year costs were incurred:

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.

(a)
FY
1986/87

(b)
FY
of Claim

Child Abuse
Birth Control/Family Planning
Stop Smoking
Library, Videos and Cassettes

First Aid, Major Emergencies

First Aid, Minor Emergencies

First Aid Kits, Filled

Immunizations

Diphtheria/Tetanus
Measles/Rubella
Influenza
Information

Insurance

On Campus Accident
Voluntary
Insurance Inquiry/Claim Administration

Laboratory Tests Done

Inquiry/Interpretation
Pap Smears

Physical Examinations

Employees
Students
Athletes

Medications

Antacids
Antidiarrheal
Aspirin, Tylenol, Etc
Skin Rash Preparations
Eye Drops
Ear Drops
Toothache, oil cloves
Stingkill
Midol, Menstrual Cramps
Other, list

Parking Cards/Elevator Keys

Tokens
Return Card/Key
Parking Inquiry
Elevator Passes
Temporary Handicapped Parking Permits

**MANDATED COSTS
HEALTH ELIMINATION FEE
HEALTH SERVICES**

**FORM
HFE-2**

(01) Claimant:

(02) Fiscal Year costs were incurred:

(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.

(a)
FY
1986/87

(b)
FY
of Claim

- Referrals to Outside Agencies
 Private Medical Doctor
 Health Department
 Clinic
 Dental
 Counseling Centers
 Crisis Centers
 Transitional Living Facilities, battered/homeless women
 Family Planning Facilities
 Other Health Agencies

- Tests
 Blood Pressure
 Hearing
 Tuberculosis
 Reading
 Information
 Vision
 Glucometer
 Urinalysis
 Hemoglobin
 EKG
 Strep A testing
 PG Testing
 Monospot
 Hemacult
 Others, list

- Miscellaneous
 Absence Excuses/PE Waiver
 Allergy Injections
 Band-aids
 Booklets/Pamphlets
 Dressing Change
 Rest
 Suture Removal
 Temperature
 Weigh
 Information
 Report/Form
 Wart Removal
 Others, list

- Committees
 Safety
 Environmental
 Disaster Planning

LONG BEACH COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session;
and Chapter 1118, Statutes of 1987

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

June 2009



JOHN CHIANG
California State Controller

June 26, 2009

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

Dear Mr. Oakley:

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

The district claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$192,807 is allowable and \$676,727 is unallowable. The costs are unallowable because the district claimed ineligible costs and understated revenues. The State made no payment to the district. The State will pay allowable costs claimed that exceed the amount paid, totaling \$192,807, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at www.csm.ca.gov/docs/IRCForm.pdf.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Eloy O. Oakley, Superintendent/President
Long Beach Community College District
Robert Rapoza, Internal Audit Manager
Long Beach Community College District
Linda Roseth, Senior Administrative Assistant/Mandated Cost Specialist
Long Beach Community College District
Kuldeep Kaur, Specialist
Fiscal Planning and Administration
California Community Colleges Chancellor's Office
Jeannie Oropeza, Program Budget Manager
Education Systems Unit
Department of Finance

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Audit Report

Summary

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

The district claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$192,807 is allowable and \$676,727 is unallowable. The costs are unallowable because the district claimed ineligible costs and understated revenues. The State made no payment to the district. The State will pay allowable costs claimed that exceed the amount paid, totaling \$192,807, contingent upon available appropriations.

Background

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

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

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

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

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

**Objective, Scope,
and Methodology**

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

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

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

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

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

Conclusion

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

For the audit period, Long Beach Community College District claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for costs of the Health Fee Elimination Program. Our audit disclosed that \$192,807 is allowable and \$676,727 is unallowable.

The State made no payment to the district. Our audit disclosed that \$192,807 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$192,807, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on May 8, 2009. Ann-Marie Gabel, Vice-President, Administrative Services, responded by letter dated May 29, 2009 (Attachment), disagreeing with the audit results. This final audit report includes the district's response.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

June 26, 2009

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

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 365,310	\$ 365,310	\$ —	
Services and supplies	94,308	94,308	—	
Total direct costs	459,618	459,618	—	
Indirect costs	152,639	78,135	(74,504)	Finding 1
Total direct and indirect costs	612,257	537,753	(74,504)	
Less authorized health fees	(344,231)	(486,684)	(142,453)	Finding 2
Subtotal	268,026	51,069	(216,957)	
Less offsetting savings/reimbursements	(872)	(872)	—	
Less late filing penalty	—	—	—	
Total program costs	<u>\$ 267,154</u>	50,197	<u>\$ (216,957)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 50,197</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 341,421	\$ 341,421	\$ —	
Services and supplies	97,746	97,746	—	
Total direct costs	439,167	439,167	—	
Indirect costs	141,983	141,983	—	
Total direct and indirect costs	581,150	581,150	—	
Less authorized health fees	(274,352)	(437,702)	(163,350)	Finding 2
Subtotal	306,798	143,448	(163,350)	
Less offsetting savings/reimbursements	(838)	(838)	—	
Less late filing penalty	—	—	—	
Total program costs	<u>\$ 305,960</u>	142,610	<u>\$ (163,350)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 142,610</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 346,620	\$ 346,620	\$ —	
Services and supplies	104,892	104,892	—	
Total direct costs	451,512	451,512	—	
Indirect costs	152,882	152,882	—	
Total direct and indirect costs	604,394	604,394	—	
Less authorized health fees	(305,891)	(640,077)	(334,186)	Finding 2
Subtotal	298,503	(35,683)	(334,186)	
Less offsetting savings/reimbursements	(1,083)	(1,083)	—	
Less late filing penalty	(1,000)	(1,000)	—	
Adjustment to eliminate negative balance	—	37,766	37,766	
Total program costs	<u>\$ 296,420</u>	—	<u>\$ (296,420)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>Summary: July 1, 2003, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 1,053,351	\$ 1,053,351	\$ —	
Services and supplies	296,946	296,946	—	
Total direct costs	1,350,297	1,350,297	—	
Indirect costs	447,504	373,000	(74,504)	
Total direct and indirect costs	1,797,801	1,723,297	(74,504)	
Less authorized health fees	(924,474)	(1,564,463)	(639,989)	
Subtotal	873,327	158,834	(714,493)	
Less offsetting savings/reimbursements	(2,793)	(2,793)	—	
Less late filing penalty	(1,000)	(1,000)	—	
Adjustment to eliminate negative balance	—	37,766	37,766	
Total program costs	<u>\$ 869,534</u>	192,807	<u>\$ (676,727)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 192,807</u>		

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Overstated indirect
cost rates**

The district claimed unallowable indirect costs totaling \$74,504 for fiscal year (FY) 2003-04. The costs are unallowable because the district overstated its indirect cost rate. A similar issue was noted in Finding 2 of the SCO audit report dated October 5, 2005. That report covered the period from July 1, 2000, through June 30, 2003.

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

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

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

The following table summarizes the claimed unallowable indirect cost rate and the resulting audit adjustment:

	Fiscal Year 2003-04
Allowable indirect cost rate	17.00%
Less claimed indirect cost rate	<u>(33.21)%</u>
Overstated indirect cost rate	(16.21)%
Allowable direct costs claimed	<u>× \$459,618</u>
Audit adjustment	<u>\$ (74,504)</u>

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

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

Recommendation

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

District's Response

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

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

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

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

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

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

SCO's Comment

The finding and recommendation remain unchanged.

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

The district states that, "the District used the prior year CCFS-31, prepared based on annual costs from the prior fiscal year for use in the current budget year." Our audit validates this statement; however, no mandate-related authoritative criteria exists to support this methodology. Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. In addition, the parameters and guidelines require the district to report actual costs. For each fiscal year, "actual costs" are costs of the current fiscal year, not costs from a prior fiscal year.

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

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

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

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

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

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

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

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

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

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

Recommendation

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

In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). If the district excludes any students from receiving health services, the district should maintain contemporaneous documentation of a district policy that excludes those students and documentation identifying the number of students excluded.

District's Response

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

"Authorized" Fee Amount

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

Education Code Section 76355

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

Government Code Section 17514

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

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

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

Government Code Section 17556

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

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

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

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

Parameters and Guidelines

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

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

SCO's Comment

The finding and recommendation remain unchanged.

"Authorized" Fee Amount

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

Education Code Section 76355

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

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

Government Code Section 17514

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

Government Code Section 17556

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

Two court cases addressed the issue of fee authority¹. Both cases concluded that “costs,” as used in the constitutional provision, exclude “expenses that are recoverable from sources other than taxes.” In both cases, the source other than taxes was fee authority.

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

Parameters and Guidelines

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

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

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

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

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

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

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

**OTHER ISSUE—
Public records request**

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

District’s Response

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

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

SCO’s Comment

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

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



Board of Trustees
Mark J. Bowen
Dr. Thomas J. Clark
Jelliey A. Kellogg
Doughut W. Otto
Roberto Uranga

Superintendent-President
Eloy O. Oakley

Long Beach City College • Long Beach Community College District

4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL - #7006 0100 0004 6064 6161

May 29, 2009

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

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

Dear Mr. Spano:

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

Finding 1 - Overstated indirect costs rates

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

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

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

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

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

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

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

Finding 2 - Understated authorized health fee service fees

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

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

"Authorized" Fee Amount

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

Education Code Section 76355

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

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

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

Government Code Section 17556

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

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

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

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

Parameters and Guidelines

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

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

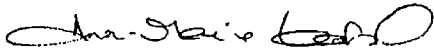
Public Records Request

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

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

○ ○ ○

Sincerely,



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

AG:lr

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

Keith Peterson, President
SixTen and Associates

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

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

C09-MCC-002

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA



STEVE WESTLY
STATE CONTROLLER

FOREWORD

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, unless otherwise specified, these instructions should not be construed in any manner to be statutes, regulations, or standards.

If you have any questions concerning the enclosed material, write to the address below or call the Local Reimbursements Section at (916) 324-5729, or email to lrsdar@sco.ca.gov.

State Controller's Office
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Prepared by the State Controller's Office
Updated September 30, 2003

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REIMBURSABLE STATE MANDATED COST PROGRAMS

Claims for the following State mandated cost programs may be filed with the SCO. For your convenience, the programs are listed in alphabetical order by program name. An "X" indicates the fiscal year for which a claim may be filed.

2002-03 Reimburse- ment Claims	2003-04 Estimated Claims	Community College Districts	
x	x	Chapter 77/78	Absentee Ballots
x	x	Chapter 961/75	Collective Bargaining
x	x	Chapter 1120/96	Health Benefits for Survivors of Peace Officers & Firefighters
x	x	Chapter 1/84	Health Fee Elimination
x	x	Chapter 783/95	Investment Reports
x	x	Chapter 284/98	Law Enforcement College Jurisdiction Agreements
x	x	Chapter 126/93	Law Enforcement Sexual Harassment Training
x	x	Chapter 486/75	Mandate Reimbursement Process
x	x	Chapter 641/86	Open Meetings Act/Brown Act Reform
x	x	Chapter 465/76	Peace Officers Procedural Bill of Rights
x	x	Chapter 875/85	Photographic Record of Evidence
x	x	Chapter 908/96	Sex Offenders: Disclosure by Law Enforcement Officers
x	x	Chapter 1249/92	Threats Against Peace Officers

APPROPRIATIONS FOR THE 2003-04 FISCAL YEAR

Source of State Mandated Cost Appropriations

Schedule	Program	Amount Appropriated
Chapter 379/02, Item 6110-295-0001¹		
(1) Chapter 77/78	Absentee Ballots	\$ 0
(2) Chapter 961/75	Collective Bargaining	0
(3) Chapter 1120/96	Health Benefits for Survivors of Peace Officers and Firefighters	0
(4) Chapter 783/95	Investment Reports	0
(5) Chapter 284/98	Law Enforcement College Jurisdiction Agreements	0
(6) Chapter 126/93	Law Enforcement Sexual Harassment Training	0
(7) Chapter 486/75	Mandate Reimbursement Process	0
(8) Chapter 641/86	Open Meetings Act/Brown Act Reform	0
(9) Chapter 465/76	Peace Officers Procedural Bill of Rights	0
(10) Chapter 875/85	Photographic Record of Evidence	0
(11) Chapter 908/96	Sex Offenders: Disclosure by Law Enforcement Officers	0
(12) Chapter 1249/92	Threats Against Peace Officers	0
Total Appropriations, Item 6110-295-001		<u>\$ 0</u>
Chapter 379/02, Item 6870-295-0001		
(13) Chapter 1/84	Health Fee Elimination	1,000
TOTAL - Funding for the 2003-04 Fiscal Year		<u><u>\$1,000</u></u>

¹ Pursuant to provision 5, "The Controller shall not make any payment from this item to reimburse community college districts for claimed costs of state-mandated education programs. Reimbursements to community college districts for education mandates shall be paid from the appropriate item within the community colleges budget."

FILING A CLAIM

1. Introduction

The law in the State of California, (Government Code Sections 17500 through 17616), provides for the reimbursement of costs incurred by school districts for costs mandated by the State. Costs mandated by the State means any increased costs which a school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing such statute which mandates a new program or higher level of service of an existing program.

Estimated claims that show costs to be incurred in the current fiscal year and reimbursement claims that detail the costs actually incurred for the prior fiscal year may be filed with the State Controller's Office (SCO). Claims for on-going programs are filed annually by January 15. Claims for new programs are filed within 120 days from the date claiming instructions are issued for the program. A 10 percent penalty, (up to \$1,000 for continuing claims, no limit for initial claims), is assessed for late claims. The SCO may audit the records of any school district to verify the actual amount of mandated costs and may reduce any claim that is excessive or unreasonable.

When a program has been reimbursed for three or more years, the COSM may approve the program for inclusion in the State Mandates Apportionment System (SMAS). For programs included in SMAS, the SCO determines the amount of each claimant's entitlement based on an average of three consecutive fiscal years of actual costs adjusted by any changes in the Implicit Price Deflator (IPD). Claimants with an established entitlement receive an annual apportionment adjusted by any changes in the IPD and, under certain circumstances, by any changes in workload. Claimants with an established entitlement do not file further claims for the program.

The SCO is authorized to make payments for costs of mandated programs from amounts appropriated by the State Budget Act, by the State Mandates Claims Fund, or by specific legislation. In the event the appropriation is insufficient to pay claims in full, claimants will receive prorated payments in proportion to the dollar amount of approved claims for the program. Balances of prorated payments will be made when supplementary funds are made available.

The instructions contained in this manual are intended to provide general guidance for filing a mandated cost claim. Since each mandate is administered separately, it is important to refer to the specific program for information relating to established policies on eligible reimbursable costs.

2. Types of Claims

There are three types of claims: Reimbursement, Estimated, and Entitlement. A claimant may file a reimbursement claim for actual mandated costs incurred in the prior fiscal year or may file an estimated claim for mandated costs to be incurred during the current fiscal year. An entitlement claim may be filed for the purpose of establishing a base year entitlement amount for mandated programs included in SMAS. A claimant who has established a base year entitlement for a program would receive an automatic annual payment which is reflective of the current costs for the program.

All claims received by the SCO will be reviewed to verify actual costs. An adjustment of the claim will be made if the amount claimed is determined to be excessive, improper, or unreasonable. The claim must be filed with sufficient documentation to support the costs claimed. The types of documentation required to substantiate a claim are identified in the instructions for the program. The certification of claim, form FAM-27, must be signed and dated by the entity's authorized officer in order for the SCO to make payment on the claim.

A. Reimbursement Claim

A reimbursement claim is defined in GC Section 17522 as any claim filed with the SCO by a local agency for reimbursement of costs incurred for which an appropriation is made for the purpose of paying the claim. The claim must include supporting documentation to substantiate the costs claimed.

Initial reimbursement claims are first-time claims for reimbursement of costs for one or more prior fiscal years of a program that was previously unfunded. Claims are due 120 days from the date of issuance of the claiming instructions for the program by the SCO. The first statute that appropriates funds for the mandated program will specify the fiscal years for which costs are eligible for reimbursement.

Annual reimbursement claims must be filed by January 15 following the fiscal year in which costs were incurred for the program. A reimbursement claim must detail the costs actually incurred in the prior fiscal year.

An actual claim for the 2002-03 fiscal year may be filed by January 15, 2004, without a late penalty. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed \$1,000. However, initial reimbursement claims will be reduced by a late penalty of 10% with no limitation. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. Claims filed more than one year after the deadline or without the requested supporting documentation will not be accepted.

B. Estimated Claim

An estimated claim is defined in GC Section 17522 as any claim filed with the SCO, during the fiscal year in which the mandated costs are to be incurred by the local agency, against an appropriation made to the SCO for the purpose of paying those costs.

An estimated claim may be filed in conjunction with an initial reimbursement claim, annual reimbursement claim, or at other times for estimated costs to be incurred during the current fiscal year. Annual estimated claims are due January 15 of the fiscal year in which the costs are to be incurred. Initial estimated claims are due on the date specified in the claiming instructions. Timely filed estimated claims are paid before those filed after the deadline.

After receiving payment for an estimated claim, the claimant must file a reimbursement claim by January 15 following the fiscal year in which costs were incurred. If the claimant fails to file a reimbursement claim, monies received for the estimated claims must be returned to the State.

C. Entitlement Claim

An entitlement claim is defined in GC Section 17522 as any claim filed by a local agency with the SCO for the sole purpose of establishing or adjusting a base year entitlement for a mandated program that has been included in SMAS. An entitlement claim should not contain nonrecurring or initial start-up costs. There is no statutory deadline for the filing of entitlement claims. However, entitlement claims and supporting documents should be filed by January 15 to permit an orderly processing of claims. When the claims are approved and a base year entitlement amount is determined, the claimant will receive an apportionment reflective of the program's current year costs. School mandates included in SMAS are listed in Section 2, number 6.

Once a mandate has been included in SMAS and the claimant has established a base year entitlement, the claimant will receive automatic payments from the SCO for the mandate. The automatic apportionment is determined by adjusting the claimant's base year entitlement for changes in the implicit price deflator of costs of goods and services to governmental agencies, as determined by the State Department of Finance. For programs approved by the COSM for inclusion in SMAS on or after January 1, 1988, the payment for each year succeeding the three year base period is adjusted according to any changes by both the deflator and average daily attendance. Annual apportionments for programs included in the system are paid on or before November 30 of each year.

A base year entitlement is determined by computing an average of the claimant's costs for any three consecutive years after the program has been approved for the SMAS process. The amount is first adjusted according to any changes in the deflator. The deflator is applied separately to each year's costs for the three years, which comprise the base year. The SCO will perform this computation for each claimant who has filed claims for three consecutive years. If a claimant has incurred costs for three consecutive years but has not filed a claim in each of those years, the claimant may file an entitlement claim, form FAM-43, to establish a base year entitlement. An entitlement claim does not result in the claimant being reimbursed for the costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

3. Minimum Claim Amount

For initial claims and annual claims filed on or after September 30, 2002, if the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by GC Section 17564. The county shall determine if the submission of a combined claim is economically feasible and shall be responsible for disbursing the funds to each special district. Combined claims may be filed only when the county is the fiscal agent for the special districts. A combined claim must show the individual claim costs for each eligible school district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a special district, provides to the county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

GC Section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such a claim exceeds one thousand dollars (\$1,000), provided that a county superintendent of schools may submit a combined claim on behalf of school districts within their county if the combined claim exceeds \$1,000, even if the individual school district's claim does not each exceed \$1,000. The county superintendent of schools shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school district. These combined claims may be filed only when the county superintendent of schools is the fiscal agent for the districts. A combined claim must show the individual claim costs for each eligible district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district provides a written notice of its intent to file a separate claim to the county superintendent of schools and to the SCO at least 180 days prior to the deadline for filing the claim.

4. Filing Deadline for Claims

Initial reimbursement claims (first-time claims) for reimbursement of costs of a previously unfunded mandated program must be filed within 120 days from the date of issuance of the program's claiming instructions by the SCO. If the initial reimbursement claim is filed after the deadline, but within one year of the deadline, the approved claim must be reduced by a 10% penalty. A claim filed more than one year after the deadline cannot be accepted for reimbursement.

Annual reimbursement claims for costs incurred during the previous fiscal year and estimated claims for costs to be incurred during the current fiscal year must be filed with the SCO and postmarked on or before January 15. If the annual or estimated reimbursement claim is filed after the deadline, but within one year of the deadline, the approved claim must be reduced by a 10% late penalty, not to exceed \$1,000. Claims must include supporting data to show how the amount claimed was derived. Without this information, the claim cannot be accepted.

Entitlement claims do not have a filing deadline. However, entitlement claims and supporting documents should be filed by January 15 to permit an orderly processing of claims. Entitlement claims are used to establish a base year entitlement amount for calculating automatic annual payments. Entitlement does not result in the claimant being reimbursed for costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

5. Payment of Claims

In order for the SCO to authorize payment of a claim, the Certification of Claim, form FAM-27, must be properly filled out, signed, and dated by the entity's authorized officer.

Reimbursement and estimated claims are paid within 60 days of the filing deadline for the claim. A claimant is entitled to receive accrued interest at the pooled money investment account rate if the payment was made more than 60 days after the claim filing deadline or the actual date of claim receipt, whichever is later. For an initial claim, interest begins to accrue when the payment is made more than 365 days after the adoption of the program's statewide cost estimate. The SCO may withhold up to 20 percent of the amount of an initial claim until the claim is audited to verify the actual amount of the mandated costs. The 20 percent withheld is not subject to accrued interest.

In the event the amount appropriated by the Legislature is insufficient to pay the approved amount in full for a program, claimants will receive a prorated payment in proportion to the amount of approved claims timely filed and on hand at the time of proration.

The SCO reports the amounts of insufficient appropriations to the State Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature which considers appropriations in order to assure appropriation of these funds in the Budget Act. If these funds cannot be appropriated on a timely basis in the Budget Act, this information is transmitted to the COSM which will include these amounts in its report to assure that an appropriation sufficient to pay the claims is included in the next local government claims bill or other appropriation bills. When the supplementary funds are made available, the balance of the claims will be paid.

Unless specified in the statutes, regulations, or parameters and guidelines, the determination of allowable and unallowable costs for mandates is based on the Parameters and Guidelines adopted by the COSM. The determination of allowable reimbursable mandated costs for unfunded mandates is made by the COSM. The SCO determines allowable reimbursable costs, subject to amendment by the COSM, for mandates funded by special legislation. Unless specified, allowable costs are those direct and indirect costs, less applicable credits, considered to be eligible for reimbursement. In order for costs to be allowable and thus eligible for reimbursement, the costs must meet the following general criteria:

1. The cost is necessary and reasonable for proper and efficient administration of the mandate and not a general expense required to carry out the overall responsibilities of government.
2. The cost is allocable to a particular cost objective identified in the Parameters and Guidelines.
3. The cost is net of any applicable credits that offset or reduce expenses of items allocable to the mandate.

The SCO has identified certain costs that, for the purpose of claiming mandated costs, are unallowable and should not be claimed on the claim forms unless specified as reimbursable under the program. These expenses include, but are not limited to, subscriptions, depreciation, memberships, conferences, workshops general education, and travel costs.

6. State Mandates Apportionment System (SMAS)

Chapter 1534, Statutes of 1985, established SMAS, a method of paying certain mandated programs as apportionments. This method is utilized whenever a program has been approved for inclusion in SMAS by the COSM.

When a mandated program has been included in SMAS, the SCO will determine a base year entitlement amount for each school district that has submitted reimbursement claims, (or entitlement claims), for three consecutive fiscal years. A base year entitlement amount is determined by averaging the approved reimbursement claims, (or entitlement claims), for 1982-83, 1983-84, and 1984-85 years or any three consecutive fiscal years thereafter. The amounts are first adjusted by any change in IPD, which is applied separately to each year's costs for the three years

that comprise the base period. The base period means the three fiscal years immediately succeeding the COSM's approval.

Each school district with an established base year entitlement for the program will receive automatic annual payments from the SCO reflective of the program's current year costs. The amount of apportionment is adjusted annually for any change in the IPD. If the mandated program was included in SMAS after January 1, 1988, the annual apportionment is adjusted for any change in both the IPD and workload.

In the event a school district has incurred costs for three consecutive fiscal years but did not file a reimbursement claim in one or more of those fiscal years, the school district may file an entitlement claim for each of those missed years to establish a base year entitlement. An "entitlement claim" means any claim filed by a county with the SCO for the sole purpose of establishing a base year entitlement. A base year entitlement shall not include any nonrecurring or initial start-up costs.

Initial apportionments are made on an individual program basis. After the initial year, all apportionments are made by November 30. The amount to be apportioned is the base year entitlement adjusted by annual changes in the IPD for the cost of goods and services to governmental agencies as determined by the State Department of Finance.

In the event the county determines that the amount of apportionment does not accurately reflect costs incurred to comply with a mandate, the process of adjusting an established base year entitlement upon which the apportionment is based, is set forth in GC Section 17615.8 and requires the approval of the COSM.

School Mandates Included In SMAS

Program Name	Chapter/Statute	Program Number
Immunization Records	Ch. 1176/77	32

Pupil Expulsion Transcripts, program #91, Chapter 1253/75 was removed from SMAS for the 2002-03 fiscal year. This program was consolidated with other mandate programs that are included in Pupil Suspension, Expulsions, and Expulsion Appeals, program #176.

7. Direct Costs

A direct cost is a cost that can be identified specifically with a particular program or activity. Each claimed reimbursable cost must be supported by documentation as described in Section 12. Costs that are typically classified as direct costs are:

(1) Employee Wages, Salaries, and Fringe Benefits

For each of the mandated activities performed, the claimant must list the names of the employees who worked on the mandate, their job classification, hours worked on the mandate, and rate of pay. The claimant may, in-lieu of reporting actual compensation and fringe benefits, use a productive hourly rate:

(a) Productive Hourly Rate Options

A local agency may use one of the following methods to compute productive hourly rates:

- Actual annual productive hours for each employee
- The weighted-average annual productive hours for each job title, or
- 1,800* annual productive hours for all employees

If actual annual productive hours or weighted-average annual productive hours for each job title is chosen, the claim must include a computation of how these hours were computed.

* 1,800 annual productive hours excludes the following employee time:

- o Paid holidays
- o Vacation earned
- o Sick leave taken
- o Informal time off
- o Jury duty
- o Military leave taken.

(b) Compute a Productive Hourly Rate

1. Compute a productive hourly rate for salaried employees to include actual fringe benefit costs. The methodology for converting a salary to a productive hourly rate is to compute the employee's annual salary and fringe benefits and divide by the annual productive hours.

Table 1 Productive Hourly Rate, Annual Salary + Benefits Method

Formula:	Description:
$[(EAS + Benefits) + APH] = PHR$	EAS = Employee's Annual Salary
	APH = Annual Productive Hours
$[(\$26,000 + \$8,099)] + 1,800 \text{ hrs} = 18.94$	PHR = Productive Hourly Rate

- As illustrated in Table 1, if you assume an employee's compensation was \$26,000 and \$8,099 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the productive hourly rate would be \$18.94. To convert a biweekly salary to EAS, multiply the biweekly salary by 26. To convert a monthly salary to EAS, multiply the monthly salary by 12. Use the same methodology to convert other salary periods.
2. A claimant may also compute the productive hourly rate by using the "Percent of Salary Method."

Table 2 Productive Hourly Rate, Percent of Salary Method

Example:		
Step 1: Fringe Benefits as a Percent of Salary		Step 2: Productive Hourly Rate
Retirement	15.00 %	Formula: $[(EAS \times (1 + FBR)) + APH] = PHR$ $[(\$26,000 \times (1.3115)) + 1,800] = \18.94
Social Security & Medicare	7.65	
Health & Dental Insurance	5.25	
Workers Compensation	3.25	
Total	31.15 %	
Description:		
EAS = Employee's Annual Salary		APH = Annual Productive Hours
FBR = Fringe Benefit Rate		PHR = Productive Hourly Rate

- As illustrated in Table 3, both methods produce the same productive hourly rate.

Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include employer's contributions for social security, pension plans, insurance, workmen's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:

- The amount of compensation is reasonable for the service rendered.
- The compensation paid and benefits received are appropriately authorized by the governing board.
- Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.
- The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs.

For each of the employees included in the claim, the claimant must use reasonable rates and hours in computing the wage cost. If a person of a higher-level job position performs an activity which normally would be performed by a lower-level position, reimbursement for time spent is allowable at the average salary range for the lower-level position. The salary rate of the person at the higher level position may be claimed if it can be shown that it was more cost effective in comparison to the performance by a person at the lower-level position under normal circumstances and conditions. The number of hours charged to an activity should reflect the time expected to complete the activity under normal circumstances and conditions. The numbers of hours in excess of normal expected hours are not reimbursable.

(c) Calculating an Average Productive Hourly Rate

In those instances where the claiming instructions allow a unit as a basis of claiming costs, the direct labor component of the unit cost should be expressed as an average productive hourly rate and can be determined as follows:

	<u>Time Spent</u>	<u>Productive Hourly Rate</u>	<u>Total Cost by Employee</u>
Employee A	1.25 hrs	\$6.00	\$7.50
Employee B	0.75 hrs	4.50	3.38
Employee C	3.50 hrs	10.00	35.00
Total	5.50 hrs		\$45.88
Average Productive Hourly Rate is $\$45.88 / 5.50 \text{ hrs.} = \8.34			

(d) Employer's Fringe Benefits Contribution

A local agency has the option of claiming actual employer's fringe benefit contributions or may compute an average fringe benefit cost for the employee's job classification and claim it as a percentage of direct labor. The same time base should be used for both salary and fringe benefits when computing a percentage. For example, if health and dental insurance payments are made annually, use an annual salary. After the percentage of salary for each fringe benefit is computed, total them.

For example:

<u>Employer's Contribution</u>	<u>% of Salary</u>
Retirement	15.00%
Social Security	7.65%
Health and Dental	5.25%
Insurance	0.75%
Worker's Compensation	0.75%
Total	<u>28.65%</u>

(e) Materials and Supplies

Only actual expenses can be claimed for materials and supplies, which were acquired and consumed specifically for the purpose of a mandated program. The claimant must list the materials and supplies that were used to perform the mandated activity, the number of units consumed, the cost per unit, and the total dollar amount claimed. Materials and supplies purchased to perform a particular mandated activity are expected to be reasonable in quality, quantity and cost. Purchases in excess of reasonable quality, quantity and cost are not reimbursable. Materials and supplies withdrawn from inventory and charged to the mandated activity must be based on a recognized method of pricing, consistently applied. Purchases shall be claimed at the actual price after deducting discounts, rebates and allowances received by local agencies.

(f) Calculating a Unit Cost for Materials and Supplies

In those instances where the claiming instructions suggest that a unit cost be developed for use as a basis of claiming costs mandated by the State, the materials and supplies component of the unit cost should be expressed as a unit cost of materials and supplies as shown in Table 1 or Table 2:

Table 1 Calculating A Unit Cost for Materials and Supplies

Supplies	<u>Cost Per Unit</u>	<u>Amount of Supplies Used Per Activity</u>	<u>Unit Cost of Supplies Per Activity</u>
Paper	0.02	4	\$0.08
Files	0.10	1	0.10
Envelopes	0.03	2	0.06
Photocopies	0.10	4	<u>0.40</u>
			<u>\$0.64</u>

Table 2 Calculating a Unit Cost for Materials and Supplies

Supplies	Supplies <u>Used</u>	Unit Cost of Supplies <u>Per Activity</u>
Paper (\$10.00 for 500 sheet ream)	250 Sheets	\$5.00
Files (\$2.50 for box of 25)	10 Folders	1.00
Envelopes (\$3.00 for box of 100)	50 Envelopes	1.50
Photocopies (\$0.05 per copy)	40 Copies	<u>2.00</u>
		<u>\$9.50</u>

If the number of reimbursable instances, is 25, then the unit cost of supplies is \$0.38 per reimbursable instance (\$9.50 / 25).

(g) Contract Services

The cost of contract services is allowable if the local agency lacks the staff resources or necessary expertise, or it is economically feasible to hire a contractor to perform the mandated activity. The claimant must give the name of the contractor; explain the reason for having to hire a contractor; describe the mandated activities performed; give the dates when the activities were performed, the number of hours spent performing the mandate, the hourly billing rate, and the total cost. The hourly billing rate shall not exceed the rate specified in the claiming instructions for the mandated program. The contractor's invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the claiming instructions for the particular mandate. Equipment rentals used solely for the mandate are reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the prorata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the claiming instructions specify them as allowable. If they are allowable, the claiming instructions for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the prorata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the claiming instructions may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation,

number of private auto mileage traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits derived by the mandate.

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. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The 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 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 costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees 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 Development, Staff Diversity, 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 indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	\$19,590,357	\$1,339,059	\$18,251,298	\$0	\$18,251,298
Instructional Administration and Instructional Governance	6000					
Academic Administration	6010	2,941,386	105,348	2,836,038	0	2,836,038
Course and Curriculum Develop.	6020	21,595	0	21,595	0	21,595
Academic/Faculty Senate	6030					
Other Instructional Administration & Instructional Governance	6090					
Instructional Support Services	6100					
Learning Center	6110	22,737	863	21,874	0	21,874
Library	6120	518,220	2,591	515,629	0	515,629
Media	6130	522,530	115,710	406,820	0	406,820
Museums and Galleries	6140	0	0	0	0	0
Academic Information Systems and Tech.	6150					
Other Instructional Support Services	6190					
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300					
Counseling and Guidance	6310					
Matriculation and Student Assessment	6320					
Transfer Programs	6330					
Career Guidance	6340					
Other Student Counseling and Guidance	6390					
Other Student Services	6400					
Disabled Students Programs & Services	6420					
Subtotal		\$24,201,764	\$1,576,523	\$22,625,241	\$0	\$22,625,241

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES					FORM FAM-29C	
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Extended Opportunity Programs & Services	6430					
Health Services	6440	0	0	0	0	0
Student Personnel Admin.	6450	289,926	12,953	276,973	0	276,973
Financial Aid Administration	6460	391,459	20,724	370,735	0	370,735
Job Placement Services	6470	83,663	0	83,663	0	83,663
Veterans Services	6480	25,427	0	25,427	0	25,427
Miscellaneous Student Services	6490	0	0	0	0	0
Operation & Maintenance of Plant	6500					
Building Maintenance and Repairs	6510	1,079,260	44,039	1,035,221	0	1,035,221
Custodial Services	6530	1,227,668	33,677	1,193,991	0	1,193,991
Grounds Maintenance and Repairs	6550	596,257	70,807	525,450	0	525,450
Utilities	6570	1,236,305	0	1,236,305	0	1,236,305
Other	6590	3,454	3,454	0	0	0
Planning, Policy Making, and Coordination	6600	587,817	22,451	565,366	565,366	0
General Inst. Support Services	6700					
Community Relations	6710	0	0	0	0	0
Fiscal Operations	6720	634,605	17,270	617,335	553,184	(a) 64,151
Human Resources Management	6730					
Noninstructional Staff Benefits & Incentives	6740					
Staff Development	6750					
Staff Diversity	6760					
Logistical Services	6770					
Management Information Systems	6780					
Subtotal		\$30,357,605	\$1,801,898	\$28,555,707	\$1,118,550	\$27,437,157

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
General Inst. Sup. Serv. (cont.)	6700						
Other General Institutional Support Services	6790						
Community Services	6800						
Community Recreation	6810	703,858	20,509	683,349	0	683,349	
Community Service Classes	6820	423,188	24,826	398,362	0	398,362	
Community Use of Facilities	6830	89,877	10,096	79,781	0	79,781	
Economic Development	6840						
Other Community Svcs. & Economic Development	6890						
Ancillary Services	6900						
Bookstores	6910	0	0	0	0	0	
Child Development Center	6920	89,051	1,206	87,845	0	87,845	
Farm Operations	6930	0	0	0	0	0	
Food Services	6940	0	0	0	0	0	
Parking	6950	420,274	6,857	413,417	0	413,417	
Student Activities	6960	0	0	0	0	0	
Student Housing	6970	0	0	0	0	0	
Other	6990	0	0	0	0	0	
Auxiliary Operations	7000						
Auxiliary Classes	7010	1,124,557	12,401	1,112,156	0	1,112,156	
Other Auxiliary Operations	7090	0	0	0	0	0	
Physical Property Acquisitions	7100	814,318	814,318	0	0	0	
(05) Total		\$34,022,728	\$2,692,111	\$31,330,617	\$1,118,550	\$30,212,067	
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				3,70233%			
(07) Notes							
(a) Mandated Cost activities designated as direct costs per claim instructions.							

9. Offset Against Mandated Claims

As noted previously, allowable costs are defined as those direct and indirect costs, less applicable credits, considered to be eligible for reimbursement. When all or part of the costs of a mandated program are specifically reimbursable from local assistance revenue sources (e.g., state, federal, foundation, etc.), only that portion of any increased costs payable from school district funds is eligible for reimbursement under the provisions of GC Section 17561.

Example 1:

As illustrated in Table 5, this example shows how the "Offset against State Mandated Claims" is determined for school districts receiving block grant revenues not based on a formula allocation. Program costs for each of the situations equals \$100,000.

Table 5 Offset Against State Mandates, Example 1

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	\$100,000	\$95,000	\$2,500	\$-0-	\$2,500
2.	100,000	97,000	2,500	-0-	2,500
3.	100,000	98,000	2,500	500	2,000
4.	100,000	100,000	2,500	2,500	-0-
5.	100,000 *	50,000	2,500	1,250	1,250
6.	100,000 *	49,000	2,500	250	2,250

* School district share is \$50,000 of the program cost.

Numbers (1) through (4), in Table 5, show intended funding at 100% from local assistance revenue sources. Numbers (5) and (6) show cost sharing on a 50/50 basis with the district. In numbers (1) through (6), included in the program costs of \$100,000 are state mandated costs of \$2,500. The offset against state mandated claims is the amount of actual local assistance revenues which exceeds the difference between program costs and state mandated costs. This offset cannot exceed the amount of state mandated costs.

In (1), local assistance revenues were less than expected. Local assistance funding was not in excess of the difference between program costs and state mandated costs. As a result, the offset against state mandated claims is zero and \$2,500 is claimable as mandated costs.

In (4), local assistance revenues were fully realized to cover the entire cost of the program, including the state mandate activity; therefore, the offset against state mandated claims is \$2,500, and claimable costs are \$0.

In (5), the district is sharing 50% of the project cost. Since local assistance revenues of \$50,000 were fully realized, the offset against state mandated claims is \$1,250.

In (6), local assistance revenues were less than the amount expended and the offset against state mandated claims is \$250. Therefore, the claimable mandated costs are \$2,250.

Example 2:

As illustrated in Table 6, this example shows how the offset against state mandated claims is determined for school districts receiving special project funds based on approved actual costs. Local assistance revenues for special projects must be applied proportionately to approved costs.

Table 6 Offset Against State Mandates, Example 2

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	\$100,000	\$100,000	\$2,500	\$2,500	\$-0-
2.	100,000 **	75,000	2,500	1,875	625
3.	100,000 **	45,000	1,500	1,125	375

** School district share is \$25,000 of the program cost.

In (2), the entire program cost was approved. Since the local assistance revenue source covers 75% of the program cost, it also proportionately covered 75% of the \$2,500 state mandated costs, or \$1,875.

If in (3) local assistance revenues are less than the amount expected because only \$60,000 of the \$100,000 program costs were determined to be valid by the contracting agency, then a proportionate share of state mandated costs is likewise reduced to \$1,500. The offset against state mandated claims is \$1,125. Therefore, the claimable mandated costs are \$375.

Federal and State Funding Sources

The listing in Appendix C is not inclusive of all funding sources that should be offset against mandated claims but contains some of the more common ones. State school fund apportionments and federal aid for education, which are based on average daily attendance and are part of the general system of financing public schools as well as block grants which do not provide for specific reimbursement of costs (i.e., allocation formulas not tied to expenditures), should not be included as reimbursements from local assistance revenue sources.

Governing Authority

The costs of salaries and expenses of the governing authority, such as the school superintendent and governing board, are not reimbursable. These are costs of general government as described in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".

10. Notice of Claim Adjustment

All claims submitted to the SCO are reviewed to determine if the claim was prepared in accordance with the claiming instructions. If any adjustments are made to a claim, the claimant will receive a "Notice of Claim Adjustments" detailing adjustments made by the SCO.

11. Audit of Costs

All claims submitted to the State Controller's Office (SCO) are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the Parameters and Guidelines (P's & G's) adopted by the Commission on State Mandates (COSM). If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to Government Code (GC) Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the 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. All documents used to support the reimbursable activities, must be

retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of three years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for three years from the date of initial payment of the claim. Claim documentation shall be made available to the SCO on request.

12. Source Documents

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

13. Claim Forms and Instructions

A claimant may submit a computer generated report in substitution for Form-1 and Form-2, provided the format of the report and data fields contained within the report are identical to the claim forms included with these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file an estimated or reimbursement claim. The SCO will revise the manual and claim forms as necessary.

A. Form-2, Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. In some mandates, specific reimbursable activities have been identified for each component. The expenses reported on this form must be supported by the official financial records of the claimant and copies of supporting documentation, as specified in the claiming instructions, must be submitted with the claims. All supporting documents must be retained for a period of not less than three years after the reimbursement claim was filed or last amended.

B. Form-1, Claim Summary

This form is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from Form-2 and are carried forward to form FAM-27.

Community colleges 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 form FAM-29C.

C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized officer of the county. All applicable information from Form-1 must be carried forward onto this form in order for the SCO to process the claim for payment. An original and one copy of the FAM-27 is required.

Claims should be rounded to the nearest dollar. Submit a signed original and one copy of form FAM-27, Claim for Payment, and all other forms and supporting documents (**To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.**) Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivered by
Other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

14. RETENTION OF CLAIMING INSTRUCTIONS

For your convenience, the revised claiming instructions in this package have been arranged in alphabetical order by program name. These revisions should be inserted in the School Mandated Cost Manual and the old forms they replace should be removed. The instructions should then be retained permanently for future reference, and the forms should be duplicated to meet your filing requirements. Annually, updated forms and any other information or instructions claimants may need to file claims, as well as instructions and forms for all new programs released throughout the year will be placed on the SCO's web site at www.sco.ca.gov/ard/local/locreim/index/shtml.

If you have any questions concerning mandated cost reimbursements, please write to us at the address listed for filing claims, send e-mail to lrsdar@sco.ca.gov, or call the Local Reimbursements Section at (916) 324-5729.

All claims submitted to the SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the COSM's P's and G's. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Pursuant to GC Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district is subject to audit by the State Controller no later than three years after the date the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. Therefore, all documentation to support actual costs claimed must be retained for the same period, and shall be made available to the SCO on request.

Fiscal Year

2003 - 2004

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

December 13, 2004

CERTIFIED MAIL # 7003 1010 0003 2876 7418

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

Claim File Copy

Dear Ms. Brummels:

Re: Annual Reimbursement Claim
Long Beach Community College District CC19250

Enclosed please find the original claim and an extra copy of the FAM-27 for Long Beach Community College District's reimbursement claim listed below:

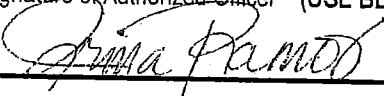
1/84	Health Fee Elimination	2003-2004
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If you have any questions regarding these claims, please contact me at (858) 514-8605.

Sincerely,



Keith B. Petersen

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION			For State Controller Use only	Program 234
(01) Claimant Identification Number: CC19250			(19) Program Number 00234	
(02) Claimant Name: Long Beach Community College District			(20) Date Filed: <u> </u> / <u> </u> / <u> </u>	
(03) County of Location: Los Angeles			(21) LRS Input: <u> </u> / <u> </u> / <u> </u>	267,154
(04) Street Address: 4901 East Carson Street			(22) HFE-1.0, (04)(b)	
(05) City: Long Beach State: CA Zip Code: 90808			(23)	
			(24)	
			(25)	
Type of Claim	Estimated Claim	Reimbursement Claim	(26)	
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)	
Fiscal Year of Cost	(06) 2004-2005	(12) 2003-2004	(30)	
Total Claimed Amount	(07) \$ 293,000	(13) \$ 267,154	(31)	
Less: 10% Late Penalty		(14) \$	(32)	
Less: Prior Claim Payment Received		(15) \$	(33)	
Net Claimed Amount		(16) \$ 267,154	(34)	
Due from State	(08) \$ 293,000	(17) \$ 267,154	(35)	
Due to State		(18)	(36)	
(37) CERTIFICATION OF CLAIM				
<p>In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>				
Signature of Authorized Officer (USE BLUE INK)			Date	
			<u>12-7-04</u>	
Irma Ramos			Administrative Dean, Human Resources	
Type or Print Name			Title	
(38) Name of Contact Person for Claim				
SixTen and Associates			Telephone Number: <u>(858) 514-8605</u>	
			E-mail Address: <u>kbpsixten@aol.com</u>	

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2003-2004
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(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Long Beach City College	\$267,153.53
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	
(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)] \$ 267,154

PROGRAM 234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2003-2004
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(03) Name of College: Long Beach City College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 33.21%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 459,618	\$ 152,639	\$ 612,257
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 459,618	\$ 152,639	\$ 612,257

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code \$76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code \$76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c))	\$ 344,231
(10) Subtotal	[Line (07) - line (09)]	\$ 268,026

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ -
(13) Total Amount Claimed	\$ 872.00
	[Line (10) - {line (11) + line (12)}]
	\$ 267,154

LONG BEACH COMMUNITY COLLEGE DISTRICT
CALCULATION OF INDIRECT COST RATE,
FISCAL YEAR
2002-2003

FOR 2003-2004 CLAIMS

REFERENCE (CCFS 311)	DESCRIPTION	2002-2003
INSTRUCTIONAL ACTIVITY		
	Instructional Costs	
	Instructional Salaries and Benefits	44,398,584
	Instructional Operating Expenses	1,795,008
	Instructional Support Instructional Salaries and Benefits	0
	Auxiliary Operations Instructional Salaries and Benefits	0
	TOTAL INSTRUCTIONAL COSTS 1	46,193,592
	Non-Instructional Costs	
	Non-Instructional Salaries and Benefits	2,834,609
	Instructional Admin. Salaries and Benefits	2,963,643
	Instructional Admin. Operating Expenses	267,591
	Auxiliary Classes Non-Inst. Salaries and Benefits	0
	Auxiliary Classes Operating Expenses	0
	TOTAL NON-INSTRUCTIONAL COSTS 2	6,065,843
	TOTAL INSTRUCTIONAL ACTIVITY COSTS 3 (1 + 2)	52,259,435
DIRECT SUPPORT ACTIVITY		
	Direct Support Costs	
	Instructional Support Services Non Inst. Salaries and Benefits	3,148,189
	Instructional Support Services Operating Expenses	223,217
	Admissions and Records	2,058,380
	Counselling and Guidance	5,400,767
	Other Student Services	6,700,227
	TOTAL DIRECT SUPPORT COSTS 4	17,530,771
	TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS 5 (3 + 4)	69,790,206
	Indirect Support Costs	
	Operation and Maintenance of Plant	7,598,562
	Planning and Policy Making	4,033,846
	General Instructional Support Services	11,542,031
	TOTAL INDIRECT SUPPORT COSTS 6	23,174,439
	TOTAL INSTRUCTIONAL ACTIVITY COSTS AND DIRECT SUPPORT COSTS AND TOTAL INDIRECT SUPPORT COSTS (5 + 6) = TOTAL COSTS	92,964,645
SUPPORT COSTS ALLOCATION RATES		
Indirect Support Costs Allocation Rate =	Total Indirect Supports Costs (6)	33.21%
	Total Instructional Activity Costs and Direct Support Costs (5)	
Direct Support Costs Allocation Rate =	Total Direct Support Costs (4)	33.55%
	Total Instructional Activity Costs (3)	
Total Support Cost Allocation		66.75%

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
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(01) Claimant Long Beach Community College District	(02) Fiscal Year costs were incurred: 2003-2004
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)		
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling		
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems; list		
Examinations, minor illnesses		
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
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(01) Claimant Long Beach Community College District	(02) Fiscal Year costs were incurred: 2003-2004
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		
Influenza		
Information	X	X
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes	X	X
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves		
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list-->Cold packs, hot packs, decongestants, cough lozenges, cold lozenges and antibiotic ointment.	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes	X	X
Temporary Handicapped Parking Permits	X	X

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2	
(01) Claimant Long Beach Community College District		(02) Fiscal Year costs were incurred: 2003-2004	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.		(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies			
Private Medical Doctor		X	X
Health Department		X	X
Clinic		X	X
Dental		X	X
Counseling Centers		X	X
Crisis Centers		X	X
Transitional Living Facilities, battered/homeless women		X	X
Family Planning Facilities		X	X
Other Health Agencies		X	X
Tests			
Blood Pressure		X	X
Hearing		X	X
Tuberculosis			
Reading		X	X
Information		X	X
Vision		X	X
Glucometer		X	X
Urinalysis		X	X
Hemoglobin		X	X
EKG			
Strep A Testing		X	X
PG Testing			
Monospot			
Hemacult			
Others, list			
Miscellaneous			
Absence Excuses/PE Waiver		X	X
Allergy Injections			
Band-aids		X	X
Booklets/Pamphlets		X	X
Dressing Change		X	X
Rest		X	X
Suture Removal		X	X
Temperature		X	X
Weigh		X	X
Information		X	X
Report/Form		X	X
Wart Removal			
Others, list		X	X
Committees			
Safety		X	X
Environmental			
Disaster Planning		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X

Fiscal Year

2004 - 2005

SixTen and Associates

Mandate Reimbursement Services

Claim File Copy

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

January 17, 2006

7005 1870 0006 2586 7085
CERTIFIED MAIL #7004 2510 0004 4007 0701

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claim
Long Beach Community College District CC19250

Dear Ms. Brummels:

Enclosed please find the original claim and an extra copy of the FAM-27 for Long Beach Community College District's reimbursement claim listed below:

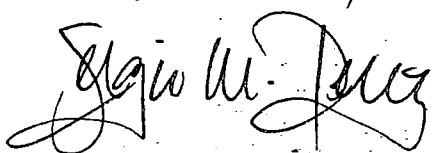
1/84

Health Fee Elimination


2004-2005

If you have any questions regarding this claim, please contact me at (858) 514-8605.

Sincerely,



Sergio M. Perez, Vice-President
Claims Processing Manager

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION		For State Controller Use only	Program 234
(01) Claimant Identification Number: CC 19250		(19) Program Number 00234	(20) Date Filed ___/___/___
		(21) LRS Input ___/___/___	
		Reimbursement Claim Data	
(02) Claimant Name Long Beach Community College District		(22) HFE-1.0, (04)(b)	305,960
County of Location Los Angeles		(23)	
Street Address 4901 East Carson Street		(24)	
City Long Beach	State CA	Zip Code 90808	(25)
Type of Claim	Estimated Claim	Reimbursement Claim	(26)
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)
Fiscal Year of Cost	(06) 2005-2006	(12) 2004-2005	(30)
Total Claimed Amount	(07) \$ 336,000	(13) \$ 305,960	(31)
Less: 10% Late Penalty		(14) \$ -	(32)
Less: Prior Claim Payment Received		(15) \$ -	(33)
Net Claimed Amount		(16) \$ 305,960	(34)
Due from State	(08) \$ 336,000	(17) \$ 305,960	(35)
Due to State		(18)	(36)
(37) CERTIFICATION OF CLAIM			
<p>In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>			
Signature of Authorized Officer (USE BLUE INK)		Date	
		1/10/06	
Irma Ramos		Administrative Dean, Human Resources	
Type or Print Name		Title	
(38) Name of Contact Person for Claim		Telephone Number: (858) 514-8605	
SixTen and Associates		E-mail Address: kbpsixten@aol.com	

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MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year	2004-2005
---	--	-------------	-----------

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Long Beach City College	\$305,960.19
2.	
3.	
4.	
5.	
6.	
7.	
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10.	
11.	
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(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 305,960
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PROGRAM 104	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year: 2004-2005
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(03) Name of College: Long Beach City College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 32.33%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 439,167	\$ 141,983	\$ 581,150
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 439,167	\$ 141,983	\$ 581,150

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code \$76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code \$76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester							
2. Per Spring Semester							
3. Per Summer Session							
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)) \$ 274,352

(10) Subtotal [Line (07) - line (09)] \$ 306,798

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ 838.00
(13) Total Amount Claimed [Line (10) - {line (11) + line (12)}]	\$ 305,960

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2	
(01) Claimant Long Beach Community College District	(02) Fiscal Year costs were incurred: 2004-2005		
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim	
Accident Reports	X	X	
Appointments			
College Physician, surgeon			
Dermatology, Family practice			
Internal Medicine			
Outside Physician			
Dental Services			
Outside Labs, (X-ray, etc.,)			
Psychologist, full services	X	X	
Cancel/Change Appointments	X	X	
Registered Nurse	X	X	
Check Appointments	X	X	
Assessment, Intervention and Counseling			
Birth Control	X	X	
Lab Reports	X	X	
Nutrition	X	X	
Test Results, office	X	X	
Venereal Disease	X	X	
Communicable Disease	X	X	
Upper Respiratory Infection	X	X	
Eyes, Nose and Throat	X	X	
Eye/Vision	X	X	
Dermatology/Allergy	X	X	
Gynecology/Pregnancy Service	X	X	
Neuralgic	X	X	
Orthopedic	X	X	
Genito/Urinary	X	X	
Dental	X	X	
Gastro-Intestinal	X	X	
Stress Counseling	X	X	
Crisis Intervention	X	X	
Child Abuse Reporting and Counseling			
Substance Abuse Identification and Counseling	X	X	
Acquired Immune Deficiency Syndrome	X	X	
Eating Disorders	X	X	
Weight Control	X	X	
Personal Hygiene	X	X	
Burnout			
Other Medical Problems; list			
Examinations, minor illnesses	X	X	
Recheck Minor Injury			
Health Talks or Fairs, Information	X	X	
Sexually Transmitted Disease	X	X	
Drugs	X	X	
Acquired Immune Deficiency Syndrome	X	X	
Child Abuse			

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2	
(01) Claimant Long Beach Community College District		(02) Fiscal Year costs were incurred: 2004-2005	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.		(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning		X	X
Stop Smoking		X	X
Library, Videos and Cassettes		X	X
First Aid, Major Emergencies		X	X
First Aid, Minor Emergencies		X	X
First Aid Kits, Filled		X	X
Immunizations			
Diphtheria/Tetanus		X	X
Measles/Rubella			
Influenza			
Information		X	X
Insurance			
On Campus Accident		X	X
Voluntary		X	X
Insurance Inquiry/Claim Administration		X	X
Laboratory Tests Done			
Inquiry/Interpretation		X	X
Pap Smears			
Physical Examinations			
Employees			
Students			
Athletes		X	X
Medications			
Antacids		X	X
Antidiarrheal		X	X
Aspirin, Tylenol, etc.;		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X
Ear Drops			
Toothache, oil cloves		X	X
Stingkill		X	X
Midol, Menstrual Cramps		X	X
Other, list-->		X	X
Parking Cards/Elevator Keys			
Tokens			
Return Card/Key			
Parking Inquiry		X	X
Elevator Passes			
Temporary Handicapped Parking Permits		X	X

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2	
(01) Claimant Long Beach Community College District		(02) Fiscal Year costs were incurred: 2004-2005		
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.		(a) FY 1986/87	(b) FY of Claim	
Referrals to Outside Agencies				
Private Medical Doctor		X		X
Health Department		X		X
Clinic		X		X
Dental		X		X
Counseling Centers		X		X
Crisis Centers		X		X
Transitional Living Facilities; battered/homeless women		X		X
Family Planning Facilities		X		X
Other Health Agencies		X		X
Tests				
Blood Pressure		X		X
Hearing		X		X
Tuberculosis				
Reading		X		X
Information		X		X
Vision		X		X
Glucometer		X		X
Urinalysis		X		X
Hemoglobin				
EKG				
Strep A Testing		X		X
PG Testing				
Monospot				
Hemacult				
Others, list				
Miscellaneous				
Absence Excuses/PE Waiver		X		X
Allergy Injections				
Band-aids		X		X
Booklets/Pamphlets		X		X
Dressing Change		X		X
Rest		X		X
Suture Removal		X		X
Temperature		X		X
Weigh		X		X
Information		X		X
Report/Form				
Wart Removal		X		X
Others, list		X		X
Committees				
Safety		X		X
Environmental				
Disaster Planning		X		X

Fiscal Year

2005 - 2006

Sixten and Associates Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

Claim File Copy

June 26, 2007

CERTIFIED MAIL # 7006 3450 0000 3941 8536

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claim
Long Beach Community College District CC 19250

Dear Ms. Brummels:

Enclosed please find the original claim and an extra copy of the FAM-27 for Long Beach Community College District's reimbursement claim listed below:

1/84

Health Fee Elimination

2005-2006

If you have any questions regarding this claim, please contact me at (858) 514-8605.

Sincerely,


for Keith B. Petersen, President

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller's Use only
(19) Program Number 00234
(20) Date Filed ___/___/___
(21) LRS Input ___/___/___

Program
234

L A B E L H E R E	(01) Claimant Identification Number: CC 19250		Reimbursement Claim Data		
	(02) Claimant Name: Long Beach Community College District				(22) HFE-1.0, (04)(b)
	County of Location: Los Angeles		(23)		
	Street Address: 4901 East Carson Street		(24)		
	City: Long Beach	State: CA	Zip Code: 90808	(25)	
	Type of Claim		Estimated Claim		Reimbursement Claim
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(26)		
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27)		
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28)		
			(29)		
Fiscal Year of Cost	(06)	(12) 2005-2006	(30)		
Total Claimed Amount	(07)	(13) \$ 297,420	(31)		
Less: 10% Late Penalty, not to exceed \$1,000		(14) \$ 1,000	(32)		
Less: Prior Claim Payment Received		(15) \$ -	(33)		
Net Claimed Amount		(16) \$ 296,420	(34)		
Due from State	(08)	(17) \$ 296,420	(35)		
Due to State		(18)	(36)		


(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK)



Date

6-15-07

Irma Ramos

Type or Print Name

Administrative Dean, Human Resources

Title

Name of Contact Person for Claim

SixTen and Associates

Telephone Number: (858) 514-8605

E-mail Address: kbpsixten@aol.com

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2005-2006
---	--	------------------------------

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Long Beach City College	\$ 297,420
2.	
3.	
4.	
5.	
6.	
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(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 297,420
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PROGRAM 34	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant: Long Beach Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2005-2006
---	--	--------------------------

(03) Name of College: Long Beach City College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 33.86%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 451,512	\$ 152,882	\$ 604,394
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 451,512	\$ 152,882	\$ 604,394

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c))	\$ 305,891
(10) Subtotal	[Line (07) - line (09)]	\$ 298,503

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ 1,083
(13) Total Amount Claimed	\$ 297,420

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2	
(01) Claimant Long Beach Community College District	(02) Fiscal Year costs were incurred: 2005-2006			
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim		
Accident Reports	X	X		
Appointments				
College Physician, surgeon				
Dermatology, Family practice				
Internal Medicine				
Outside Physician				
Dental Services				
Outside Labs, (X-ray, etc.,)				
Psychologist, full services	X	X		
Cancel/Change Appointments	X	X		
Registered Nurse	X	X		
Check Appointments	X	X		
Assessment, Intervention and Counseling				
Birth Control	X	X		
Lab Reports	X	X		
Nutrition	X	X		
Test Results, office	X	X		
Venereal Disease	X	X		
Communicable Disease	X	X		
Upper Respiratory Infection	X	X		
Eyes, Nose and Throat	X	X		
Eye/Vision	X	X		
Dermatology/Allergy	X	X		
Gynecology/Pregnancy Service	X	X		
Neuralgic	X	X		
Orthopedic	X	X		
Genito/Urinary	X	X		
Dental	X	X		
Gastro-Intestinal	X	X		
Stress Counseling	X	X		
Crisis Intervention	X	X		
Child Abuse Reporting and Counseling				
Substance Abuse Identification and Counseling	X	X		
Acquired Immune Deficiency Syndrome	X	X		
Eating Disorders	X	X		
Weight Control	X	X		
Personal Hygiene	X	X		
Burnout				
Other Medical Problems, list				
Examinations, minor illnesses	X	X		
Recheck Minor Injury				
Health Talks or Fairs, Information	X	X		
Sexually Transmitted Disease	X	X		
Drugs	X	X		
Acquired Immune Deficiency Syndrome	X	X		
Child Abuse				

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
---	--	--

(01) Claimant Long Beach Community College District	(02) Fiscal Year costs were incurred: 2005-2006
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations		
Diphtheria/Tetanus	X	X
Measles/Rubella		
Influenza		
Information	X	X
Insurance		
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done		
Inquiry/Interpretation	X	X
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes	X	X
Medications		
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops		
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list-->	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry	X	X
Elevator Passes		
Temporary Handicapped Parking Permits	X	X

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------------	--	-----------------------------

(01) Claimant Long Beach Community College District	(02) Fiscal Year costs were incurred: 2005-2006
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies		
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests		
Blood Pressure	X	X
Hearing	X	X
Tuberculosis		
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG		
Strep A Testing	X	X
PG Testing		
Monospot		
Hemacult		
Others, list		
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections		
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form		
Wart Removal	X	X
Others, list	X	X
Committees		
Safety	X	X
Environmental		
Disaster Planning	X	X



JOHN CHIANG
California State Controller

November 26, 2014

RECEIVED
November 26, 2014
*Commission on
State Mandates*

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

Re: **Incorrect Reduction Claim (IRC)**
Health Fee Elimination, 09-4206-I-22
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2003-2004, 2004-2005, and 2005-2006
Long Beach Community College District, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) is transmitting our response to the above-titled IRC.

The district did not comply with the requirements of the claiming instructions in developing its indirect cost rates. The SCO's adjustment to the indirect cost rates based on the SCO's FAM-29C methodology is supported by the Commission's decisions on previous IRCs (e.g., statement of decision adopted on January 24, 2014, for the San Mateo County and San Bernardino community college districts on this same program). The parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions. The claiming instructions and related general provisions of the SCO's Mandated Cost Manual provide ample notice for claimants to properly claim indirect costs.

The district offset revenues collected from student health fee rather than by the fee amount the district was authorized to impose. The SCO's reduction of reimbursement to the extent of fee authority is supported by Education Code section 76355, the Commission decisions on previous IRCs, as mentioned above, and the appellate court decision in *Clovis Unified School District v. Chiang*.

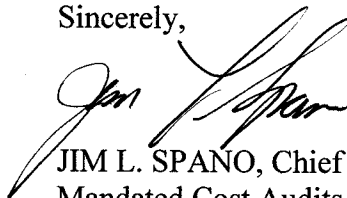
Heather Halsey, Executive Director

November 26, 2014

Page 2

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano". The signature is written in a cursive style with a large, sweeping initial "J".

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/sk

8649

Attachment

**RESPONSE BY THE STATE CONTROLLER’S OFFICE (SCO)
TO THE INCORRECT REDUCTION CLAIM (IRC) BY
LONG BEACH COMMUNITY COLLEGE DISTRICT
Health Fee Elimination Program**

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Commission on State Mandates Staff Analysis, Proposed Parameters and Guidelines (May 1989).....	Tab 4
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References to Exhibits relate to the District’s IRC filed on September 25, 2009:	
• Exhibit A-PDF page 23	
• Exhibit B-PDF page 27	
• Exhibit C-PDF page 35	
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Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

2 300 Capitol Mall, Suite 1850
3 Sacramento, CA 94250
4 Telephone No.: (916) 445-6854

5 BEFORE THE
6 COMMISSION ON STATE MANDATES
7 STATE OF CALIFORNIA

9 INCORRECT REDUCTION CLAIM ON:

No.: CSM 09-4206-I-22

10 *Health Fee Elimination Program*

AFFIDAVIT OF BUREAU CHIEF

11 Chapter 1, Statutes of 1984, 2nd Extraordinary
12 Session; and Chapter 1118, Statutes of 1987

13 LONG BEACH COMMUNITY
14 COLLEGE DISTRICT, Claimant

15
16 I, Jim L. Spano, make the following declarations:

- 17 1) I am an employee of the State Controller's Office and am over the age of 18 years.
18 2) I am currently employed as a Bureau Chief, and have been so since April 21, 2000.
19 Before that, I was employed as an audit manager for two years and three months.
20 3) I am a California Certified Public Accountant.
21 4) I reviewed the work performed by the State Controller's Office (SCO) auditor.
22 5) Any attached copies of records are true copies of records, as provided by the Long
23 Beach Community College District or retained at our place of business.
24 6) The records include claims for reimbursement, along with any attached supporting
25 documentation, explanatory letters, or other documents relating to the above-entitled
Incorrect Reduction Claim.

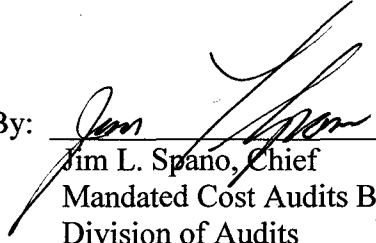
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7) A review of the claims for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06 commenced on October 16, 2008, and ended on April 8, 2009.

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: November 26, 2014

OFFICE OF THE STATE CONTROLLER

By: 
Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
LONG BEACH COMMUNITY COLLEGE DISTRICT
For Fiscal Year (FY) 2003-04, FY 2004-05, and FY 2005-06**

**Health Fee Elimination Program
Chapter 1, Statutes of 1984, 2nd Extraordinary Session,
and Chapter 1118, Statutes of 1987**

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim that the Long Beach Community College District final on September 25, 2009. The SCO audited the district's claims for costs of the legislatively mandated Health Fee Elimination Program for the period of July 1, 2003, through June 30, 2006. The SCO issued its final report on June 26, 2009 (**Exhibit D**).

The district submitted reimbursement claims totaling \$ 869,534 as follows:

- FY 2003-04—\$267,154 (**Exhibit H**)
- FY 2004-05—\$305,960 (**Exhibit H**)
- FY 2005-06—\$296,420 (**Exhibit H**)

Subsequently, the SCO performed an audit of those claims. The SCO audit disclosed that \$192,807 is allowable and \$676,727 is unallowable. The total unallowable is comprised of \$74,504 in overstated indirect costs reported in fiscal year (FY) 2003-04, \$639,989 in understated authorized health service fees during the audit period, and a \$37,766 correcting entry to eliminate a negative balance in FY 2005-06. The following table summarizes the audit results:

Cost Element	Actual Costs Claimed	Allowable per Audit	Audit Adjustments
<u>July 1, 2003, through June 2004</u>			
Direct costs:			
Salaries and benefits	\$ 365,310	\$ 365,310	\$ —
Services and supplies	94,308	94,308	—
Total direct costs	459,618	459,618	—
Indirect costs	152,639	78,135	(74,504)
Total direct and indirect costs	612,257	537,753	(74,504)
Less authorized health fees	(344,231)	(486,684)	(142,453)
Subtotal	268,026	51,069	(216,957)
Less offsetting savings/reimbursements	(872)	(872)	—
Less late filing penalty	—	—	—
Total program costs	<u>\$ 267,154</u>	50,197	<u>\$ (216,957)</u>
Less amount paid by State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 50,197</u>	

<u>Cost Element</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustments</u>
<u>July 1, 2004, through June 2005</u>			
Direct costs:			
Salaries and benefits	\$ 341,421	\$ 341,421	\$ —
Services and supplies	97,746	97,746	—
Total direct costs	439,167	439,167	—
Indirect costs	141,983	141,983	—
Total direct and indirect costs	581,150	581,150	—
Less authorized health fees	(274,352)	(437,702)	(163,350)
Subtotal	306,798	143,448	(163,350)
Less offsetting savings/reimbursements	(838)	(838)	—
Less late filing penalty	—	—	—
Total program costs	<u>\$ 305,960</u>	142,610	<u>\$ (163,350)</u>
Less amount paid by State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 142,610</u>	
<u>July 1, 2005 through June 2006</u>			
Direct costs:			
Salaries and benefits	\$ 346,620	\$ 346,620	\$ —
Services and supplies	104,892	104,892	—
Total direct costs	451,512	451,512	—
Indirect costs	152,882	152,882	—
Total direct and indirect costs	604,394	604,394	—
Less authorized health fees	(305,891)	(640,077)	(334,186)
Subtotal	298,503	(35,683)	(334,186)
Less offsetting savings/reimbursements	(1,083)	(1,083)	—
Less late filing penalty	(1,000)	(1,000)	—
Adjustment to eliminate negative balance	—	37,766	37,766
Total program costs	<u>\$ 296,420</u>	—	<u>\$ (296,420)</u>
Less amount paid by State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>Summary: July 1, 2003, through June 30, 2006</u>			
Direct costs:			
Salaries and benefits	\$ 1,053,351	\$ 1,053,351	\$ —
Services and supplies	296,946	296,946	—
Total direct costs	1,350,297	1,350,297	—
Indirect costs	447,504	373,000	(74,504)
Total direct and indirect costs	1,797,801	1,723,297	(74,504)
Less authorized health fees	(924,474)	(1,564,463)	(639,989)

Cost Element	Actual Costs Claimed	Allowable per Audit	Audit Adjustments
<u>Summary: July 1, 2003, through June 2006 (continued)</u>			
Subtotal	873,327	158,834	(714,493)
Less offsetting savings/reimbursements	(2,793)	(2,793)	—
Less late filing penalty	(1,000)	(1,000)	—
Adjustment to eliminate negative balance	—	37,766	37,766
Total program costs	<u>\$ 869,534</u>	192,807	<u>\$ (676,727)</u>
Less amount paid by State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 192,807</u>	

¹ Payment information current as of June 14, 2010.

The district believes that its claimed indirect costs rates are appropriate and that it reported the correct amount of health fee revenues. In addition, the district believes that the SCO was not authorized to audit the district's FY 2003-04 claim.

**I. SCO REBUTTAL TO STATEMENT OF DISPUTE—
CLARIFICATION OF REIMBURSABLE ACTIVITIES, CLAIM CRITERIA, AND
DOCUMENTATION REQUIREMENTS**

Parameters and Guidelines

On August 27, 1987, the Commission on State Mandates (Commission) adopted Parameters and Guidelines for Chapter 1, Statutes of 1984, 2nd Extraordinary Session. The Commission amended Parameters and Guidelines on May 25, 1989 (**Exhibit B**), because of Chapter 1118, Statutes of 1987.

Parameters and guidelines (amended May 25, 1989) identify the scope of the mandate and the reimbursable activities as follows.

V. REIMBURSABLE COSTS

A. Scope of Mandate

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

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable to the extent they were provided by the community college district in fiscal year 1986-87
[see Exhibit B for a list of reimbursable items.]

The parameters and guidelines (amended May 25, 1989) provide the following claim preparation criteria:

VI. CLAIM PREPARATION

B. Actual Costs of Claim Year for Providing 1986-87 Fiscal Year Program Level of Service

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) 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. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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.

3. Allowable Overhead Cost

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

The parameters and guidelines (amended May 25, 1989) define supporting data as follows:

VII. SUPPORTING DATA

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 or his agent.

The parameters and guidelines (amended May 25, 1989) define offsetting savings and other reimbursements as follows:

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 . . . authorized by Education Code Section 72246 for health services [now Education Code section 76355].

SCO Claiming Instructions and Filing Instructions

The SCO annually issues claiming instructions, which contain filing instructions for mandated cost programs. The September 2004 claiming instructions provide indirect cost claiming instructions for FY 2003-04. Section 8 of the instructions (**Tab 3**) states, "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,' the Controller's methodology outlined in the following paragraphs [FAM-29C or a 7% indirect cost rate]."

II. DISTRICT OVERSTATED ITS INDIRECT COST RATE CLAIMED

Issue

For FY 2003-04, the district claimed indirect costs based on indirect cost rate that it calculated using the principles of Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget Circular A-21). However, the district did not obtain federal approval for its indirect cost rate proposals (ICRPs).

SCO Analysis:

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

For FY 2003-04, the SCO's claiming instructions (**Tab 3**) state:

A CCD [community college district] may claim indirect costs using the Controller's methodology (FAM-29C) . . . If specially allowed by a mandated program's P's & G's [parameters and guidelines], a district may alternatively choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate. . . .

The SCO calculated indirect cost rates using the Form FAM-29C methodology described in the SCO claiming instructions. The Form FAM-29C methodology did not support the rates that the district claimed.

District's Response

The Controller asserts that the District overstated its indirect costs by \$74,504 for fiscal year 2003-04 because the District's indirect cost rate was not federally approved.

Parameters and Guidelines

No particular indirect cost rate calculation is required by law. The Controller insists that the rate be calculated according to the claiming instructions. The parameters and guidelines state that "[i]ndirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." The District claimed these indirect costs "in the manner" described by the Controller. The correct forms were used and the claimed amounts were entered at the correct locations. Further, "may" is not "shall;" the parameters and guidelines do not *require* that indirect costs be claimed in the manner described by the Controller. In the audit report, the Controller asserts that because the parameters and guidelines specifically reference the claiming instructions, the claiming instructions thereby become authoritative criteria. Since the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are a statement of the Controller's interpretation and not law.

The Controller's interpretation of Section VI of the parameters and guidelines would, in essence, subject claimants to underground rulemaking at the direction of the Commission. The Controller's claiming instructions are unilaterally created and modified without public notice or comment. The Commission would violate the Administrative Procedure Act if it held that the Controller's claiming instructions are enforceable as standards or regulations. In fact, until 2005, the Controller regularly included a "forward" in the Mandated Cost Manual for Community Colleges (September 30, 2003 version attached as Exhibit "E") that explicitly stated the claiming instructions were "issued for the sole purpose of assisting claimants" and "should not be construed in any manner to be statutes, regulations, or standards."

Neither State law nor the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines. . . .

Prior Year CCFS-311

The audit used the most recent CCFS-311 information available for the calculation of the indirect cost rate. The District used the prior year CCFS-311. The CCFS-311 is prepared based on annual costs from the prior fiscal year for use in the current budget year. While the audit report is correct that there is "no-mandate-related authoritative criteria" supporting the District's method, there is also none that supports the Controller's method. As a practical matter, the CCFS-311 for the current year is often not available at the time that mandate reimbursement claims are due. Therefore, the District is unable to rely on that data and must determine its indirect cost rates based on the prior year CCFS-311.

The audit report asserts that the Controller's use of the most recent CCFS-311 is supported by the need to claim only actual costs. However, this is inconsistent with the parameters and guidelines and the Controller's claiming instructions. The parameters and guidelines do not specify any particular method of calculating indirect costs, nor do they require any particular source be used for the data used in the computation. The Controller's claiming instructions, while not enforceable, are also silent to whether the prior or current year CCFS-311 should be used in the FAM-29C methodology. Additionally, the claiming instructions for some programs accept the use of a federally approved rate or a flat 7% rate, which has not relationship at all to actual indirect costs incurred.

As a practical example of the baselessness of the Controller's position on prior year CCFS-311 reports, note that federally approved indirect cost rates are approved for periods of two to four years. This mean the data from which the rates were calculated can be from three to five years removed from the last fiscal year in which the federal rate is used. The longstanding practice of the Controller prior to FY 2004-05 had been to accept federally approved rates. The audit report provides no explanation as to why using data from prior years to calculate indirect cost rates is acceptable for federally approved rates but not acceptable for rates derived under its FAM29-C (sic) method.

EXCESSIVE OR UNREASONABLE

The Controller did not conclude that the District's FY 2003-04 indirect cost rate was excessive. The Controller is authorized to reduce a claim only if it determines the claim to be excessive or unreasonable. Here, the District has computed its indirect cost rates using the CCFS-311 report, and the Controller has disallowed it without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

The Controller has the burden to show that the indirect cost rate used by the District is excessive or unreasonable, pursuant to Government Code Section 17561(d)(2). The audit report never asserts that the indirect cost rate claimed was excessive, only that it was not federally approved, and the auditors decided to recalculate the rate using their own preferred method.

Neither state law nor the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines. The burden of proof is on the Controller to prove that the product of the District's calculation is unreasonable, not to recalculate the rate according to its unenforceable ministerial preferences.

SCO's Comment

Parameters and Guidelines

The district states, "No particular indirect cost rate calculation is required by law." The district infers that it may calculate an indirect cost rate in any manner that it chooses. We disagree with the district's interpretation of the parameters and guidelines. The phrase "may be claimed" simply permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the parameters and guidelines require that it comply with the SCO's claiming instructions. If the district believes that the program's parameters and guidelines are deficient, it should initiate a request to amend the parameters and guidelines pursuant to Government Code section 17557, subdivision (d). However, any such amendment would not apply to this audit period.

The district states that it "claimed these indirect costs 'in the manner' described by the Controller." The district did *not* claim indirect costs in accordance with the SCO's claiming instructions. The district prepared its FY 2003-04 indirect cost rates using Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget (OMB) Circular A-21). However, the district did not obtain federal approval of that rate.

The district believes that the SCO incorrectly interprets the parameters and guidelines. We disagree. The parameters and guidelines are clear and unambiguous. They state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions [emphasis added]. In this case, the parameters and guidelines specifically identify the claiming instructions as authoritative criteria for indirect costs. The district also states:

The Controller's interpretation of Section VI of the parameters and guidelines would, in essence, subject claimants to underground rulemaking. . . . The Controller's claiming instructions are unilaterally created and modified without public notice or comment.

We disagree. Title 2, CCR, Section 1186, allows districts to request that the Commission on State Mandates (Commission) review the SCO's claiming instructions. Section 1186, subdivision (e) through (h) provides districts an opportunity for public comment during the review period. Neither this district nor any other district requested that the Commission review the SCO's claiming instructions (i.e., the district did not exercise its right for public comments). The district may not now request a review of the claiming instructions applicable to the audit period. Title 2, CCR, section 1186, subdivision (j)(2), states, "A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

The district further states, "The Commission would violate the Administrative Procedure Act if it held that the Controller's claiming instructions are enforceable as standards or regulations." We disagree. The Commission adopted the parameters and guidelines pursuant to Government Code section 17557. The parameters and guidelines specifically reference the SCO's claiming instructions for claiming indirect costs. Government Code section 17527, subdivision (g), states that in carrying out its duties and responsibilities, the Commission shall have the following powers:

(g) To adopt, promulgate, amend, and rescind rules and regulations, *which shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act* [emphasis added]. . . .

The district also references the Foreword section to the SCO's claiming instructions (**Exhibit E**); however, the district quotes the Foreword section out of context. The Foreword section actually states:

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, *unless otherwise specified* [emphasis added], these instructions should not be construed in any manner to be statutes, regulations, or standards.

The parameters and guidelines state that claimants may claim indirect costs in accordance with the SCO's claiming instructions. Therefore, the Foreword section does not conflict with our conclusion that the SCO's claiming instructions are authoritative in this instance.

Finally, the district states:

Neither State law or the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines.

We disagree. Government Code section 17564, subdivision (b), states "Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed *in the manner prescribed in the parameters and guidelines* [emphasis added]. . . ." The parameters and guidelines state that claimants may claim indirect costs in the manner described in the SCO's claiming instructions.

Prior Year CCFS-311

The district states, "While the audit report is correct that there are 'no-mandate-related authoritative criteria' supporting the District's method, there is also none that supports the Controller's method." We support the district's conclusion that no mandate-related authoritative criteria support its cost rate methodology. However, we disagree that none support the SCO's method. The parameters and guidelines state that indirect costs may be claimed in accordance with the SCO's claiming instructions. The claiming instructions, along with Government Code section 17558.5 and the parameters and guidelines, require the district to report actual costs. For each fiscal year, "actual costs" are costs of the current fiscal year, not costs from a prior fiscal year.

The district infers that this is "inconsistent" with the parameters and guidelines and the SCO's claiming instructions. However, the district then states, "The parameters and guidelines do not specify any particular method of calculating indirect costs. . . . The Controller's claiming instructions . . . are also silent. . . ." Using the district's points, there can be no inconsistency if the parameters and guidelines and the claiming instructions are silent. In any case, Government Code section 17560, subdivision (a), states "A local agency or school district may . . . file an annual reimbursement claim that details the costs *actually incurred for that fiscal year* [emphasis added]." The district includes additional comments regarding federally approved rates and flat rates; those comments are irrelevant to this Incorrect Reduction Claim. The Health Fee Elimination Program's parameters and guidelines and the SCO's claiming instructions allow claimants to use only the FAM-29C methodology to claim indirect costs.

The district also states, "As a practical matter, the CCFS-311 for the current year is often not available at the time the mandate reimbursement claims are due." We disagree. For the audit period, mandated program claims were due the SCO on January 15 following the fiscal year in which the costs were incurred (the due date was subsequently amended to February 15). Title 5, CCR, section 58305, subdivision (d), states, "On or before the 10th day of October, each district shall submit a copy of its adopted annual financial budget report to the Chancellor." Therefore, the district's CCFS-311 is available well before it must submit its mandated cost claims.

EXCESSIVE OR UNREASONABLE

Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs *and* reduce any claim that the SCO determines is excessive or unreasonable. In addition, Government Code section 12410 states, "The Controller shall audit all claims against the state, and may audit the disbursement of any state money for correctness, legality, and for sufficient provisions of law for payment."

In any case, the SCO did conclude that the district's claim was excessive. Excessive is defined as "Exceeding what is usual, *proper, necessary*, [emphasis added] or normal."¹ The district's indirect cost rate exceeded the proper amount based on the audited indirect cost rate that the SCO calculated according to the claiming instructions.

Further, pursuant to Government Code section 12410, we concluded that the district's claim was neither correct nor legal. Correct is defined as "Conforming to an approved or conventional standard."² Legal is defined as "Conforming to or permitted by law or established rules."³ The district claimed an indirect cost rate that did not conform to the SCO's claiming instructions.

The district states, "Neither State law nor the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines." However, the district did *not* follow the parameters and guidelines. The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district did not comply with the claiming instructions applicable to each fiscal year during the audit period.

¹ Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

² Ibid.

³ Ibid.

III. DISTRICT UNDERSTATED AUTHORIZED HEALTH FEES

Issue

For the audit period, the district understated authorized health service fees by \$639,989. The district believes that it is required to report only actual health service fees received.

SCO Analysis:

The program's parameters and guidelines require a district to deduct authorized health services fees from costs claimed. For the period of July 1, 2003, through December 31, 2005, Education Code section 76355, subdivision (c), authorizes health fees for all students except those students who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; (3) demonstrate financial need. Effective January 1, 2006, Education Code section 76355, subdivision (c)(1) and (2) are applicable. The following table summarizes the authorized fee per student:

Fiscal Year	Authorized Health Fee Rate	
	Fall and Spring Semesters	Summer Session
2003-04	\$12	\$9
2004-05	\$13	\$10
2005-06	\$14	\$11

Government Code section 17514 defines “costs mandated by the state” as any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that Commission shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

District’s Response

The audit report concludes that the District understated offsetting revenue by \$639,989 for the audit period because it claimed student health service fees that were actually collected, rather than those that were “authorized as specified in the Controller’s claiming instructions. However, as previously discussed, the Controller’s claiming instructions are not enforceable because they are unilaterally adopted by the Controller and do not comply with the Administrative Procedure Act. Therefore, they cannot be the basis of an audit finding. The District complied with the parameters and guidelines for the Health Fee Elimination mandate when it properly reported revenue actually received from student health service fees.

The audit report states that it used data from the California Community Colleges Chancellor’s Office to calculate health service fees authorized for each of the fiscal years, without explanation as to how this data, which is “extracted” from data reported by the District, is more reliable or relevant than the District’s own records. However, this issue is not determinative of the outcome since the proper offset for health service fee revenue is calculated by fees actually received in accordance with the parameters and guidelines.

Parameters and Guidelines

The parameters and guidelines, which control reimbursement under the Health Fee Elimination mandate, state:

Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursements 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 [student fees] as authorized by Education Code Section 72246(a)⁴

⁴ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, and was replaced by Education Code Section 76355.

In order for the District to “experience” these “offsetting savings” the District must actually have collected these fees. Note that the student health fees are named as a potential source of the reimbursement *received* in the preceding sentence. The use of the term “any offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not. Thus, the Controller’s conclusion is based on an illogical interpretation of the parameters and guidelines.

The audit report claims that the Commission’s intent was for claimed costs to be reduced by fees authorized, rather than fees received as stated in the parameters and guidelines. It is true that the Department of Finance proposed, as part of the amendments that were adopted on May 25, 1989,

that a sentence be added to the offsetting savings section expressly stating that if no health service fee was charged, the claimant would be required to deduct the amount authorized. However, the Commission declined to add this requirement and adopted the parameters and guidelines without this language.

The fact that the Commission staff and the California Community College Chancellors Office agreed with the Department of Finance's interpretation does not negate the fact that the Commission adopted parameters and guidelines that *did not* include the additional language. It would be nonsensical if the Commission held that every proposal that is discussed was somehow implied in the adopted document, because the proposals of the various parties are often contradictory. Therefore, it is evident that the Commission intends the language of the parameters and guidelines to be construed as written, and only those savings that are *experienced* are to be deducted.

Education Code Section 17556 (sic)

The Controller continues to rely on Education Code Section 17556(d), while neglecting its context and omitting a crucial clause. Section 17556(d) does specify that the Commission on State Mandates shall not find costs mandated by the state if the local agency has the authority to levy fees, but only if those fees are "*sufficient to pay for the mandated program*" (emphasis added). Section 17556 pertains specifically to the Commission's determination on a test claim, and does not concern the development of parameters and guidelines of the claiming process. The Commission has already found state-mandated costs for this program, and the Controller cannot substitute its judgment for that of the Commission through the audit process.

The two court cases the audit report relies upon (*County of Fresno v. California* (1991) 53 Cal.3rd 482 and *Connell v. Santa Margarita* (1997) 59 Cal.App.4th 382) are similarly misplaced. Both cases concern the approval of a test claim by the Commission. They do not address the issue of offsetting revenue in the reimbursement stages, only whether there is fee authority *sufficient to fully fund* the mandate that would prevent the Commission from finding costs mandated by the state.

In *County of Fresno*, the Commission had specifically found that the fee authority was sufficient to fully fund the test claim activities and denied the test claim. The court simply agreed to uphold this determination because Government Code Section 17556(d) was consistent with the California Constitution. The Health Fee Elimination mandate, decided by the Commission, found that the fee authority is not sufficient to fully fund the mandate. Thus, *County of Fresno* is not applicable because it concerns the activity of approving or denying a test claim and has no bearing on the annual claim reimbursement process.

Similarly, although a test claim had been approved and parameters and guidelines were adopted, the court in *Connell* focused its determination on whether the initial approval of the test claim had been proper. It did not evaluate the parameters and guidelines or the reimbursement process because it found that the initial approval of the test claim had been in violation of Section 17556(d).

SCO's Comment

We disagree with the district's inference that the disallowance was based on the Controller's claiming instructions. Our audit report clearly identifies Government Code sections 17514 and 17556 as the basis for our audit adjustments.

The district states:

The audit report states that it used data from the California Community College Chancellor's Office [CCCCO] to calculate health service fees authorized. . . without explanation as to how this data, which is "extracted" from data reported by the District, is more reliable or relevant than the District's own records

The district's comment is invalid. The district distinguishes between data received from the CCCCCO versus "the District's own records." It is the same data. The SCO receives the student enrollment and Board of Government Grant (BOGG) recipient data from the CCCCCO; this data is extracted directly from data that the district submitted to the CCCCCO.

The CCCCCO has not informed us that the data was unreliable. As of report's date, the district has not provided any evidence that the enrollment numbers from the CCCCCO are incorrect.

Parameters and Guidelines

We disagree with the district's interpretation of the parameters and guidelines' requirement regarding authorized health service fees. The Commission clearly recognized the *availability* of another funding source by including the fees as offsetting savings in parameters and guidelines. The Commission's staff analysis of May 25, 1989 (Tab 4), states the following regarding the proposed parameters and guidelines amendments that the Commission adopted that day:

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

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

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

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

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

The district concludes that the Commission "declined" to add the sentence proposed by the DOF. We disagree. The Commission did not revise the proposed parameters and guidelines amendments further, as the Commission's staff concluded that DOF's proposed language did not substantively change the scope of the staff's proposed language. The Commission, DOF, and CCCCCO all agreed with the intent to offset authorized health service fees. As noted above, the Commission staff analysis *agreed* with the DOF proposed language. The Commission staff concluded that it was unnecessary to revise the proposed parameters and guidelines, as the proposed language did "not substantively change the scope of Item VIII." The Commission's meeting minutes of May 25, 1989 (Tab 5) show that the Commission adopted the proposed parameters and guidelines on consent (i.e., the Commission concurred with its staff's analysis). The Health Fee Elimination Program amended parameters and guidelines were Item 6 on the meeting agenda. The meeting minutes state, "There being no discussion or appearances on Items 2, 3, 4, 5, 6, 7, 10, and 12, Member Buenrostro *moved adoption of the staff recommendation on these items* [emphasis added] on the consent calendar. . . . The motion carried." Therefore, no community college districts objected and there was no change to the Commission's interpretation regarding authorized health service fees.

Government Code Section 17556

The district's response erroneously refers to "Education Code Section 17556," rather than Government Code section 17556. The district believes that Government Code section 17556, subdivision (d), applies only when the fee authority is sufficient to offset the "entire" mandated

costs. We disagree. The Commission recognized that the Health Fee Elimination Program's costs are not uniform between districts. Districts provided different levels of service in FY 1986-87 (the "base year"). Furthermore, districts provided these services at varying costs. As a result, the fee authority may be sufficient to pay for some districts' mandated program costs, while it is insufficient for other districts. Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the Commission adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. To the extent that districts have authority to charge a fee, they are not required to incur a cost, as defined by Government Code section 17514. We agree that the Commission found state-mandated costs for this program through the test claim process; however, the state-mandated costs found are those that are not otherwise reimbursable by authorized fees or other offsetting savings and reimbursements.

The district believes that the audit report's reliance on two court cases is "misplaced." We disagree. *County of Fresno v. State of California* (1991) 53 Cal.3d 482 (which is also referenced by *Connell v. Santa Margarita Water District* (1997) 59 Cal. App. 4th 382) states, in part:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. . . . Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus although its language broadly declares that the "state shall provide a subvention of fund Reimburse . . . local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state . . . if, after a hearing, the commission finds that "the local government" has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." *Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes* [emphasis added]. Such a construction is altogether sound. As the discussion makes clear, *the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes* [emphasis added]. . . .

Thus, mandated costs exclude expenses that are recoverable from sources other than taxes—in this case, the authority to assess health service fees.

IV. STATUTE OF LIMITATIONS

Issue

The audit scope included FY 2003-04 through FY 2005-06. The district believes that FY 2003-04 were not subject to audit at the time the SCO initiated its audit.

District's Response

December 13, 2004	FY 2003-04 claim filed by the District
December 13, 2007	FY 2003-04 statute of limitations for audit expires
October 16, 2008	Audit entrance conference for all fiscal years

This was not an audit finding. The District asserts that the audit of the FY 2003-04 annual reimbursement claim commenced after the time limitation for audit had passed. No payment was made to the District for this claim. However, the clause in Government Code Section 17558.8 that delays the commencement of the time for the Controller to audit to the date of initial payment is void because it is impermissibly vague.

Applicable Time Limitation for Audit

Prior to January 1, 1994, no statute specifically governed the statute of limitations for audits of mandate reimbursement claims. Statutes of 1993, Chapter 906, Section 2, operative January 1, 1994, added Government Code Section 17558.5 to establish for the first time specific statute of limitations for audit of mandate reimbursement claims:

- (a) 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 four 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.

Statutes of 1995, Chapter 945, Section 13, operative July 1, 1996, repealed and replaced Section 17558.5, changing only the length of the period of limitations:

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

The annual reimbursement claim for FY 2003-04 is subject to the three-year statute of limitations established by Chapter 1128, Statutes of 2002 which requires the audit to be "initiated" within three years of the date the actual claim is filed.

The amendment is pertinent because this is the first time that the factual issue of the date the audit is "initiated" is introduced for mandate programs for which funds are appropriated. This amendment also means that it is impossible for the claimant to know when the statute of limitations will expire at the time the claim is filed, which is contrary to the purpose of a statute of limitations. It allows the Controller's own unilateral delay, or failure to make payments from funds appropriated for the purpose of paying the claims, to control the tolling of the statute of limitations, which is also contrary to the purpose of a statute of limitations.

Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended Section 17558.5 to state:

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

This amendment has no effect on the FY 2003-04 annual reimbursement claim because it was effective after the date that claim was filed.

Vagueness

The version of Section 17558.5 applicable to the FY 2003-04 annual reimbursement claim provides that the time limitation for audit "shall" commence to run from the date of initial payment" if no payment is made. However, this provision is void because it is impermissibly

vague. At the time a claim is filed, the claimant has no way of knowing when payment will be made or how long the records applicable to that claim must be maintained....Additionally, it is possible for the Controller to unilaterally extend the audit period by withholding payment or directing appropriated funds only to those claims that have already been audited.

Therefore, the only specific and enforceable time limitation to commence an audit is three years from the date the claim was filed, and the annual reimbursement claim for FY 2003-04 was past this time period when the audit was commenced on October 16, 2008. All adjustments to this fiscal year are void and should be withdrawn.

SCO's Comment

The district discusses statutory language effective prior to January 1, 2003; however, that language is irrelevant to the claims that are the subject of this Incorrect Reduction Claim.

Regarding relevant statutory language, the district states, “. . . the clause in Government Code section 17558.5 that delays the commencement of the time for the Controller to audit to the date of initial payment is void because it is impermissibly vague.” We disagree. The district has no authority to adjudicate statutory language. Title 2, CCR, section 1185, subdivision (e)(3) states, “If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim.” The district presented no evidence to support its assertion that existing statutory language is “void.”

The district also states, “. . . it is possible for the Controller to unilaterally extend the audit period by withholding payment or directing appropriated funds only to those claims that have already been audited.” The district's allegation contradicts statutory language. Government Code section 17567 prohibits the SCO from directing funds to selected claims. It states:

In the event that the amount appropriated for reimbursement purposes pursuant to Section 17561 is not sufficient to pay all of the claims approved by the Controller, the Controller shall prorate claims in proportion to the dollar amount of approved claims timely filed and on hand at the time proration [emphasis added]. . . .

In addition, Government Code section 17561, subdivision (d), prohibits the SCO from withholding payment. It states:

The Controller shall pay any eligible claim pursuant to this section by October 15 or 60 days after the date the appropriation for the claim is effective, whichever is later. . . .

The SCO initiated its audit within the period allowed by Government Code section 17558.5, subdivision (a), which states:

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* [emphasis added].

For its FY 2003-04 claim, the district has not received a payment. The SCO initiated its audit on October 16, 2008. Therefore, the SCO met the requirements of Government Code section 17558.5, subdivision (a).

VII. CONCLUSION

The State Controller's Office audited the Long Beach Community College District's claims for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2003, through June 30, 2006. The district claimed \$869,534 (\$870,534 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$192,807 is allowable and \$676,727 is unallowable. The unallowable costs occurred primarily because the district claimed ineligible costs and understated authorized health service fees.

The district overstated its indirect cost rates, thus overstating its indirect costs by \$74,504 for FY 2003-04. The district did not obtain federal approval of its indirect cost rate proposal prepared using OMB Circular A-21 methodology. Additionally, the district used expenditures from the prior year's CCFS-311 to prepare the indirect cost rate in that fiscal year. The SCO calculated the indirect cost rate based on the FAM-29C methodology that the parameters and guidelines and the SCO's claiming instructions allow; this rate did not support the rate claimed.

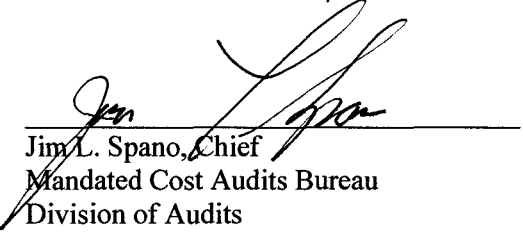
Further, the district understated authorized health fees by \$639,989 for the audit period. The district reported actual revenue received rather than health fees the district was authorized to collect.

In conclusion, the Commission on State Mandates should find that: (1) the SCO initiated its audit of FY 2003-04 within the timeframe provided by Government Code section 17558.5, subdivision (a); (2) the SCO correctly reduced the district's FY 2003-04 claim by \$216,957; (3) the SCO correctly reduced the district's FY 2004-05 claim by \$163,350; and (4) the SCO correctly reduced the district's FY 2005-06 claim by \$296,420.

VIII. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on November 26, 2014, at Sacramento, California, by:



Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 3

perform the mandated activity. The claimant must give the name of the contractor, explain the reason for having to hire a contractor, describe the mandated activities performed, give the dates when the activities were performed, the number of hours spent performing the mandate, the hourly billing rate, and the total cost. The hourly billing rate shall not exceed the rate specified in the Parameters and Guidelines for the mandated program. The contractor's invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the Parameters and Guidelines for the particular mandate. Equipment rentals used solely for the mandate are reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the prorata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the Parameters and Guidelines specify them as allowable. If they are allowable, the claiming instructions for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the prorata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the Parameters and Guidelines may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation, number of private auto miles traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits

derived by the mandate.

A community 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.

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. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The 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 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 community 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 costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees 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 Development, Staff Diversity, 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 indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	\$19,590,357	\$1,339,059	\$18,251,298	\$0	\$18,251,298
Instructional Administration and Instructional Governance	6000					
Academic Administration	6010	2,941,386	105,348	2,836,038	0	2,836,038
Course and Curriculum Develop.	6020	21,595	0	21,595	0	21,595
Academic/Faculty Senate	6030					
Other Instructional Administration & Instructional Governance	6090					
Instructional Support Services	6100					
Learning Center	6110	22,737	863	21,874	0	21,874
Library	6120	518,220	2,591	515,629	0	515,629
Media	6130	522,530	115,710	406,820	0	406,820
Museums and Galleries	6140	0	0	0	0	0
Academic Information Systems and Tech.	6150					
Other Instructional Support Services	6190					
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300					
Student Counseling and Guidance	6310					
Matriculation and Student Assessment	6320					
Transfer Programs	6330					
Career Guidance	6340					
Other Student Counseling and Guidance	6390					
Other Student Services	6400					
Disabled Students Programs & Services	6420					
Subtotal		\$24,201,764	\$1,576,523	\$22,625,241	\$0	\$22,625,241

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
Extended Opportunity Programs & Services	6430						
Health Services	6440	0	0	0	0	0	
Student Personnel Admin.	6450	289,926	12,953	276,973	0	276,973	
Financial Aid Administration	6460	391,459	20,724	370,735	0	370,735	
Job Placement Services	6470	83,663	0	83,663	0	83,663	
Veterans Services	6480	25,427	0	25,427	0	25,427	
Miscellaneous Student Services	6490	0	0	0	0	0	
Operation & Maintenance of Plant	6500						
Building Maintenance and Repairs	6510	1,079,260	44,039	1,035,221	72,465	962,756	
Custodial Services	6530	1,227,668	33,677	1,193,991	83,579	1,110,412	
Grounds Maintenance and Repairs	6550	596,257	70,807	525,450	36,782	488,668	
Utilities	6570	1,236,305	0	1,236,305	86,541	1,149,764	
Other	6590	3,454	3,454	0	0	0	
Planning, Policy Making, and Coordination	6600	587,817	22,451	565,366	565,366	0	
General Inst. Support Services	6700						
Community Relations	6710	0	0	0	0	0	
Fiscal Operations	6720	634,605	17,270	617,335	553,184	(a) 64,151	
Human Resources Management	6730						
Noninstructional Staff Benefits & Incentives	6740						
Staff Development	6750						
Staff Diversity	6760						
Logistical Services	6770						
Management Information Systems	6780						
Subtotal		\$30,357,605	\$1,801,898	\$28,555,707	\$1,397,917	\$27,437,157	

Table 4. Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
General Inst. Sup. Serv. (cont.)	6700					
Other General Institutional Support Services	6790					
Community Services and Economic Development	6800					
Community Recreation	6810	703,858	20,509	683,349	0	683,349
Community Service Classes	6820	423,188	24,826	398,362	0	398,362
Community Use of Facilities	6830	89,877	10,096	79,781	0	79,781
Economic Development	6840					
Other Community Svcs. & Economic Development	6890					
Ancillary Services	6900					
Bookstores	6910	0	0	0	0	0
Child Development Center	6920	89,051	1,206	87,845	0	87,845
Farm Operations	6930	0	0	0	0	0
Food Services	6940	0	0	0	0	0
Parking	6950	420,274	6,857	413,417	0	413,417
Student and Co-curricular Activities	6960	0	0	0	0	0
Student Housing	6970	0	0	0	0	0
Other	6990	0	0	0	0	0
Auxiliary Operations	7000					
Contract Education	7010	1,124,557	12,401	1,112,156	0	1,112,156
Other Auxiliary Operations	7090	0	0	0	0	0
Physical Property Acquisitions	7100	814,318	814,318	0	0	0
(05) Total		\$34,022,728	\$2,692,111	\$31,330,617	\$1,397,917	\$30,212,067
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				4.63%		
(07) Notes						
(a) Mandated Cost activities designated as direct costs per claim instructions						
(b) 7% of Operation and Maintenance of Plant costs are shown as indirect in accordance with claiming instructions.						

Tab 4

Hearing: 5/25/89
File Number: CSM-4206
Staff: Deborah Fraga-Decker
WP 0366d

PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS
Chapter 1, Statutes of 1984, 2nd E.S.
Chapter 1118, Statutes of 1987
Health Fee Elimination ✓

Executive Summary

At its hearing of November 20, 1986, the Commission on State Mandates found that Chapter 1, Statutes of 1984, 2nd E.S., imposed state mandated costs upon local community college districts by (1) requiring those community college districts which provided health services for which it was authorized to and did charge a fee to maintain such health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter and (2) repealing the district's authority to charge a health fee. The requirements of this statute would repeal on December 31, 1987, unless subsequent legislation was enacted.

Chapter 1118, Statutes of 1987, was enacted September 24, 1987, and became effective January 1, 1988. Chapter 1118/87 modified the requirements contained in Chapter 1/84, 2nd E.S., to require those community college districts which provided health services in fiscal year 1986-87 to maintain such health services in the 1987-88 fiscal year and each fiscal year thereafter. Additionally, the language contained in Chapter 1/84, 2nd E.S., which repealed the districts' authority to charge a health fee to cover the costs of the health services program was allowed to sunset, thereby reinstating the districts' authority to charge a fee as specified. Parameters and guidelines amendments are appropriate to address the changes contained in Chapter 1118/87 because this statute amended the same Education Code sections previously enacted by Chapter 1/84, 2nd E.S., and found to contain a mandate.

Commission staff included the Department of Finance suggested non-substantive amendment to the staff's proposed parameters and guidelines amendments. The Chancellor's Office, the State Controller's Office, and the claimant are in agreement with these amendments. Therefore, staff recommends that the Commission adopt the parameters and guidelines amendments as requested by the Chancellor's Office and as developed by staff.

Claimant

Rio Hondo Community College District

Requesting Party

California Community Colleges Chancellor's Office

Chronology

- 12/2/85 Test Claim filed with Commission on State Mandates.
- 7/24/86 Test Claim continued at claimant's request.
- 11/20/86 Commission approved mandate.
- 1/22/87 Commission adopted Statement of Decision.
- 4/9/87 Claimant submitted proposed parameters and guidelines.
- 8/27/87 Commission adopted parameters and guidelines
- 10/22/87 Commission adopted cost estimate
- 9/28/88 Mandate funded in Commission's Claims Bill, Chapter 1425/88

Summary of Mandate

Chapter 1/84, 2nd E.S., effective July 1, 1984, repealed Education Code (EC) Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. The statute also required that any community college district which provided health services for which it was authorized to charge a fee shall maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter.

Prior to the passage of Chapter 1/84, 2nd E.S., the implementation of a health services program was at the local community college district's option. If implemented, the respective community college district had the authority to charge a health fee up to \$7.50 per semester for day and evening students, and \$5 per summer session.

Proposed Amendments

The Community Colleges Chancellor's Office (Chancellor's Office) has requested parameters and guidelines amendments be made to address the changes in mandated activities effectuated by Chapter 1118/87. (Attachment G) In order to expedite the process, staff has developed language to accomplish the following: (1) change the eligible claimants to those community college districts which provided a health services program in fiscal year 1986-87; and (2) change the offsetting savings and other reimbursements to include the reinstated authority to charge a health fee. (Attachment B)

Recommendations

The Department of Finance (DOF) proposed one non-substantive amendment to clarify the effect of the fee authority language on the scope of the reimbursable costs. With this amendment, the DOF believes the amendments to the parameters and guidelines are appropriate for this mandate and recommends the Commission adopt them. (Attachment C)

The Chancellor's Office recommends that the Commission approve the amended parameters and guidelines developed by staff with the additional language suggested by the DOF. (Attachment D)

The State Controller's Office (SCO), upon review of the proposed amendments, finds the proposals proper and acceptable. (Attachment E)

The claimant, in its recommendation, states its belief that the revisions are appropriate and concurs with the proposed changes. (Attachment F)

Staff Analysis

Issue 1: Eligible Claimants

The mandate found in Chapter 1/84, 2nd E.S., was for a new program with a required maintenance of effort at the fiscal year 1983-84 level. Chapter 1118/87 superseded that level of service by requiring that community college districts which provided a health services program in fiscal year 1986-87 maintain that level of effort in fiscal year 1987-88 and each subsequent year thereafter. Additionally, this expanded the group of eligible claimants because the requirement is no longer imposed on only those community college districts which had charged a health fee for the program. At the time of enactment of Chapter 1118/87, there were 11 community college districts which provided the health services program but had never charged a health fee for the service.

Therefore, staff has amended the language in Item III. "Eligible Claimants" to reflect this change in the scope of the mandate.

Issue 2: Reimbursement Alternatives

In response to Chapter 1/84, 2nd E.S., Item VI.B. contained two alternatives for claiming reimbursement costs. This gave claimants a choice between claiming actual costs for providing the health services program, or funding the program as was done prior to the mandate when a health fee could be charged.

The first alternative was in Item VI.B.1. and provided for the use of the formula which the eligible claimants were authorized to utilize prior to the implementation of Chapter 1/84, 2nd E.S.--total eligible enrollment multiplied by the health fee charged per student in fiscal year 1983-84. With the sunset of the repeal of the health fee authority as contained in Chapter 1/84, 2nd E.S., claimants can now charge the health fee as was allowed prior to fiscal year 1983-84, thereby funding the program as was done prior to the mandate. Therefore, this alternative is no longer applicable to this mandate and has been deleted by staff.

The second alternative was in Item VI.B.2. and provided for the claiming of actual costs involved in maintaining a health services program at the fiscal year 1983-84 level. This alternative is now the sole method of reimbursement for this mandate. However, it has been amended to reflect that Chapter 1118/87 requires a maintenance of effort at the fiscal year 1986-87 level.

Issue 3: Offsetting Savings and Other Reimbursements

With the sunset of the repeal of the fee authority contained in Chapter 1/84, 2nd E.S., Education Code (EC) section 72246(a) again provides community college districts with the authority to charge a health fee as follows:

"72246.(a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents (\$7.50) for each semester, and five dollars (\$5) for summer school, or five dollars (\$5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both."

Staff amended Item "VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of this fee authority.

In response to that amendment, the DOF has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants' reimbursable costs:

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

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

Issue 4: Editorial Changes

In preparing the proposed parameters and guidelines amendments, it was not necessary for staff to make any of the normal editorial changes as the original parameters and guidelines contained the language usually adopted by the commission.

Staff, the DOF, the Chancellor's Office, the SCO, and the claimant are in agreement with the recommended amendments which are shown in Attachment A with additions indicated by underlining and deletions by strikeout.

Staff Recommendation

Staff recommends the adoption of the staff's proposed parameters and guidelines amendments, which are based on the original parameters and guidelines adopted in response to Chapter 1/84, 2nd E.S., and amended in response to Chapter 1118/87, as well as incorporating the amendment recommended by the DOF. All parties concur with these amendments.

Adopted: 8/27/87

PARAMETERS AND GUIDELINES
Chapter 1118, Statutes of 1987 ~~11/2/87~~ ~~11/2/87~~
Health Fee Elimination

I. SUMMARY OF MANDATE

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. This statute also required that health services for which a community college district charged a fee during the 1983-84 fiscal year had to be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community colleges districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 to require any community college district that provided health services in 1986-87 to maintain health services at the level provided during the 1986-87 fiscal year in 1987-88 and each fiscal year thereafter.

II. COMMISSION ON STATE MANDATES' DECISION

At its hearing on November 20, 1986, the Commission on State Mandates determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983-84 fiscal year to maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement applies to all community college districts which levied a health services fee in the 1983-84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983-84 fiscal year level.

At its hearing of April 27, 1989, the Commission determined that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to apply to all community college districts which provided health services in fiscal year 1986-87 and required them to maintain that level in fiscal year 1987-88 and each fiscal year thereafter.

III. ELIGIBLE CLAIMANTS

Community college districts which provided health services ~~for~~ ~~in~~ 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1, Statutes of 1984, 2nd E.S., became effective July 1, 1984. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30th following a given fiscal year to establish for that fiscal year. The test claim for this mandate was filed on November 27, 1985; therefore, costs incurred on or after July 1, 1984, are reimbursable. Chapter 1118, Statutes of 1987, became effective January 1, 1988. Title 2, California Code of Regulations, section 1185.3(a) states that a parameters and guidelines amendment filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines; therefore, costs incurred on or after January 1, 1988, for Chapter 1118, Statutes of 1987, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim if applicable. Pursuant to Section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed; except as otherwise allowed by Government Code Section 17564.

V. REIMBURSEMENTABLE COSTS

A. Scope of Mandate

Eligible community college districts shall be reimbursed for the costs of providing a health services program ~~without the authority to levy a fee~~. Only services provided ~~for the~~ in 1986-87 fiscal year may be claimed.

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable to the extent they were provided by the community college district in fiscal year ~~1983-84~~ 1986-87:

ACCIDENT REPORTS

APPOINTMENTS

- College Physician - Surgeon
- Dermatology, Family Practice, Internal Medicine
- Outside Physician
- Dental Services
- Outside Labs (X-ray, etc.)
- Psychologist, full services
- Cancel/Change Appointments
- R.N.
- Check Appointments

ASSESSMENT, INTERVENTION & COUNSELING

Birth Control
Lab Reports
Nutrition
Test Results (office)
VD
Other Medical Problems
CD
URI
ENT
Eye/Vision
Derm./Allergy
Gyn/Pregnancy Services
Neuro
Ortho
GU
Dental
GI
Stress Counseling
Crisis Intervention
Child Abuse Reporting and Counseling
Substance Abuse Identification and Counseling
Aids
Eating Disorders
Weight Control
Personal Hygiene
Burnout

EXAMINATIONS (Minor Illnesses)

Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

Sexually Transmitted Disease
Drugs
Aids
Child Abuse
Birth Control/Family Planning
Stop Smoking
Etc.
Library - videos and cassettes

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

Diphtheria/Tetanus
Measles/Rubella
Influenza
Information

INSURANCE

On Campus Accident
Voluntary
Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE
Inquiry/Interpretation
Pap Smears

PHYSICALS
Employees
Students
Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)
Antacids
Antidiarrhial
Antihistamines
Aspirin, Tylenol, etc.
Skin rash preparations
Misc.
Eye drops
Ear drops
Toothache - Oil cloves
Stingkill
Midol - Menstrual Cramps

PARKING CARDS/ELEVATOR KEYS
Tokens
Return card/key
Parking inquiry
Elevator passes
Temporary handicapped parking permits

REFERRALS TO OUTSIDE AGENCIES
Private Medical Doctor
Health Department
Clinic
Dental
Counseling Centers
Crisis Centers
Transitional Living Facilities (Battered/Homeless Women)
Family Planning Facilities
Other Health Agencies

TESTS
Blood Pressure
Hearing
Tuberculosis
Reading
Information
Vision
Glucometer
Urinalysis
Hemoglobin
E.K.G.
Strep A testing
P.G. testing
Monospot
Hemacult
Misc.

A. Description of Activity

1. Show the total number of full-time students enrolled per semester/quarter.
2. Show the total number of full-time students enrolled in the summer program.
3. Show the total number of part-time students enrolled per semester/quarter.
4. Show the total number of part-time students enrolled in the summer program.

B. Outstanding Alternatives

Claimed costs should be supported by the following information:

Alternative 1 // Fees Previously Collected in 1983-84 Fiscal Year /
 1/ Fees Collected in the 1983-84 Fiscal Year to Support the Health Services Program

2/ Total Number of Students Under Item 11/11/1 through 4/ above // Including this Alternative // the Total Amount Claimed/ would be Item 11/11/1 // multiplied by Item 11/12/1 // with the Total Amount Reported/ increased by the appropriate Topical Price Factor /

Alternative 2 // Actual Costs of Claim Year for Providing 1986-87 Fiscal Year Program Level of Service.

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) 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. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

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.

3. Allowable Overhead Cost

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

VII. SUPPORTING DATA

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 1983-84 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 or his agent.

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) now received from individuals other than students who were not covered by former Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct;

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with;

and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

CHANCELLOR'S OFFICE

GEORGE DEUKMEIAN, Governor

CALIFORNIA COMMUNITY COLLEGES

1100 N STREET
 SACRAMENTO, CALIFORNIA 95814
 (916) 445-8752 445-1163



February 22, 1989



Mr. Robert W. Eich
 Executive Director
 Commission on State Mandates
 1130 "K" Street, Suite LL50
 Sacramento, CA 95814-3927

Dear Mr. Eich:

As you know, the Commission on August 27, 1987 adopted Parameters and Guidelines for claiming reimbursements of mandated costs related to community college health services. Fees formerly collected by community colleges had been eliminated by Chapter 1, Statutes of 1984, Second Extraordinary Session. Last year's mandate claims bill (AB 2763) included funding to pay all these claims through 1988-89.

The Governor's partial approval of AB 2763 last September included a stipulation that claims for the current year would be paid this fiscal year, but prior-year claims will be paid in equal installments from the next three budget acts. The Governor did not address the fact that the ongoing costs of providing the mandated level of service will continue to exceed the maximum permissible fee of \$7.50 per student per semester.

On behalf of all eligible community college districts, the Chancellor's Office proposes the following changes in the Parameters and Guidelines:

- o Payment of 1988-89 mandated costs in excess of maximum permissible fees. (This amount is payable from AB 2763.)
- o Payment of all prior-year claims in installments over the next three years. (Funds for these payments will be included in the next 3 budget acts.)
- o Payment of future-years mandated costs in excess of the maximum permissible fees. (No funding has yet been provided for these costs.)

Mr. Eich

2

February 22, 1989

If you have any questions regarding this proposal, please contact Patrick Ryan at (916) 445-1163.

Sincerely,

David Mertes

DAVID MERTES
Chancellor

DM:PR:mh

cc: Deborah Fraga-Decker, CSM
Douglas Burris
Joseph Newmyer
Gary Cook

State of California

Memorandum

March 22, 1989

To : Deborah Fraga-Decker
Program Analyst
Commission on State Mandates

From : Department of Finance

Proposed Amendments to Parameters and Guidelines for Claim No. CSM-4206 -- Chapter 1, Statutes of 1984, 2nd E.S. and Chapter 1118, Statutes of 1987 -- Health Fee Elimination

Pursuant to your request, the Department of Finance has reviewed the proposed amendments to the parameters and guidelines related to community college health services. These amendments, which are requested by the Chancellor's Office, reflect the impact that Chapter 1118/87 has on the original parameters adopted by the Commission for Chapter 1/84 on August 27, 1987. Specifically, Chapter 1118/87:

- (1) requires districts which were providing health services in 1986-87, rather than 1983-84, to continue to provide such services, irrespective of whether or not a fee was charged for the services; and
- (2) allows all districts to again charge a fee of up to \$7.50 per student for the services. In this regard, we would point out that the proposed amendment to "VIII. Offsetting Savings, and Other Reimbursements" could be interpreted to require that, if a district elected not to charge fees it would not have to deduct anything from its claim. We believe that, pursuant to Section 17556 (d) of the Government Code, an amount equal to \$7.50 per student must be deducted whether or not it is actually charged since the district has the authority to levy the fee. We suggest that the following language be added as a second paragraph under "VIII": "If a claimant does not levy the fee authorized by Education Code Section 72246 (a), it shall deduct an amount equal to what it would have received had the fee been levied."

With the amendment described above, we believe the amendments to the parameters and guidelines are appropriate for this mandate and recommend the Commission adopt them at its April 27, 1989, meeting.

Any questions regarding this recommendation should be directed to James M. Apps or Kim Clement of my staff at 324-0043.


Fred Klass
Assistant Program Budget Manager

cc: see second page

cc: Glen Beattie, State Controller's Office
Pat Ryan, Chancellor's Office, Community College
Juliet Musso, Legislative Analyst's Office
Richard Frank, Attorney General

LR:1988-2

OFFICE

GEORGE DEUKERMAN, Governor

CALIFORNIA COMMUNITY COLLEGES

1201 NINTH STREET
 SACRAMENTO, CALIFORNIA 95814
 916/425-4732 445-1163

April 3, 1989



Mr. Robert W. Eich
 Executive Director
 Commission on State Mandates
 170 K Street, Suite LL50
 Sacramento, CA 95814

Attention: Ms. Deborah Fraga-Decker

Subject: CSM 4206
 Amendments to Parameters and Guidelines
 Chapter 1, Statutes of 1984, 2nd E.S.
 Chapter 118, Statutes of 1987
Health Fee Elimination

Dear Mr. Eich:

In response to your request of March 8, we have reviewed the proposed language changes necessary to amend the existing parameters and guidelines to meet the requirements of Chapter 1118, Statutes of 1987.

The Department of Finance has also provided us a copy of their suggestion to add the following language in part VIII: "If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied." This office concurs with their suggestion which is consistent with the law and with our request of February 22.

With the additional language suggested by the Department of Finance, the Chancellor's Office recommends approval of the amended parameters and guidelines as drafted for presentation to the Commission on April 27, 1989.

Sincerely,

DAVID MERTES
 Chancellor

DM:PR:mh

cc: Jim Apps, Department of Finance
 Glen Beatie, State Controller's Office
 Richard Frank, Attorney General's Office
 Juliet Muso, Legislative Analyst's Office
 Douglas Burris
 Joseph Newmyer
 Gary Cook



GRAY DAVIS
Controller of the State of California
P.O. BOX 942850
SACRAMENTO, CA 94250-0001

April 3, 1989

Ms. Deborah Fraga-Decker
Program Analyst
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814



Dear Ms. Fraga-Decker:

RE: Proposed Amendments to Parameters and Guidelines: Chapter 1/84, 2nd
E.S., and Chapter 1118/87 - Health Fee Elimination

We have reviewed the amendments proposed on the above subject and find the proposals proper and acceptable.

However, the Commission may wish to clarify section "VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS" that the required offset is the amount received or would have received per student in the claim year.

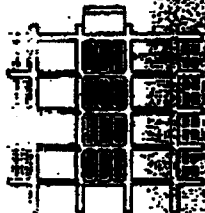
If you have any questions, please call Glen Bestie at 3-8137.

Sincerely,

Glenn Haas, Assistant Chief
Division of Accounting

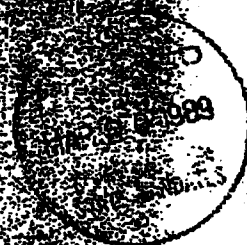
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SC81822



KRI/EO

RIO HONDO COMMUNITY COLLEGE DISTRICT
3600 Workman Mill Road • Whittier, CA 90608 • Phone (714) 861-2100



March 16, 1989

Ms. Deborah Fraga-Decker
Program Analyst
Commission on State Mandates
1130 K Street, Suite 1150
Sacramento, CA 95814

REFERENCE: CSM-4206
AMENDMENTS TO PARAMETERS AND GUIDELINES
CHAPTER 1, STATUTES OF 1984, 2ND E.S.
CHAPTER 1118, STATUTES OF 1987
HEALTH FEE ELIMINATION

Dear Deborah:

We have reviewed your letter of March 7 to Chancellor David Montes and the attached amendments to the health fee parameters and guidelines. We believe these revisions to be most appropriate and concur totally with the changes you have proposed.

I would like to thank you again for your expertise and helpfulness throughout this entire process.

Yours very truly,

Timothy M. Wood
Vice President
Administrative Affairs

TMW: bh

Tab 5

MINUTES

COMMISSION ON STATE MANDATES

May 25, 1989

10:00 a.m.

State Capitol, Room 437
Sacramento, California

Present were: Chairperson Russell Gould, Chief Deputy Director, Department of Finance; Fred R. Buenrostro, Representative of the State Treasurer; D. Robert Shuman, Representative of the State Controller; Robert Martinez, Director, Office of Planning and Research; and Robert C. Creighton, Public Member.

There being a quorum present, Chairperson Gould called the meeting to order at 10:02 a.m.

Item 1 Minutes

Chairperson Gould asked if there were any corrections or additions to the minutes of the Commission's hearing of April 27, 1989. There were no corrections or additions.

The minutes were adopted without objection.

Consent Calendar

The following items were on the Commission's consent agenda:

**Item 2 Proposed Statement of Decision
Chapter 406, Statutes of 1988
Special Election - Bridges**

**Item 3 Proposed Statement of Decision
Chapter 583, Statutes of 1985
Infectious Waste Enforcement**

**Item 4 Proposed Statement of Decision
Chapter 980, Statutes of 1984
Court Audits**

**Item 5 Proposed Statement of Decision
Chapter 1286, Statutes of 1985
Homeless Mentally Ill**

Minutes
Hearing of May 25, 1989
Page 2

- Item 6 Proposed Parameters and Guidelines Amendment
Chapter 1, Statutes of 1984, 2nd E.S.
Chapter 1118, Statutes of 1987
Health Fee Elimination
- Item 7 Proposed Parameters and Guidelines Amendment
Chapter 8, Statutes of 1988
Democratic Presidential Delegates
- Item 10 Proposed Statewide Cost Estimate
Chapter 498, Statutes of 1983
Education Code Section 48260.5
Notification of Truancy
- Item 12 Proposed Statewide Cost Estimate
Chapter 1226, Statutes of 1984
Chapter 1526, Statutes of 1985
Investment Reports

There being no discussion or appearances on Items 2, 3, 4, 5, 6, 7, 10, and 12, Member Buenrostro moved adoption of the staff recommendation on these items on the consent calendar. Member Martinez seconded the motion. The vote on the motion was unanimous. The motion carried.

The following items were continued:

- Item 13 Proposed Statewide Cost Estimate
Chapter 1335, Statutes of 1986
Trial Court Delay Reduction Act
- Item 16 Test Claim
Chapter 841, Statutes of 1982
Patients' Rights Advocates
- Item 17 Test Claim
Chapter 921, Statutes of 1987
Countywide Tax Rates

The next item to be heard by the Commission was:

- Item 8 Proposed Parameters and Guidelines Amendment
Chapter 961, Statutes of 1975
Collective Bargaining

The party requesting the proposed amendment, Fountain Valley School District, did not appear at the hearing. Carol Miller, appearing on behalf of the Education Mandated Cost Network, stated that the Network was interested in the issue of reimbursing a school district for the time the district Superintendent spent in, or preparing for, collective bargaining issues.

The Commission then discussed the issue of reimbursing the Superintendent's time as a direct cost to the mandated program or as an indirect cost as required by the federal publications OASC-10, and Federal Management Circular 74-4. Upon conclusion of this discussion, the Commission, staff, and Ms. Miller, agreed that the Commission could deny this proposed amendment by the Fountain Valley School District, and Ms. Miller could assist another district in an attempt to amend the parameters and guidelines to allow reimbursement of the Superintendent's cost relative to collective bargaining matters.

Member Creighton then inquired on the issue of holding collective bargaining sessions outside of normal working hours and the number of teachers the parameters and guidelines reimburse for participating in collective bargaining sessions. Ms. Miller stated that because of the classroom disruption that can result from the use of a substitute teacher, bargaining sessions are sometimes held outside of normal work hours for practical reasons. Ms. Miller also stated that the parameters and guidelines permit reimbursement for five substitute teachers.

Member Martinez moved and Member Buenrostro seconded a motion to adopt the staff recommendation to deny the proposed amendments to the parameters and guidelines. The roll call vote on the motion was unanimous. The motion carried.

Item 9 Proposed Statewide Cost Estimate
Chapter 498, Statutes of 1983
Education Code Section 51225.3
Graduation Requirements

Carol Miller appeared on behalf of the claimant, Santa Barbara Unified School District, Jim Apps and Don Enderton appeared on behalf of the Department of Finance, and Rick Knott appeared on behalf of the San Diego Unified School District.

Carol Miller began the discussion on this matter by stating her objection to the Department of Finance raising issues that were already argued in the parameters and guidelines hearings for this mandate. Based on this objection, Ms. Miller requested that the Commission adopt staff's recommendation and allow the Controller's Office to handle any audit exceptions.

Jim Apps stated that because school districts did not report funds that have been received by them, then the data reported in the survey is suspect. Therefore, the Department of Finance is not convinced that the cost estimate based on the data received by the schools is legitimate.

Discussion continued on the validity of the cost estimate and on the figures presented to the Commission for its consideration.

Member Creighton then made a motion to adopt staff's recommendation. Member Shuman seconded the motion. The vote on the motion was: Member Buenrostro, no; Member Creighton, aye; Member Martinez, no; Member Shuman, aye; and Chairperson Gould, no. The motion failed.

Chairperson Gould made an alternative motion that staff, the Department of Finance, and the school districts, conduct a pre-hearing conference and agree on an estimate to be presented to the Commission at a future hearing. Member Buenrostro seconded the motion. The roll call vote on the motion was unanimous. The motion carried.

Item 11 Statewide Cost Estimate
Chapter 815, Statutes of 1979
Chapter 1327, Statutes of 1984
Chapter 757, Statutes of 1985
Short-Doyle Case Management

Pamela Stone, representing the County of Fresno, stated that the county was in agreement with the staff proposed statewide cost estimate of \$20,000,000 for the 1985-86 through 1989-90 fiscal years, and was opposed to the reduction of the costs estimate being proposed by the Department of Mental Health's late filing.

Lynn Whetstone, representing the Department of Mental Health, stated that the Department agrees with the methodology used by Commission staff to develop the cost estimate, however, the Department questioned the manner in which Commission staff extrapolated its survey figures into a statewide estimate. Ms. Whetstone stated that due to the reasons stated in its late filing, the Department believes that the cost estimate be reduced to \$17,280,000.

Member Shuman moved, and Member Martinez seconded a motion to adopt the staff proposed statewide cost estimate of \$20,000,000 for the 1985-86 through 1989-90 fiscal years. The roll call vote on the motion was unanimous. The motion carried.

Item 14 State Mandates Apportionment System
Request for Review of Base Year Entitlement
Chapter 1242, Statutes of 1977
Senior Citizens' Property Tax Postponement

Leslie Hobson appeared on behalf of the claimant, County of Placer, and stated agreement with the staff analysis.

There were no other appearances and no further discussion.

Member Creighton moved approval of the staff recommendation. Member Shuman seconded the motion. The roll call vote was unanimous. The motion carried.

Item 15 Test Claim
Chapter 670, Statutes of 1987
Assigned Judges

Vicki Wajdak and Pamela Stone appeared on behalf of the claimant, County of Fresno. Beth Mullen appeared on behalf of the Administrative Office of

the Courts. Jim Apps appeared on behalf of the Department of Finance. Allan Burdick appeared on behalf of the County Supervisors Association of California. Pamela Stone restated the claimant's position that the revenue losses due to this statute were actually increased costs because Fresno is now required to compensate its part-time justice court judges for work performed in another county while on assignment. Beth Mullen stated her opposition to this interpretation because Fresno's part-time justice court judge cannot be assigned elsewhere until all work required to be performed for Fresno has been completed; therefore, Fresno is only required to compensate the judge for its own work.

There followed discussion by the parties and the Commission regarding the applicability of the Supreme Court's decisions in County of Los Angeles and Lucia Mar. Chairperson Gould asked Commission Counsel Gary Hori whether this statute imposed a new program and higher level of service as contemplated by these two decisions. Mr. Hori stated that it did meet the definition of new program and higher level of service as contemplated by the Supreme Court.

Member Creighton moved to adopt the staff recommendation to find a mandate on counties whose part-time justice court judge is assigned within the home county. Member Shuman seconded the motion. The roll call vote was unanimous. The motion carried.

Item 18 Test Claim
Chapter 1247, Statutes of 1977
Chapter 797, Statutes of 1980
Chapter 1373, Statutes of 1980
Public Law 99-372
Attorney's Fees - Special Education

Chairperson Gould recused himself from the hearing on this item.

Clayton Parker, representing the Newport-Mesa Unified School District, submitted a late filing on the test claim rebutting the staff analysis. Member Creighton stated that he had not had an opportunity to review the late filing and inquired on whether the claim should be heard at this hearing. Staff informed Member Creighton and Member Buenrostro that in reviewing the filing before this item was called, the filing appeared to be summary of the claimant's position on the staff analysis, and that there appeared to be no reason to continue the item.

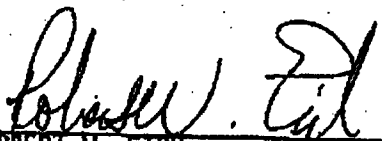
Mr. Parker stated that Commission staff had misstated the events that resulted in the claimant having to pay attorneys' fees to a pupil's guardians, and because of case law, courts do not have any discretion in awarding attorney's fees. Mr. Parker stated that because state legislation has codified the federal Education of the Handicapped Act, school districts are subject to the provisions of Public Law 94-142 and Public Law 99-372. Member Buenrostro then inquired whether staff was comfortable with discussing the issue of a state executive order incorporating federal law.

Minutes
Hearing of May 25, 1989
Page 6

Staff informed the Commission that it was not comfortable discussing this issue, and further noted that it appeared that Mr. Parker was basing his reasoning for finding P.L. 99-372 to be a state mandated program, on the Board of Control's finding that Chapter 1247, Statutes of 1977, and Chapter 797, Statutes of 1980, were a state mandated program. Staff noted that Board of Control's finding is currently the subject of the litigation in Huff v. Commission on State Mandates (Sacramento County Superior Court Case No. 352295).

Member Creighton moved and Member Martinez seconded a motion to continue this item and have legal counsel and staff review the arguments presented by Mr. Parker. The vote on the motion was unanimous. The motion carried.

With no further items on the agenda, Chairperson Gould adjourned the hearing at 11:45 a.m.



ROBERT W. EICH
Executive Director

RNE:GLH:cm:0224g

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On December 1, 2014, I served the:

SCO Comments

Health Fee Elimination, 09-4206-I-22

Education Code Section 76355

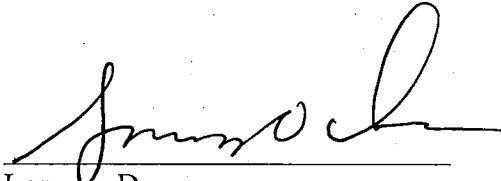
Statutes 1984, 2nd E.S.; Chapter 1; Statutes 1987, Chapter 1118;

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

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 1, 2014 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/1/14

Claim Number: 09-4206-I-22

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

Socorro Aquino, *State Controller's Office*

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

Phone: (916) 322-7522

SAquino@sco.ca.gov

Marieta Delfin, *State Controller's Office*

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

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Ann-Marie Gabel, *Long Beach Community College District*

4901 East Carson Street, Long Beach, CA 90808

Phone: (562) 938-4406

agabel@lbcc.edu

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Ed Hanson, *Department of Finance*

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

Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, *Department of Finance*
Education Systems Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Cheryl.ide@dof.ca.gov

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

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

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

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

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

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

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

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

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

Keith Petersen, *SixTen & Associates*
Claimant Representative

P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kpbsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Nicolas Schweizer, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
nicolas.schweizer@dof.ca.gov

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

COMMISSION ON STATE MANDATES

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

Exhibit C



May 1, 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: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Health Fee Elimination, 09-4206-I-22
Education Code Section 76355, Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.)
(AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years 2003-2004, 2004-2005, and 2005-2006
Long Beach Community College District, Claimant.

Dear Mr. Petersen and Ms. Kanemasu:

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

Written Comments

Written comments may be filed on the draft proposed decision by **May 22, 2015**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, July 24, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about July 10, 2015. 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.

Sincerely,

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

Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT 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, 2003-2004, 2004-2005, and 2005-2006

09-4206-I-22

Long Beach Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses reductions made by the State Controller's Office (Controller) to reimbursement claims filed by Long Beach Community College District (claimant) totaling \$676,727 for fiscal years 2003-2004 through 2005-2006 under the *Health Fee Elimination* program. The Controller's audit reduced the claims by the following amounts:

- \$74,504 for fiscal year 2003-2004 based on asserted faults in the development and application of the indirect cost rate. The claimant developed the indirect cost rate proposal based on the OMB Circular A-21 methodology, but did not obtain federal approval. The Controller recalculated indirect costs using the FAM-29C methodology allowed in the claiming instructions.
- \$639,989 for fiscal years 2003-2004, 2004-2005 and 2005-2006 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant. The Controller recalculated authorized health fee revenue by using student enrollment data that the claimant reported to the Chancellor's Office and health service fee waivers that the claimant's records supported.

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.² In 1984, the Legislature repealed the community colleges' fee

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.]

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 per 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, 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, 1988.⁶ 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.⁷ 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.⁸

Procedural History

On December 13, 2004, the transmittal letter for claimant's fiscal year 2003-2004 reimbursement claim was signed. On January 17, 2006, the transmittal letter for claimant's fiscal year 2004-2005 reimbursement claim was signed. On June 26, 2007, the transmittal letter for claimant's fiscal year 2005-2006 reimbursement claim was signed. On June 26, 2009, the Controller's audit report was issued. On September 24, 2009, the claimant filed this IRC.⁹ On November 26, 2014, the Controller submitted comments on the IRC.¹⁰ On May 1, 2015, Commission staff issued the draft proposed decision on the IRC.

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 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. 1987, ch. 1118).

⁸ 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).

⁹ Exhibit A, Incorrect Reduction Claim, p. 1.

¹⁰ Exhibit B, Controller's Comments on IRC, p. 1.

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 on State Mandates (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 6.¹¹ 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."¹²

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.¹³

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.¹⁴ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹⁵

¹¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹² *County of Sonoma*, supra, 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹³ *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.

¹⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁵ 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.

Claims

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

Issue	Description	Staff Recommendation
Statutory deadline applicable to the audit of claimant’s 2003-2004 reimbursement claim.	At the time the underlying reimbursement claim was 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 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.”	<i>The audit was timely initiated</i> – Staff presumes that the plain language of section 17558.5 is valid and enforceable, and finds that because the fiscal year 2003-2004 reimbursement claim was not paid, the statutory deadline to initiate an audit had not passed.
Reduction of costs based on asserted flaws in the development of indirect cost rates.	Claimant asserts that the Controller incorrectly reduced indirect costs claimed, because the claimant did not obtain federal approval for its indirect cost rate proposal. Claimant argues that there is no requirement that an indirect cost rate be federally approved.	<i>Correct</i> – 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. The Controller recalculated the indirect cost rate using the Form FAM 29-C which is expressly authorized in the claiming instructions. Therefore, this reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
Reduction of costs based on understated offsetting revenues from student health fees authorized	Claimant asserts that the Controller incorrectly reduced costs claimed because only the fee revenue collected is required to be deducted from the costs claimed.	<i>Correct</i> – This issue has been conclusively decided by <i>Clovis Unified School District v. Chiang</i> (2010) 188 Cal.App.4th 794, in which the court held that local government could choose not

to be charged.		to exercise statutory fee authority to its maximum extent, but not at the state's expense. Thus, the reduction is correct as a matter of law. In addition, the Controller's calculation of authorized health service fees, based on enrollment data provided by the claimant and health service fee waivers that the claimant's records supported, is not arbitrary, capricious, or entirely lacking in evidentiary support.
----------------	--	--

Staff Analysis

A. The Controller Met the Statutory Deadlines for the 2003-2004 Fiscal Year Audit Imposed by Government Code Section 17558.5.

The 2003-2004 reimbursement claim transmittal letter was signed on December 13, 2004, but was not paid. The audit entrance conference was conducted on October 16, 2008. The Controller issued its final audit report on June 26, 2009.

Government section 17558.5(a) requires a valid audit to be initiated no later than three years after the date that the reimbursement claim is filed or last amended.¹⁶ This section also provides that 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.”¹⁷ Statutes 2002, chapter 1128, which amended section 17558.5, is a duly enacted statute and must be presumed valid and constitutional. Staff finds that the Controller timely initiated the audit of the 2003-2004 reimbursement claim.

Staff further finds that the audit of the reimbursement claims at issue in this case was timely completed. Effective January 1, 2005, when the audit period in this case was still pending, Government Code section 17558.5 was amended to require for the first time that “In any case, an audit shall be completed not later than two years after the date that the audit is commenced;” which in this case would be no later than October 16, 2010.¹⁸ The Controller issued its final audit report on June, 26, 2009, before the two year deadline to complete the audit.

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.

¹⁶ Government Code section 17558.5 as amended by Statutes 2002, chapter 1128.

¹⁷ *Id.*

¹⁸ Statutes 2004, chapter 890.

The Controller reduced indirect costs claimed for fiscal year 2003- 2004 by a total of \$74,504 because claimant utilized the OMB Circular A-21 method for claiming indirect costs but did not obtain federal approval of its indirect cost rate as required by the OMB Circular A-21. The Controller recalculated the indirect cost rate using the state Form FAM-29C in accordance with the claiming instructions, reducing the indirect cost rate to 17.00 percent for fiscal year 2003-2004.

Staff finds claimant did not comply with the requirements in the parameters and guidelines, claiming instructions, or the OMB Circular A-21 when developing and applying its indirect cost rate for fiscal year 2003-2004, since it did not obtain federal approval of the rate. Therefore, the reduction is correct as a matter of law. Staff further finds that the Controller’s recalculation of indirect costs using the Form FAM 29C is not arbitrary, capricious, or entirely lacking in evidentiary support since that method is expressly authorized in the claiming instructions and results in rates higher than the seven percent default rate.

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 claimed for the three fiscal years by a total of \$639,989 because claimant understated its offsetting fees by reporting only the fee revenue collected, and not the fee revenue authorized to be charged.

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

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.¹⁹

The court in *Clovis Unified* upheld the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fee districts are authorized to charge. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

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.²⁰

The court also noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”²¹ Since the *Clovis* case is a final decision of the court addressing the merits of

¹⁹ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811.

²⁰ *Id.* at p. 812.

²¹ *Ibid.*

the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.²²

Therefore, staff finds the Controller's adjustment is correct as a matter of law. Staff further finds that the Controller's calculation of the claimant's total authorized offsetting fee revenue is not arbitrary, capricious, or entirely lacking in evidentiary support since the Controller used the enrollment data available and reported by the claimant.

Conclusion

Pursuant to Government Code section 17551(d), staff finds that the audit of the 2003-2004 reimbursement claim was timely, and that the reductions to the following costs are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$74,504 for fiscal year 2003-2004 because claimant developed the indirect cost rate proposal based on the OMB Circular A-21 methodology, but did not obtain federal approval.
- \$639,989 for fiscal years 2003-2004, 2004-2005 and 2005-2006 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant.

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.

²² *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
ON:

Education Code Section 76355

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

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

Long Beach Community College District,
Claimant.

Case Nos.: 09-4206-I-22

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 July 24, 2015)

PROPOSED DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on July 24, 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 Long Beach Community College District's (claimant's) reimbursement claims for fiscal years 2003-2004, 2004-2005, and 2005-2006 under the *Health Fee Elimination* program. Over the three fiscal years in question, the Controller reduced costs totaling \$676,727. The Controller found that claimant incorrectly calculated the indirect cost rate for the 2003-04 fiscal year and under reported offsetting health service fee revenue authority for the three fiscal years at issue.

Pursuant to Government Code section 17551(d), the Commission concludes that the audit of the 2003-2004 reimbursement claim was timely, and that the following reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$74,504 in indirect costs claimed for fiscal year 2003-04 is correct because claimant used the OMB Circular A-21 methodology, but did not obtain federal approval for its indirect cost rate proposals.
- \$639,989 in offsetting fees due to claimant's reporting of offsetting revenue collected, rather than the amount authorized to be charged.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

- 12/13/2004 Transmittal letter for claimant's fiscal year 2003-2004 reimbursement claim was signed.²³
- 01/17/2006 Transmittal letter for claimant's fiscal year 2004-2005 reimbursement claim was signed.²⁴
- 06/26/2007 Transmittal letter for claimant's fiscal year 2005-2006 reimbursement claim was signed.²⁵
- 10/16/2008 The audit entrance conference was conducted.²⁶
- 06/26/2009 The Controller, Division of Audits, issued its final audit report.²⁷
- 09/24/2009 Claimant filed this incorrect reduction claim.²⁸
- 11/26/2014 The Controller filed comments on the incorrect reduction claim.²⁹
- 05/01/2015 Commission staff issued the draft proposed decision.

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.³⁰ In 1984, the Legislature repealed the community colleges' fee authority for health services.³¹ However, Legislature also reenacted section 72246, to become

²³ Exhibit A, Incorrect Reduction Claim, p. 101; Exhibit B, Controller's Comments on IRC, p. 20. (References to page numbers are to the PDF page number.)

²⁴ Exhibit A, Incorrect Reduction Claim, p. 110.

²⁵ Exhibit A, Incorrect Reduction Claim, p. 118.

²⁶ Exhibit A, Incorrect Reduction Claim, p. 20; Exhibit B, Controller's Comments on IRC, p. 20.

²⁷ Exhibit A, Incorrect Reduction Claim, p. 50.

²⁸ Exhibit A, Incorrect Reduction Claim, p. 1.

²⁹ Exhibit B, Controller's Comments on IRC, p. 1.

³⁰ 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.].

³¹ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4 [repealing Education Code section 72246].

operative on January 1, 1988, to reauthorize the fee at \$7.50 for each semester (or \$5 per quarter or summer semester).³²

In addition to temporarily repealing community college districts' fee authority, Statutes 1984, chapter 1 required any district which provided health services during the 1983-1984 fiscal year, for which it 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, 1988.³³ 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, 1988.³⁴ 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.³⁵ 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.³⁶ 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.³⁷

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.

³² Statutes 1984, 2nd Extraordinary Session 1984, chapter 1, section 4.5.

³³ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

³⁴ 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).

³⁵ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

³⁶ 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).

³⁷ 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).

Controller's Audit and Summary of the Issues

The claimant submitted reimbursement claims totaling \$869,531 for costs incurred in fiscal years 2003-2004, 2004-2005, and 2005-2006. The Controller's audit reduced the claims by \$676,727 and determined that \$192,807 was allowable as follows:

- Reduction of \$74,504 for fiscal year 2003-2004 based on asserted faults in the development and application of the indirect cost rate. The claimant developed the indirect cost rate proposal based on the OMB Circular A-21 methodology, but did not obtain federal approval for its proposal. The Controller recalculated indirect costs using the FAM-29C methodology allowed in the claiming instructions.³⁸
- Reduction of \$639,989 for fiscal years 2003-2004, 2004-2005, and 2005-2006 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant. The Controller recalculated authorized health fee revenue by using student enrollment data that the claimant reported to the Chancellor's Office and health service fee waivers that the claimant's records supported.³⁹

III. Positions of the Parties

Long Beach Community College District

Claimant asserts that the Controller's reduction of \$74,504 in overstated indirect costs on the basis that "the District's indirect cost was not federally approved"⁴⁰ is incorrect. Claimant argues that the claiming instructions are "a statement of the Controller's interpretation and not law..."⁴¹ Claimant also asserts that there is no requirement in law that claimant's indirect costs be claimed by the manner specified by the Controller,⁴² and the Controller did not make findings that claimant's rate was excessive or unreasonable.⁴³ Claimant also asserts that a reduction of \$639,989, based on understated authorized health service fees was incorrect, because the parameters and guidelines require claimants to state offsetting savings "experienced," and claimant did not experience offsetting savings for fees that it did not charge to students.⁴⁴ The claimant also challenged the validity of the audit as to the 2003-2004 fiscal year based on the statutory deadlines applicable to the audit.⁴⁵

³⁸ Exhibit A, Incorrect Reduction Claim, p. 58 (Finding 1, Final Audit Report).

³⁹ Exhibit A, Incorrect Reduction Claim, p. 61 (Finding 2, Final Audit Report); Exhibit B, Controller's Comments on IRC, pp. 18-20.

⁴⁰ Exhibit A, Incorrect Reduction Claim, p. 10.

⁴¹ Exhibit A, Incorrect Reduction Claim, pp. 10-11.

⁴² Exhibit A, Incorrect Reduction Claim, p. 11.

⁴³ Exhibit A, Incorrect Reduction Claim, p. 13.

⁴⁴ Exhibit A, Incorrect Reduction Claim, pp. 14-15.

⁴⁵ Exhibit A, Incorrect Reduction Claim, p. 17-18.

State Controller's Office

The Controller argues that the IRC should be denied. The Controller asserts that claimant overstated its indirect costs for fiscal year 2003-04 because claimant used the federal OMB Circular A-21, but did not obtain federal approval for its indirect cost rate proposal, as required by the Controller's claiming instructions and by OMB Circular A-21. The Controller asserts that its recalculation of claimant's indirect cost rate using the state Form FAM-29C was reasonable.

The Controller further found that claimant understated its authorized health service fees for the audit period by \$639,989. Using enrollment and exemption data, the Controller recalculated the health fees that claimant was authorized to collect, and reduced the claim by the amount not stated as offsetting revenues.⁴⁶ The Controller argues that, "to the extent community college districts can charge a fee, they are not required to incur a cost."⁴⁷

The Controller asserts that because the claimant has not received payment for the 2003-2004 fiscal year claim, the requirements of Government Code section 17558.5(a) were met when it initiated its audit on October 16, 2008.⁴⁸

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 6.⁴⁹ 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."⁵⁰

⁴⁶ Exhibit A, Incorrect Reduction Claim, p.61.

⁴⁷ Exhibit B, Controller's Comments on IRC, p. 20.

⁴⁸ Exhibit B, Controller's Comments on IRC, p. 22.

⁴⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁵⁰ *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.

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.⁵¹ 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.’ ”⁵²

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.⁵³ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.⁵⁴

A. The Controller Met the Statutory Deadlines for the 2003-2004 Fiscal Year Audit Imposed by Government Code Section 17558.5.

The claimant asserts that the audit of the 2003-2004 claim was not timely initiated under Government Code section 17558.5, based on the filing date of the claim (December 13, 2004), and the date that the audit entrance conference took place (October 16, 2008)⁵⁵. The claimant further argues that the clause in section 17558.5, which delays the commencement of the time for the Controller to audit to the date of initial payment when no payment has been made, “is void because it is impermissibly vague,” and that the filing date of the claim should control.⁵⁶

⁵¹ *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.

⁵² *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pp. 547-548.

⁵³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁵⁴ 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.

⁵⁵ Exhibit A, Incorrect Reduction Claim, p. 17.

⁵⁶ Exhibit A, Incorrect Reduction Claim, p. 20.

The Controller does not dispute the filing date of the 2003-2003 claim, but asserts that the claim was not paid.⁵⁷ The Controller concludes that the audit was timely initiated because section 17558.5 provides for a timely audit to be initiated after payment is made.⁵⁸

Section 17558.5, as applicable to the fiscal year claim here at issue, requires a valid audit to be initiated no later than three years after the date that the reimbursement claim is filed or last amended. However, the section also plainly provides that 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.”⁵⁹

The Commission finds that the Controller timely initiated the audit of the 2003-2004 reimbursement claim. The fiscal year 2003-2004 reimbursement claim was filed on December 13, 2004, but was not paid, based on the evidence in the record.⁶⁰ Statutes 2002, chapter 1128, which amended Government Code section 17558.5, is a duly enacted statute and must be presumed valid and constitutional.⁶¹ Article III, section 3.5 of the California Constitution states that an administrative agency has no power “[t]o declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional...”

Therefore, the time to initiate an audit, in this case, had not commenced to run and the audit initiated no later than October 16, 2008 was timely.

The Commission further finds that the audit of the reimbursement claims at issue in this case was timely completed. Effective January 1, 2005, before the audit in this case was initiated, Government Code section 17558.5 was amended to require for the first time that “an audit shall be completed not later than two years after the date that the audit is commenced,” which in this case would be no later than October 16, 2010.

Here, the audit was completed when the final audit report was issued on June 26, 2009, well before the two year deadline of October 16, 2010, to complete the audit.

Based on the foregoing, the Commission finds that the audit of the District’s reimbursement claims is not barred by the statutory deadlines in section 17588.5.

⁵⁷ Exhibit B, Controller’s Comments on IRC, p. 22.

⁵⁸ Exhibit B, Controller’s Comments on IRC, p. 22.

⁵⁹ Government Code section 17558.5, as amended by Statutes 2002, chapter 1128.

⁶⁰ The Legislature deferred payment for this mandated program in fiscal years 2003-2004 and 2004-2005 by appropriating \$1,000 for the program. (Stats. 2003, ch. 157, and Stats. 2004, ch. 208, Item 6870-295-0001, schedule 1.) The Fourth District Court of Appeal in *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 791, concluded that “the Legislature’s practice of nominal funding of state mandates [an appropriation of \$1,000] with the intention to pay the mandate in full with interest at an unspecified time does not constitute a funded mandate under the applicable constitutional and statutory provisions.”

⁶¹ *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 129.

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 by a total of \$74,504 for fiscal year 2003-04. Claimant used the OMB Circular A-21 to calculate its indirect cost rate, using expenditures from the prior year’s CCFS-311 Annual Financial and Budget Report, but claimant failed to obtain federal approval as required by the claiming instructions and the OMB Circular A-21. The Controller recalculated indirect costs for fiscal year 2003-04 using the state Form FAM-29C allowed in the claiming instructions.⁶²

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 or the state Form FAM-29C.

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.⁶³ Parameters and guidelines, in addition to identifying the reimbursable activities, provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of a state-mandated program.⁶⁴ 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 17559.⁶⁵ Claimants are required as a matter of law to file reimbursement claims in accordance with the parameters and guidelines.⁶⁶ 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.

⁶² Exhibit A, Incorrect Reduction Claim, p.58.

⁶³ Government Code section 17557.

⁶⁴ Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

⁶⁵ *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.]

⁶⁶ 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.

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.*”⁶⁷ 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.⁶⁸

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 Controller’s interpretation and not law.”⁶⁹ The parameters and guidelines, which were duly adopted at a Commission hearing and are regulatory 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, are found in the School Mandated Cost Manual which is revised each year and which also contains claiming instructions applicable to all school and community college mandated programs. The cost manual issued by the Controller’s Office in September 2004, governs the reimbursement claim filed for the 2003-04 fiscal year reimbursement claim in this case.⁷⁰ This cost manual allows claimants to use the OMB Circular A-21 methodology with federal approval or the FAM-29C:⁷¹

A community 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.

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. . . .

[¶]

⁶⁷ Exhibit A, Incorrect Reduction Claim, p. 33.

⁶⁸ Exhibit A, Incorrect Reduction Claim, p. 10.

⁶⁹ Exhibit A, Incorrect Reduction Claim, pp. 10-11.

⁷⁰ Exhibit B, Controller’s Comments on IRC, pp. 25-29.

⁷¹ Exhibit B, Controller’s Comments on IRC, p. 26.

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.⁷²

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.⁷³

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

2. Claimant did not comply with the requirements of the parameters and guidelines, claiming instructions, and the OMB Circular in developing and applying its indirect cost rate for 2003-2004. Therefore, the Controller’s reduction is correct as a matter of law and the recalculation of the indirect cost rate using the Fam-29C was not arbitrary, capricious, or entirely lacking in evidentiary support.

Here, claimant used a valid methodology, the OMB Circular A-21, but failed to obtain federal approval for that rate as required in the OMB Circular A-21, and the claiming instructions. Therefore, the reduction of costs is correct as a matter of law.

The Commission further finds that the Controller’s recalculation of indirect costs using the Fam-29C is not arbitrary, capricious or entirely lacking in evidentiary support. The methodology is expressly allowed by the claiming instructions. The Controller’s allowable rate was 17.00 percent for fiscal year 2003-2004.⁷⁴

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 the state Form FAM-29C 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.

⁷² Exhibit B, Controller’s Comments on IRC, p. 26.

⁷³ Exhibit X, OMB Circular A-21.

⁷⁴ Exhibit A, Incorrect Reduction Claim, p. 58.

The Controller reduced costs for the three fiscal years by \$639,989 because claimant understated its offsetting health service fee authority and instead claimed only fees collected.⁷⁵ These reductions were made on the basis of the fee authority available to the claimant, multiplied by the number of students subject to the fee, less the amount of offsetting revenue claimed.

Claimant disputes the reduction, arguing that the relevant Education Code provisions permit, but do not require, a community college to levy a health services fee, and that the parameters and guidelines require a community college to deduct from its reimbursement claims “[a]ny offsetting savings that the claimant experiences as a direct result of this statute....”⁷⁶ The Claimant argues that “[i]n order for the district to ‘experience’ these ‘offsetting savings’ the District must actually have collected these fees.”⁷⁷ Claimant concluded that “[s]tudent fees actually collected must be used to offset costs, but not student fees that could have been collected and were not.”⁷⁸

The Commission finds that the issue of offsetting revenue from student health fees has been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law.

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

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

The Health Fee Rule relies on Education Code section 76355(a), which provides in relevant part:

(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

(a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that

⁷⁵ Exhibit A, Incorrect Reduction Claim, p. 14.

⁷⁶ Exhibit A, Incorrect Reduction Claim, p. 14.

⁷⁷ Exhibit A, Incorrect Reduction Claim, p. 15.

⁷⁸ Exhibit A, Incorrect Reduction Claim, p. 15.

⁷⁹ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 811.

calculation produces an increase of one dollar (\$) above the existing fee, the fee may be increased by one dollar (\$1).⁸⁰

The court in *Clovis Unified* 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:

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.⁸¹

The court also notes that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”⁸² Additionally, in responding to the community college districts’ argument that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s,”⁸³ the court held:

To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.⁸⁴ (Italics added.)

Thus, pursuant to the court’s decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by claimants for the *Health Fee Elimination* program is valid. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.⁸⁵ In addition, the *Clovis* decision is binding on the claimant under principles of collateral estoppel.⁸⁶ Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to

⁸⁰ Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

⁸¹ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 812.

⁸² *Ibid.*

⁸³ *Ibid.* (Original italics.)

⁸⁴ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 812.

⁸⁵ *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

⁸⁶ The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

litigate the issue.⁸⁷ Here, the claimant was in privity with parties to the *Clovis* action, and under principles of collateral estoppel, the court's decision is binding on the claimant with respect to these reimbursement claims.⁸⁸

The Commission further finds that the Controller's recalculation of offsetting revenues authorized to be charged, using student enrollment data that claimant reported to the California Community College Chancellor's Office and student waiver data supported by claimant's records, was not arbitrary, capricious, or entirely lacking in evidentiary support. The Controller calculated the offsetting revenue using student enrollment and Board of Governors Grant (BOGG) recipient data obtained from the California Community Colleges Chancellor's Office.⁸⁹ For all terms, except Spring 2006, the number of enrolled students was reduced by the number of BOGG recipients, in order to calculate the number students who could have been charged a health fee.⁹⁰ This number was then multiplied by the authorized health service fee rate to determine the total authorized health service fee.⁹¹ The CCCCCO data is based on student data that the claimant reported. This data is a public record maintained by the claimant in the normal course of business, and claimant has provided no other documents to support the offsetting health service fee revenue authorized for this program.

Accordingly, the Commission finds that 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.

V. Conclusion

Pursuant to Government Code section 17551(d), the Commission finds that the audit of the 2003-2004 reimbursement claim was timely, and that the reductions to the following costs are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support:

- \$74,504 for fiscal year 2003-2004 because claimant developed the indirect cost rate proposal based on the OMB Circular A-21 methodology, but did not obtain federal approval.

⁸⁷ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

⁸⁸ *Ibid.* Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.

⁸⁹ Exhibit A, Incorrect Reduction Claim, p. 61.

⁹⁰ Exhibit A, Incorrect Reduction Claim, pp. 61-62. The BOGG recipients were not deducted for Spring 2006 because, effective January 31, 2006 the exemption for the fee for BOGG recipients was removed in what was formerly Education Code section 76355(3)(c). [Education Code section 76355(c)(3) (Stats. 2005, ch. 320 (AB 982)).]

⁹¹ Exhibit A, Incorrect Reduction Claim, p. 61-62.

- \$639,989 for fiscal years 2003-2004, 2004-2005 and 2005-2006 based on offsetting health service fee revenue authorized to be charged, rather than the amount collected by claimant.

Based on the foregoing, 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 May 1, 2015, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Health Fee Elimination, 09-4206-I-22

Education Code Section 76355, Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.)

(AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336)

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

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 1, 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: 4/24/15

Claim Number: 09-4206-I-22

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Socorro Aquino, *State Controller's Office*

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

Phone: (916) 322-7522

SAquino@sco.ca.gov

Julia Blair, Senior Commission Counsel, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

julia,blair@csm.ca.gov

Marieta Delfin, *State Controller's Office*

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

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Ann-Marie Gabel, *Long Beach Community College District*

4901 East Carson Street, Long Beach, CA 90808

Phone: (562) 938-4406

agabel@lbcc.edu

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Ed Hanson, *Department of Finance*

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

Phone: (916) 445-0328

ed.hanson@dof.ca.gov

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

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

Phone: (916) 445-0328

Cheryl.ide@dof.ca.gov

Jill Kanemasu, *State Controller's Office*

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

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

Jay Lal, *State Controller's Office (B-08)*

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

Phone: (916) 324-0256

JLal@sco.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*

915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

kathleen.lynch@dof.ca.gov

Yazmin Meza, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

Yazmin.meza@dof.ca.gov

Robert Miyashiro, *Education Mandated Cost Network*

1121 L Street, Suite 1060, Sacramento, CA 95814

Phone: (916) 446-7517

robertm@sscal.com

Jameel Naqvi, Analyst, *Legislative Analysts' Office*

Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8331

Jameel.naqvi@lao.ca.gov

Andy Nichols, *Nichols Consulting*

1857 44th Street, Sacramento, CA 95819

Phone: (916) 455-3939

andy@nichols-consulting.com

Christian Osmena, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122

apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*

Claimant Representative

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

Phone: (916) 419-7093

kbsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*

P.O. Box 894059, Temecula, CA 92589

Phone: (951) 303-3034

sandrareynolds_30@msn.com

David Scribner, *Max8550*

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

Phone: (916) 852-8970

dscribner@max8550.com

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

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

Phone: (916) 323-5849

jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

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

Phone: (916) 324-0254

DSpeciale@sco.ca.gov



RECEIVED
May 07, 2015
Commission on
State Mandates

BETTY T. YEE
California State Controller

Exhibit D

May 7, 2015

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

Re: **Draft Proposed Decision**
Incorrect Reduction Claim
Health Fee Elimination, 09-4206-I-22
Education Code Section 76355
Statutes of 1984, Chapter 1, 2nd E.S.; Statutes of 1987, Chapter 1118
Fiscal Years 2003-04, 2004-2005, and 2005-2006
Long Beach Community College District, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) has reviewed the Commission on State Mandates' (Commission) draft staff analysis dated May 1, 2015, for the above referenced incorrect reduction claim filed by Long Beach Community College District. We support the Commission's conclusion and recommendation.

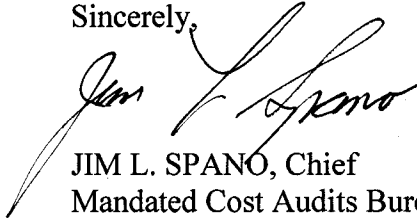
The Commission supported the SCO adjustments related to the following:

- The audit of the FY 2003-04 claim was not time-barred by any statutory limitation.
- Reduction of indirect costs based on recalculation of the indirect cost rate for FY 2003-04, totaling \$75,504, is correct as a matter of law.
- Reduction based on understated offsetting health service fee revenues, totaling \$639,989, is correct as a matter of law.

Heather Halsey, Executive Director
May 7, 2015
Page 2

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano". The signature is written in a cursive style with a large, sweeping initial "J".

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/lr

15566

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 6, 2015, I served the:

SCO Comments on Draft Proposed Decision

Health Fee Elimination, 09-4206-I-22

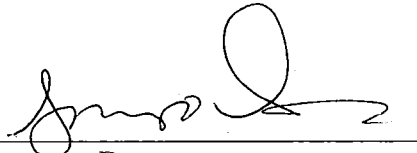
Education Code Section 76355, Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and Statutes 1987, Chapter 1118 (AB 2336)

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

Long Beach Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 6, 2015 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/24/15

Claim Number: 09-4206-I-22

Matter: Health Fee Elimination

Claimant: Long Beach Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Socorro Aquino, *State Controller's Office*

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

Phone: (916) 322-7522

SAquino@sco.ca.gov

Julia Blair, Senior Commission Counsel, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

julia,blair@csm.ca.gov

Marieta Delfin, *State Controller's Office*

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

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Ann-Marie Gabel, *Long Beach Community College District*

4901 East Carson Street, Long Beach, CA 90808

Phone: (562) 938-4406

agabel@lbcc.edu

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Ed Hanson, *Department of Finance*

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

Phone: (916) 445-0328

ed.hanson@dof.ca.gov

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

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

Phone: (916) 445-0328

Cheryl.ide@dof.ca.gov

Jill Kanemasu, *State Controller's Office*

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

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

Jay Lal, *State Controller's Office (B-08)*

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

Phone: (916) 324-0256

JLal@sco.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*

915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

kathleen.lynch@dof.ca.gov

Yazmin Meza, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

Yazmin.meza@dof.ca.gov

Robert Miyashiro, *Education Mandated Cost Network*

1121 L Street, Suite 1060, Sacramento, CA 95814

Phone: (916) 446-7517

robertm@sscal.com

Jameel Naqvi, Analyst, *Legislative Analysts' Office*

Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8331

Jameel.naqvi@lao.ca.gov

Andy Nichols, *Nichols Consulting*

1857 44th Street, Sacramento, CA 95819

Phone: (916) 455-3939

andy@nichols-consulting.com

Christian Osmena, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*

2488 Historic Decatur Road, Suite 200, San Diego, CA 92106

Phone: (619) 232-3122

apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*

Claimant Representative

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

Phone: (916) 419-7093

kbsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*

P.O. Box 894059, Temecula, CA 92589

Phone: (951) 303-3034

sandrareynolds_30@msn.com

David Scribner, *Max8550*

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

Phone: (916) 852-8970

dscribner@max8550.com

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

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

Phone: (916) 323-5849

jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

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

Phone: (916) 324-0254

DSpeciale@sco.ca.gov

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, President

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645
www.sixtenandassociates.com

Sacramento
P.O. Box 340430
Sacramento, CA 95834-0430
Telephone: (916) 419-7093
Fax: (916) 263-9701
E-Mail: kbpsixten@aol.com

May 20, 2015

RECEIVED
May 20, 2015
Commission on
State Mandates

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

Dear Ms. Halsey:

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

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

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

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

Chronology of Annual Claim Action Dates

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

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

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

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

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

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

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

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

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

PART B. APPLICATION OF AN INDIRECT COST RATE

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

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

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

² From the Clovis Appellate Court Decision (4):

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

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

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

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

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

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

From the Clovis Appellate Court Decision (15):

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

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

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

3. Allowable Overhead Cost

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

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

B. Indirect Cost Rates

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

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

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

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

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

PART C. UNDERSTATED OFFSETTING REVENUES

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

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

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

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

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

CERTIFICATION

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

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



Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box

LONG BEACH COMMUNITY COLLEGE DISTRICT

Revised Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session;
and Chapter 1118, Statutes of 1987

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

October 2012



JOHN CHIANG
California State Controller

October 24, 2012

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

Dear Mr. Uranga:

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

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

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

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

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

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

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Revised Audit Report

Summary

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

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

Background

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

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

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

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

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

Objective, Scope, and Methodology

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

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

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

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

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

Conclusion

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

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

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

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

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

Views of Responsible Official

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

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

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

October 24, 2012

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

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

Revised Schedule 1 (continued)

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

Revised Schedule 1 (continued)

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

¹ See the Revised Findings and Recommendations section.

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

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

Findings and Recommendations

**FINDING 1—
Overstated indirect
cost rate**

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

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

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

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

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

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

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

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

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

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

Recommendation

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

District's Response

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

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

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

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

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

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

SCO’s Comment

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation

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

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

District’s Response

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

“Authorized” Fee Amount

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

Education Code Section 76355

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

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

Government Code Section 17514

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

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

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

Government Code Section 17556

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

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

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

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

Parameters and Guidelines

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

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

SCO’s Comment

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

“Authorized” Fee Amount

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

Education Code Section 76355

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

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

Government Code Section 17514

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

Government Code Section 17556

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

Two court cases addressed the issue of fee authority¹. Both cases concluded that “costs,” as used in the constitutional provision, exclude “expenses that are recoverable from sources other than taxes.” In both cases, the source other than taxes was fee authority.

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

Parameters and Guidelines

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

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

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

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

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

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

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

**OTHER ISSUE—
Public records request**

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

District’s Response

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

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

SCO’s Comment

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

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



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

Superintendent-President
Eloy O. Oakley

Long Beach City College • Long Beach Community College District

4901 East Carson Street • Long Beach, California 90808

CERTIFIED MAIL - #7006 0100 0004 6064 6161

May 29, 2009

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

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

Dear Mr. Spano:

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

Finding 1 - Overstated indirect costs rates

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

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

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

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

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

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

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

Finding 2 - Understated authorized health fee service fees

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

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

"Authorized" Fee Amount

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

Education Code Section 76355

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

Government Code Section 17514

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

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

Parameters and Guidelines

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

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

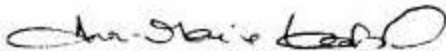
Public Records Request

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

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

○ ○ ○

Sincerely,



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

AG:lr

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

Keith Peterson, President
SixTen and Associates

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

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



JOHN CHIANG
California State Auditor

October 3, 2008

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

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

Dear Mr. Oakley:

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

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

Sincerely,

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

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

AL/kr

Attachment

Eloy O. Oakley
October 3, 2008
Page 2

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

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

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

CIRCULAR A-21 (Revised 05/10/04)

CIRCULAR NO. A-21

Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS
SUBJECT: Cost Principles for Educational Institutions

1. Purpose. This Circular establishes principles for determining costs applicable to grants, contracts, and other agreements with educational institutions. The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Supersession. The Circular supersedes Federal Management Circular 73-8, dated December 19, 1973. FMC 73-8 is revised and reissued under its original designation of OMB Circular No. A-21.

3. Applicability.

a. All Federal agencies that sponsor research and development, training, and other work at educational institutions shall apply the provisions of this Circular in determining the costs incurred for such work. The principles shall also be used as a guide in the pricing of fixed price or lump sum agreements.

b. In addition, Federally Funded Research and Development Centers associated with educational institutions shall be required to comply with the Cost Accounting Standards, rules and regulations issued by the Cost Accounting Standards Board, and set forth in 48 CFR part 99; provided that they are subject thereto under defense related contracts.

4. Responsibilities. The successful application of cost accounting principles requires development of mutual understanding between representatives of educational

PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS,
CONTRACTS, AND OTHER AGREEMENTS WITH
EDUCATIONAL INSTITUTIONS

A. Purpose and scope.

1. Objectives. This Attachment provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. Policy guides. The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that --

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such governmentwide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

years ending during 1997, or the period covered by negotiated agreements in effect on December 31, 1995, whichever is later, except for those educational institutions with cognizant agencies other than HHS or DOD. Cognizance for these educational institutions shall transfer to HHS or DOD at the end of the period covered by the current negotiated rate agreement. After cognizance is established, it shall continue for a five-year period.

b. Acceptance of rates. The negotiated rates shall be accepted by all Federal agencies. Only under special circumstances, when required by law or regulation, may an agency use a rate different from the negotiated rate for a class of sponsored agreements or a single sponsored agreement.

c. Correcting deficiencies. The cognizant agency shall negotiate changes needed to correct systems deficiencies relating to accountability for sponsored agreements. Cognizant agencies shall address the concerns of other affected agencies, as appropriate.

d. Resolving questioned costs. The cognizant agency shall conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for work performed under Circular A-21 may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates. The cognizant agency shall arrange with the educational institution to provide copies of rate proposals to all interested agencies. Agencies wanting such copies should notify the cognizant agency. Rates shall be established by one of the following methods:

(1) Formal negotiation. The cognizant agency is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Non-cognizant Federal agencies, which award sponsored agreements to an educational institution, shall notify the cognizant agency of specific concerns (i.e., a need to establish special cost rates) that could affect the negotiation process. The cognizant agency shall address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency shall then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this Circular.

g. Formalizing determinations and agreements. The cognizant agency shall formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest.

h. Disputes and disagreements. Where the cognizant agency is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency shall be followed for resolution of the disagreement.

12. Standard Format for Submission. For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating F&A rates, as described in Section H.

H. Simplified method for small institutions.

1. General.

a. Where the total direct cost of work covered by Circular A-21 at an institution does not exceed \$10 million in a fiscal year, the use of the simplified procedure described in subsections 2 or 3, may be used in determining allowable F&A costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information shall be utilized as basis for determining the F&A cost rate applicable to all sponsored agreements. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as distribution basis.

b. The simplified procedure should not be used where it produces results that appear inequitable to the Federal Government or the institution. In any such case, F&A costs should be determined through use of the regular procedure.

2. Simplified procedure - Salaries and wages base.

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The total amount of salaries and wages included in the F&A cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a the amount of salaries and wages included under subsection b.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the F&A cost rate to direct salaries and wages for individual agreements to determine the amount of F&A costs allocable to such agreements.

3. Simplified procedure - Modified total direct cost base.

a. Establish the total costs incurred by the institution for the base period.

b. Establish a F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

OMB CIRCULAR A-133

COMPLIANCE SUPPLEMENT



MARCH 2014
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

- c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. *Suggested Compliance Audit Procedures – Indirect Costs*

- a. Test a sample of transactions for conformance with the following criteria contained in A-21 and CAS, as applicable.
- b. *For educational institutions that charge indirect cost to Federal awards based on federally approved rate(s):*
 - (1) Ascertain if indirect costs or centralized or administrative services costs were allocated or charged to a major program. If not, the following suggested audit procedures do not apply.
 - (2) Obtain and read the current indirect cost rate agreement and determine the terms in effect.
 - (3) Select a sample of claims for reimbursement and verify that the rates used are in accordance with the rate agreement, that rates were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the costs that were included in the base year (e.g., if the allocation base is total direct costs, verify that current year direct costs do not include costs items that were treated as indirect costs in the base year).
 - (4) Ascertain if the educational institution's accounting practices for determining direct and indirect costs for the fiscal year being audited are consistent with the accounting practices used to establish the federally approved rate and its DS-2. If accounting changes have occurred, determine if they were approved by the cognizant Federal agency. If accounting changes have not been approved and the accounting changes impact costs charged to federally funded awards, this should be considered a reportable finding. (A-21, section C.14 and CAS, as applicable).
- c. *For educational institutions that charge indirect cost to Federal awards based on rate(s) which are not approved by the cognizant Federal agency:*
 - (1) If the ICRP has been certified and submitted to the cognizant Federal agency and is based on costs incurred in the year being audited, then the ICRP should be audited for compliance with the provisions of A-21 and CAS, as applicable.

- (2) If the educational institution has a certified ICRP, which is based on costs incurred in the year being audited, but has not submitted it to their Federal cognizant agency, then the ICRP should be audited using the procedures listed below.
- (a) Test the indirect cost pool groupings for compliance with A-21, section F.
 - (b) Test the indirect cost pools to determine if costs are allowable.
 - (c) Test that indirect costs have been treated consistently when incurred for the same purpose, in like circumstances, as indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as a cost any cost, if another cost incurred for the same purpose, in like circumstances, has been included as a direct cost of that or any other final cost objective (A-21, section C.11).
 - (d) Test that the indirect cost pools in the rate proposal were developed consistent with the educational institution's disclosed practices as described in its DS-2, if applicable (A-21, section C.14).
 - (e) Test the *depreciation and use allowance* cost pool to determine if:
 - (i) Computations of depreciation or use allowance are based on the acquisition cost of the assets. Acquisition costs exclude (A) the cost of land; (B) any portion of the cost of buildings and equipment borne by the Federal Government, irrespective of where title was originally vested or where it is presently located; and (C) any portion of the cost of buildings and equipment contributed by or for the educational institution where law or agreement prohibit recovery (A-21, section J.14).
 - (ii) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods reflects the pattern of consumption of the asset during its useful life (A-21, section J.14).
 - (iii) Charges for use allowances or depreciation are supported by adequate property records and physical inventories, which must be taken at least once every 2 years (A-21, section J.14).

- (iv) The depreciation methods used to calculate the depreciation amounts for the ICRP are the same methods used by the educational institution for its financial statements (A-21, section J.12).
 - (v) The allocation method for the depreciation and use allowance cost pool complies with A-21, section F.2.
 - (vi) Gains and losses on the sale, retirement, or other disposition of depreciable property have been appropriately accounted for and complies with A-21, section J.21.
 - (vii) *Large research facilities* – Determine that large research facilities that are included in ICRPs negotiated after January 1, 2000, and on which the design and construction began after July 1, 1998, are compliant with the provisions for determining allowable costs in A-21, section F.2.c.
- (f) Test the *interest* cost pool to determine if:
- (i) Computations for interest comply with the provisions of A-21, section J.26.
 - (ii) The allocation method for the interest cost pool complies with A-21, section F.3.
- (g) Test the *operations and maintenance* cost pool to determine if:
- (i) Costs are appropriately classified in this cost pool (A-21, section F.4).
 - (ii) Rental costs comply with the provisions of A-21, section J.43.
 - (iii) The educational institution's accounting practices for classifying (A) rearrangement and alteration costs and (B) reconversion costs, either as direct or indirect, result in consistent treatment in like circumstances.
 - (iv) The allocation method for the operations and maintenance cost pool complies with A-21, section F.4.
- (h) Tests the *library* cost pool to determine if:
- (i) Costs are appropriately classified in this cost pool (A-21, section F.8).

- (ii) The allocation method for the library cost pool complies with A-21, section F.8.
- (iii) If the allocation method is based on a cost analysis study in accordance with A-21, section E.2.d, determine that the study:
 - (A) Results in an equitable distribution of costs and represents the relative benefits derived,
 - (B) Is appropriately documented in sufficient detail for review by the cognizant Federal agency,
 - (C) Is statistically sound,
 - (D) Is performed specifically at the educational institution,
 - (E) Is reviewed every 2 years, and, if necessary, updated, and
 - (F) Assumptions are clearly stated and adequately explained.
- (i) Test the *administrative* cost pools to determine if:
 - (i) Costs are appropriately classified in these cost pools and the distribution bases are compliant with A-21, sections F.5, F.6, and F.7.
 - (ii) The administrative cost components comply with the limitation on reimbursement of administrative cost in A-21, section G.8. If the proposal is based on the alternative method for administrative cost in A-21, section G.9, then the limitation does not apply. If the proposal is based on the alternative method for administrative cost, determine that the educational institution meets the criteria of section G.9 and that this is adequately documented in the proposal.
 - (iii) *Departmental administration expense pool* – test to determine that this cost pool complies with A-21, section F.6.
 - (iv) *Academic Deans' Offices* – test that salaries and operating expenses are limited to those attributable to administrative functions.

- (v) *Academic Departments* – Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, is allowed at a rate of 3.6 percent of modified total direct costs. This category should not include professional business or administrative officers. Determine that this allowance is added to the computation of the indirect cost rate for major functions. Test to determine that the expenses covered by this allowance are excluded from the departmental cost pool (A-21, section F.6).

Test for consistent treatment, in like circumstances, of other administrative and supporting expenses incurred within academic departments. For example, items such as office supplies, postage, local telephone, and memberships shall normally be treated as indirect costs.

- (3) If the ICRP has been certified and submitted to the cognizant Federal agency, but is based on costs incurred in a fiscal year prior to the fiscal year being audited, a review of the ICRP is not required.
- (4) If an ICRP has not been prepared and, therefore, the indirect costs charged to Federal awards are not based on a certified ICRP, this may be required to be reported as an audit finding, in accordance with OMB Circular A-133, §__.510(a)(5).
- (5) *Application of an indirect cost rate(s) not approved by the cognizant agency* – Even though the rate(s) has not been approved by the cognizant agency, an unapproved indirect cost rate(s) should be reviewed for consistent application of the submitted rates to direct cost bases to ensure that the indirect cost rate(s) is applied consistent with the educational institution's policies and procedures that apply uniformly to both federally funded and other activities of the institution.
- d. *For educational institutions that also have awards containing award-specific rates (approved by the Federal awarding agency) that take precedence over the negotiated rate for purposes of indirect cost recovery:*
- (1) Ascertain that the award-specific rate is in accordance with special circumstances required by law or regulation.
- (2) Obtain and review the award terms used to establish an award-specific indirect cost rate(s).

- (3) Select a sample of claims for reimbursement and verify that the award-specific rate(s) used are in accordance with the terms of the award, that rate(s) were applied to the appropriate bases, and that the amounts claimed were the product of applying the rate to the applicable base. Verify that the costs included in the base(s) are consistent with the terms of the agreement.

Allowable Costs – Special Requirements – Cost Accounting Standards and Disclosure Statements

1. Compliance Requirement – CAS and Disclosure Statements

- a. A-21, section C.14 requires educational institutions (institutions) that receive more than \$25 million in Federal funding in a fiscal year to prepare and submit a Disclosure Statement (DS-2) that describes the institution's cost accounting practices. These institutions are required to submit a DS-2 within 6 months after the end of the institution's fiscal year that begins after May 8, 1996, unless the institution is required to submit a DS-2 earlier due to a receipt of a CAS-covered contract in accordance with 48 CFR section 9903.202-1.
- b. These institutions are responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. They are also responsible for filing amendments to the DS-2 when disclosed practices are changed or modified. Amendments should be provided to the cognizant Federal agency for approval.
- c. Federal Acquisition Regulation (FAR) Appendix, 48 CFR section 9903.201-2(c), Types of CAS Coverage, requires educational institutions to comply with all of the CAS specified in 48 CFR part 9905 that are in effect on the effective date of a covered contract. Negotiated contracts in excess of \$500,000 are CAS-covered, except for CAS-covered contracts awarded to Federally Funded Research and Development Centers (FFRDCs) operated by an educational institution, which are subject to 48 CFR part 9904.

2. Audit Objectives – CAS and Disclosure Statements

- a. Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c).
- b. Determine whether the educational institution's DS-2 is current, accurate, and complete and that it has been approved by the cognizant Federal agency as adequate and compliant with A-21 and CAS (48 CFR part 9905).
- c. Determine whether the educational institution's actual accounting practices are consistent with its disclosed accounting practices.
- d. Determine whether amendments have been filed with and approved by the cognizant Federal agency.

- e. Determine whether the educational institution's accounting practices for direct and indirect costs comply with CAS applicable to educational institutions (48 CFR part 9905).

3. *Suggested Internal Control Audit Procedures – CAS and Disclosure Statements*

- a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.
- b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in §___500(c)(3) of OMB Circular A-133, including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.
- c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. *Suggested Compliance Audit Procedures – CAS and Disclosure Statements*

- a. Obtain a copy of the educational institution's DS-2, amendments, and letters of approval from the cognizant Federal agency.
- b. Read the DS-2 and its amendments and ascertain if the disclosure agrees with the policies prescribed in the educational institution's current policies and procedures documents.
- c. Test that the disclosure agrees with actual practices for the period covered by audit, including whether the practices were consistent throughout the period.
- d. Test direct and indirect charges to Federal awards to determine that the educational institution's practices used in estimating the costs in the proposal were consistent with the institution's cost accounting practices used in accumulating and reporting the costs (A-21, section C.10 and FAR Appendix, 48 CFR section 9905.501).
- e. For those costs which are sometimes charged direct and sometimes charged indirect, test for consistent classification of these costs, when incurred for the same purpose and under like circumstances (A-21, section C.11 and FAR Appendix, 48 CFR section 9905.502). For example:
 - (1) Salaries of administrative and clerical staff are normally treated as indirect costs; however, they may be charged direct to a major project or activity

under certain conditions. Sample these costs when they have been charged direct to Federal awards to determine consistent treatment for non-Federal awards, instructional activity, or other institutional activity (A-21, section F.6.).

- (2) Office supplies, postage, local telephone costs and memberships are normally treated as indirect. Sample these costs when they have been charged direct to Federal awards to determine consistent treatment for non-Federal awards, instructional activity, or other institutional activity (A-21, section F.6.).
- f. Capital expenditures for general and special-purpose equipment may be charged direct to awards with approval of the awarding agency. Sample these costs when they have been charged direct to Federal awards to determine consistent treatment for non-Federal awards, instructional activity, or other institutional activity (A-21, section J.18.).
- g. Test costs direct charged to Federal awards and indirect costs accumulated in the educational institution's accounting system for adequate accounting of unallowable costs (A-21 section C.12 and FAR Appendix, 48 CFR section 9905.505).
- h. Determine that the educational institution's cost accounting period for accumulating costs on Federal awards and indirect cost pools are consistent with the institution's fiscal year. If not, determine that the institution has met the criteria for an exception described in A-21, section C.13 and that it has been approved by the cognizant Federal agency (A-21, section C.13 and FAR Appendix, 48 CFR section 9905.506).

Allowable Costs – Special Requirements – Internal Service, Central Service, Pension, or Similar Activities or Funds

1. *Compliance Requirement*

Charges made from internal service, central service, pension, or similar activities or funds, must follow the applicable cost principles provided in A-21.

2. *Audit Objectives*

Obtain an understanding of internal control, assess risk, and test internal control as required by OMB Circular A-133 §___.500(c). Determine whether charges made from internal service, central service, pension, or similar activities or funds are in accordance with A-21.

3. *Suggested Internal Control Audit Procedures*

- a. Using the guidance provided in Part 6 – Internal Control, perform procedures to obtain an understanding of internal control sufficient to plan the audit to support a low assessed level of control risk for the program.
- b. Plan the testing of internal control to support a low assessed level of control risk for allowable costs/cost principles and perform the testing of internal control as planned. If internal control over some or all of the compliance requirements is likely to be ineffective, see the alternative procedures in OMB Circular §____.500(c)(3), including assessing the control risk at the maximum and considering whether additional compliance tests and reporting are required because of ineffective internal control.
- c. Consider the results of the testing of internal control in assessing the risk of noncompliance. Use this as the basis for determining the nature, timing, and extent (e.g., number of transactions to be selected) of substantive tests of compliance.

4. *Suggested Compliance Audit Procedures*

The auditor should consider procedures such as the following:

- a. For activities accounted for in separate funds, ascertain if (1) retained earnings/fund balances (including reserves) were computed in accordance with A-21; (2) working capital reserves were not excessive in amount (generally not greater than 60 days for cash expenses for normal operations incurred for the period exclusive of depreciation, capital costs and debt principal costs); and (3) refunds were made to the Federal Government for its share of any amounts transferred or borrowed from internal service, central service, pension, insurance, or other similar activities or funds for purposes other than to meet the operating liabilities, including interest on debt, of the fund.
- b. Test that all users of services are billed in a consistent manner.
- c. Test that billing rates exclude unallowable costs, in accordance with A-21.
- d. Test, where activities are not accounted for in separate funds, that billing rates (or charges) are developed based on actual costs and were adjusted to eliminate profits.
- e. For educational institutions that have self-insurance and certain types of fringe benefit programs (e.g., pension funds), ascertain if independent actuarial studies appropriate for such activities are performed at least biennially and that current period costs were allocated based on an appropriate study which is not over 2 years old.