

COMMISSION ON STATE MANDATES

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October 12, 2011

Mr. Keith Petersen
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0430

Elizabeth Miller, EdD,
Administrative Services
Allan Hancock Joint Community
College District
800 South College Drive
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Mr. Jim Spano
Division of Audits
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

And Interested Parties and Affected State Agencies (See Mailing List)

RE: Final Staff Analysis , Proposed Statement of Decision, and Hearing Date
*Health Fee Elimination (09-4206-I-19, 09-4206-I-20, 09-4206-I-23, 09-4206-I-26,
09-4206-I-27, 09-4206-I-28, 09-4206-I-30)*
Education Code Section 76355
Statutes 1984, Chapter 1; Statutes 1987, Chapter 1118
Claimants: Citrus Community College District (FYs 2002-02 – 2006-07), Cerritos
Community College District (FYs 2002-03 – 2006-07), Los Rios Community College
District (FYs 2005-06 – 2007-08), Redwood Community College District
(FYs 2002-03 – 2008-09), Allan Hancock Joint Community College District
(FYs 2002-03 – 2006-07), Rancho Santiago Community College District (FYs 2005-06 –
2008-09), Pasadena Community College District (FYs 2004-05 – 2005-06)

Dear Mr. Petersen, Ms. Miller, and Mr. Spano:

The final staff analysis for the above-named matters is enclosed.

Hearing

This matter is set for hearing on **Thursday, October 27, 2011**, at 9:00 a.m., in the State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1183.01(c)(2).)

Special Accommodations

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

Please contact Kenny Louie at (916) 323-3562 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan".

Drew Bohan
Executive Director

ITEM 10
INCORRECT REDUCTION CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Section 76355

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

Statutes 1987, Chapter 1118

Health Fee Elimination

Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009
09-4206-I-19, 09-4206-I-20, 09-4206-I-23, 09-4206-I-26, 09-4206-I-27, 09-4206-I-28, 09-4206-I-30

Citrus Community College District, Cerritos Community College District,
Los Rios Community College District, Redwoods Community College District,
Allan Hancock Joint Community College District,
Rancho Santiago Community College District, and
Pasadena Area Community College District, Claimants

Attached is the proposed statement of decision for this matter. The executive summary and the proposed statement of decision also function as the final staff analysis, as required by section 1183.07 of the Commission's regulations.

EXECUTIVE SUMMARY

Overview

This analysis looks at seven consolidated incorrect reduction claims filed by seven community college districts (Districts) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2002-2003 through 2008-2009 for providing health services to all community college students under the *Health Fee Elimination* program.

Health Fee Elimination Program

Prior to 1984, community college districts were authorized to charge almost all students a general fee (health service fee) for the purpose of providing health services. In 1984, the Legislature enacted legislation eliminating community college districts' fee authority for health services. The 1984 legislation also required any district which provided health services during the 1983-1984 fiscal year, for which it was previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988. The result was that community college districts, which previously had fee authority to provide health services, had to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose.

In 1987, the Legislature required the maintenance of effort requirement to continue after January 1, 1988. As a result, all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain those services every subsequent fiscal year. In addition, on January 1, 1988, the community college district fee authority for health services was reestablished.

Commission Decisions

At the November 20, 1986 Commission hearing, the Commission determined that the 1984 legislation, which required community college districts to maintain health services while repealing the districts' fee authority for those services, 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.

At the May 25, 1989 Commission hearing, the Commission adopted amendments to the parameters and guidelines for the *Health Fee Elimination* program to reflect amendments made by the 1987 legislation. The 1987 legislation reestablished community college districts' fee authority for the provision of health services and extended the maintenance of service provision such that all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain that level of service each fiscal year thereafter. As a result, the 1989 parameters and guidelines reflected a change in eligible claimants, and the reestablishment of community college districts' fee authority for the *Health Fee Elimination* program.

Procedural History

Between January 7, 2004 and February 10, 2010, the Districts filed reimbursement claims for various fiscal years with the Controller for actual costs incurred as a result of the *Health Fee Elimination* program. The Districts offset the costs incurred by health service fees that were actually charged and received.

Between July 1, 2009 and May 25, 2010, the Controller issued claims adjustment letters reducing reimbursement claims filed by the Districts for the *Health Fee Elimination* program based on the determination that the districts understated the health service fees which are required to be deducted from the costs claimed by failing to account for health service fees that districts were *authorized* to charge.

The Districts filed seven individual incorrect reduction claims as a result of the adjustments made to the reimbursement claims. The Districts argue that they were only required to offset costs by health service fees that were *actually* charged and received.

On September 21, 2010, after the filing of the incorrect reduction claims, the Third District Court of Appeal issued its opinion in *Clovis Unified School Dist. v. Chiang (Clovis)* (2010) 188 Cal.App.4th 794, which specifically addressed this disputed issue. The court found that community college districts were required to offset costs claimed for the *Health Fee Elimination* program by the health service fees that community college districts were *authorized* to charge.

On December 13, 2010, Commission staff consolidated the seven incorrect reduction claims filed by the Districts and requested comments from the Districts and the Controller on the effect of the *Clovis* decision on the incorrect reduction claims. The Districts and the Controller both filed comments in response.

On July 20, 2011, the draft staff analysis was issued. The Districts and the Controller filed comments in response to the draft staff analysis.

Positions of the Parties

Claimants' Positions

For fiscal years 2002-2003 through 2008-2009, the Districts claimed reimbursement for costs to provide health services to community college students under the *Health Fee Elimination* program. During these fiscal years the Districts accounted only for health service fees actually received as offsetting revenue and subtracted that amount from the costs incurred as a result of providing health services.

The Districts contend that the Controller incorrectly reduced the costs for providing health services to students. Prior to the court's decision in *Clovis* the Districts asserted in their incorrect reduction claims that:

- Community college districts are required to reduce costs only by offsetting revenue received.
- The Controller did not provide the required explanation of the adjustments. "The Controller's actions ... deny the District the opportunity to comprehensively contest the adjustments through this Incorrect Reduction Claim."
- No audit was conducted, "[t]herefore the Controller has no factual basis to make a conclusion that the costs claimed were excessive or unreasonable, as required by Government Code section 17561(d)(2)."
- The second sentence of Government Code section 17558.5(a) provides that if no payment has been made to a claimant for a fiscal year for which a 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. The second sentence is impermissibly vague. As a result, the statute of limitations should commence to run upon filing of a claim by a claimant.

The Districts also filed a response to the consolidation of the incorrect reduction claims and request for further briefing and information by the Commission in January 2011. The Districts' comments generally provide that:

- Increasing the health service fees by the same percentage increase to the Implicit Price Deflator for State and Local Purchases of Goods and Services is within the authority of only community college districts. As a result, without action by a community college district the maximum amount of health service fees that can be charged by the district are the amounts specified in Education Code section 76355(a)(1). Additionally, the Controller cannot use information provided by the California Community College Districts Chancellor's Office (Chancellor's Office) to determine the maximum health service fee authority because only the districts have the authority to increase the health service fee.
- The Controller reduced the claims for reimbursement by too much.
 - Although the Controller excluded students exempt from paying the health service fees from the calculation of the amount of health service fees that a district is

authorized to charge, the Controller did not account for the cost of providing services to these exempt students.

- The Controller's calculations of the total amount of health service fees that a district is authorized to charge include all students regardless of whether there is a student health service center at a student's location of attendance.
- The scope of health services provided pursuant to the *Health Fee Elimination* program exceeds the scope of authorized uses of the health service fee.
- The Controller improperly utilized enrollment data from the Chancellor's Office for the calculation of collectible fees.

In addition, the Districts reassert that no audit was conducted. The Districts state that "the Controller did not audit the districts' enrollment or program costs. The Controller does not assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard for review."

The Districts filed a response disagreeing with the draft staff analysis, and clarifying and reiterating the arguments above.

State Controller's Office's Position

The State Controller's Office (Controller) filed comments disagreeing with the incorrect reduction claims filed by the Districts, and responding to the request for information on the effect of the *Clovis* decision on the incorrect reduction. The Controller specifically asserts:

- In regard to the Districts' assertion that districts are required to reduce costs only by offsetting revenue received, "the issues surrounding offsetting revenue based on authorized fees have been fully resolved by the court in the [*Clovis*] case. In that case the court concluded that the "Health Fee Rule" implemented by the Controller's Office, which reduced reimbursement by the amount of the health fee authorized, was valid."
- In response to the Districts' assertion that the Controller did not provide the required explanation of the adjustments and in doing so has denied the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims, a detailed analysis of all claim reductions was provided (after the incorrect reductions were filed). In addition, "The [Districts] may file an amended Incorrect Reduction Claim pursuant to Title 2, California Code of Regulations (CCR), section 1185."
- In response to the Districts' assertion that no audit was conducted, and that the Controller does not assert that the costs claimed were excessive or unreasonable, "We disagree. The [Controller] reviewed the [Districts'] claims and concluded that the [Districts] did not properly report authorized health service fees." Additionally, "The [Controller] did in fact conclude that the [Districts'] claim was *excessive*."
- In response to the Districts' assertion that the statute of limitations applicable to audits conducted on reimbursement claims for which no payment has been made is impermissibly vague, "the language of the statute in [*sic*] not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the 'date of initial payment,' in cases where no funds are appropriated or no payment is made. . . . Ultimately, the argument concerning

vagueness is moot, as the [Commission] has no authority to determine that statute, or any portion thereof, is unconstitutional.”

On September 2, 2011, the Controller submitted comments agreeing with the conclusions regarding issues of law in the draft staff analysis. The Controller’s comments also clarified facts in the record.

Commission Responsibilities

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

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 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.

Staff Analysis

Staff makes the following findings:

1. Pursuant to the *Clovis* decision, the Controller appropriately used Education Code section 76355(a)(2) to determine the maximum health service fee authority of community college districts.

The court in *Clovis* upheld the Controller’s use of the “Health Fee Rule,” which reduced reimbursement claims based on the fees districts are *authorized* to charge regardless of whether community college districts charged or collected those fees. Based on the language of Education Code section 76355(a)(2), the fee authority for health services automatically increases by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. The Commission is bound by the court’s decision in *Clovis*.

The Districts argue that increasing the fee pursuant to Education Code section 76355(a)(2) requires legislative action by a community college district. As a result, the Districts assert that the Controller cannot use Education Code section 76355(a)(2) for purposes of determining the maximum fees that the Districts were authorized to charge for purposes of offsetting costs incurred from the *Health Fee Elimination* program. The Districts are incorrect.

The court fully resolved the issue of the Controller’s use of the Health Fee Rule, which includes the automatic increase in authority pursuant to Education Code section 76355(a)(2). The court held that the Health Fee Rule is valid because community college districts are not entitled to reimbursement for costs for which the districts have the *authority* to charge a fee. This rule is applicable regardless of the fee that community college districts decide to actually charge.

Pursuant to the decision in *Clovis*, staff finds that it was necessary for the Controller to use Education Code section 76355(a)(2) to identify the maximum health service fees that

community college districts had the authority to charge and were required to use as offsetting revenue for claims of reimbursement for the *Health Fee Elimination* program.

2. The Controller correctly included students that cannot access student health services in a practical manner in the calculation of the maximum amount of health service fees that a community college district has the authority to charge.

The Districts argue that community college districts cannot reasonably charge students the health service fee if those students cannot access health services in a practical manner or that do not use the health services provided by the districts.

For purposes of mandate reimbursement the issue as identified by the court in *Clovis* is whether community college districts have the *authority* to charge the health service fee regardless of the decision made by the community college districts to actually impose the fee or not.

Education Code section 76355 authorizes community college districts to charge all students the health service fee, except for students that fall within three exceptions. The Districts acknowledge that the Controller has excluded the students exempted from the fee in calculating the maximum amount of health service fees that the Districts had the authority to charge. Unless the students referenced in the Districts' argument fall into any of the three categories of exempted students, the Districts have the authority to charge the students the health service fee.

Thus, staff finds that the State Controllers' Office properly included all students that do not fall within the three categories of students exempt from the health service fee as students which the Districts have the *authority* to charge.

3. The Controller has properly conducted an audit and met the statute of limitations to initiate and complete the audit.

The Districts make the following assertions: (a) the Controller has improperly used enrollment data and fee authority calculations provided by the Chancellor's Office to conduct the audits; (b) the Controller has based its adjustments to the Districts' reimbursement claims on the wrong standard of review; and (c) the Controller did not initiate and complete an audit within the applicable statute of limitations.

- The Controller has not improperly utilized enrollment data provided by the Chancellor's Office to conduct an audit.

The Districts argue that the Controller cannot rely on enrollment data provided by the Chancellor's Office for purposes of conducting an audit of the Districts' reimbursement claims absent validation of the data.

Staff finds that the Controller maintains broad discretion in how to perform its duty to audit all claims against the state. The District has the burden to show that the Controller's audit is arbitrary, capricious, or entirely lacking in evidentiary support.

Staff finds that the Districts have failed to meet their burden based on the evidence provided by the Districts and the Districts' response to the Controller's request for information. In addition, staff finds that the Controller has not improperly utilized the health fee calculations and enrollment data provided by the Chancellor's Office to conduct an audit.

As a corollary issue the Districts assert that the Controller's use of the health fee calculations and the enrollment data provided by the Chancellor's Office constitute rules of general application, and because the alleged rules were not adopted under the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) the use of the calculations and data are invalid as underground regulations. However, the Commission does not have jurisdiction to determine whether the Controller's actions, or any other administrative agency's actions, constitute invalid underground regulations. As a result, staff makes no findings on this issue.

- The Controller has adjusted the Districts' claims based on the correct standard.

The Districts argue that the Controller does not "assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard of review."

In response the State Controllers' Office argues:

The SCO did in fact conclude that the district's claim was excessive. Excessive is defined as "Exceeding what is usual, *proper, necessary*, [emphasis added] or normal." The [Districts'] mandated cost claims exceeded the proper amount based on the reimbursable costs allowed by statutory language and the program's parameters and guidelines.

Staff finds that the Controller adjusted the Districts' claims for reimbursement based on the correct standard.

- The Controller has met the statute of limitations to initiate and complete the audits.

The Districts assert that Government Code section 17558.5(a) is impermissibly vague, and thus unenforceable. The Districts propose a different statute of limitations and argue that the Controller has failed to meet the statute of limitations to conduct audits for some of the reimbursement claims filed by the Districts during certain fiscal years. As a result, the Districts contend that reductions made to reimbursement claims during these fiscal years are void and should be withdrawn.

The Commission does not have the authority to determine that a statute, or any portion thereof, is unconstitutional and therefore unenforceable. As a result, staff makes no findings on the constitutionality of Government Code section 17558.5(a), and must treat all of subdivision (a) as enforceable. Applying the plain language of Government Code section 17558.5(a) to the evidence presented to the Commission, staff finds that the Controller has initiated and completed the audits within the statute of limitations.

4. Although the Controller did not provide an explanation of the adjustments made to reimbursement claims within the 30-day time limit of Government Code section 17558.5(c), the Controller has not denied the Districts the opportunity to comprehensively contest the adjustments.

Government Code section 17558.5(c) requires the Controller to notify why an adjustment of a claim for reimbursement was made to claimants in writing within 30 days of issuing a remittance advice for the adjustment made. The Controller failed to meet the 30 day

timeline for notifying why adjustments were made to the reimbursement claims filed by the Districts for the *Health Fee Elimination* program.

Prior to receiving the Controller's explanations, the Districts made the assertion that the Controller's actions deny the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims filed with the Commission.

Although the Controller did not provide an explanation of adjustments made to the reimbursement claims within the 30-day time limit, staff finds that the Districts are not denied the opportunity to comprehensively contest adjustments made. Claimants are authorized to file an incorrect reduction claim with the Commission upon receiving a remittance advice or other notice of adjustment notifying the claimant of a reduction. This is the beginning of a claimant's opportunity to contest adjustments made by the Controller. After a claimant has filed an incorrect reduction claim, the claimant has the ability to amend its incorrect reduction claim and is provided multiple opportunities to submit comments to respond to comments or issues raised during the Commission's incorrect reduction claims process. Additionally, if the Controller fails to provide a needed explanation of adjustments made to a reimbursement claim filed by a claimant, the Commission maintains subpoena power. Here, the Controller provided detailed analyses to all of the claim reductions on October 20, 2009 and October 21, 2009, to which the Districts have responded to on January 11, 2011. Thus, the actions of the Controller have not denied the Districts the opportunity to comprehensively contest adjustments made to the reimbursement claims.

5. The Controller properly accounted for students exempt from the Health Service Fee.

In conducting audits on the Districts' claims for reimbursement, the Controller calculated the offsetting revenue from health service fees for each term for each fiscal year claimed by multiplying the maximum fee authority for the term during the fiscal year claimed by the total enrollment minus exempted students for each term. The Controller then subtracted the offsetting revenue for each fiscal year from the total reimbursable claim amounts submitted by the Districts for each fiscal year.

The Districts argue that the Controller's collectible fee calculation excludes these exempted students from the calculation of the offsetting revenue, but does not determine the costs of the services to these exempt students.

It is a claimant's responsibility to claim total reimbursable costs in its reimbursement claims filed with the Controller. Here, the total reimbursable costs claimed by the Districts should have included the reimbursable costs of health services provided to all students, including students exempt from the health service fee. It is unclear if, or why, the Districts excluded the cost of health services provided to students exempt from the health service fee from the total reimbursable claim amounts submitted by the Districts to the Controller. To the extent that reimbursable costs under the *Health Fee Elimination* program have not been claimed, it is the responsibility of the claimants (the Districts) to claim these costs, not that of the Controller.

Ultimately, the cost of health services provided to students exempt from the health service fee is irrelevant for purposes of the consolidated incorrect reduction claims. The Controller did not make any reduction to the reimbursement claims on the basis of the

costs claimed by the Districts for providing health services to students exempt from the health service fee. Thus, staff finds that the Controller properly accounted for students exempt from the health service fee.

6. The scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of health service fees.

The Districts argue that the scope of reimbursable services described in the parameters and guidelines exceeds the program regulations. Therefore, the Districts argue that they are eligible for reimbursement for some parameters and guidelines services that are outside the scope of the Title 5 constraints for use of the fees.

The parameters and guidelines for the *Health Fee Elimination* program list physicals for athletes and employees as a reimbursable cost. Based on the language of Education Code section 76355 and its implementing regulations, community college districts are prohibited from using the student health service fee for physicals for athletes and employees. Thus, staff agrees with the Districts' argument that the scope of reimbursable services described in the parameters and guidelines exceeds the permissible uses of the health service fee paid by students to the extent that it pertains to: (a) physicals for athletes; and (b) physicals for employees.

In the audits of these Districts the Controller used the health service fees as offsets for all costs claimed by the districts without delineating the costs claimed by the districts associated with providing physicals for athletes and employees. From the evidence in the record it is not possible for staff to determine the costs associated with providing physicals for athletes and employees for each district and each fiscal year claimed. As a result, staff finds that the Controller incorrectly reduced reimbursable costs associated with providing physicals for athletes and employees by applying health service fees as offsetting revenue to the costs claimed for physicals for athletes or employees.

Conclusion

Staff concludes that the Controller incorrectly reduced costs incurred that are attributable to physicals for athletes by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008 (CSM 09-4206-I-23).
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

The above community college districts' reimbursement claims are hereby remanded back to the Controller to determine the portion of the total costs claimed that are attributable to physicals for athletes. The costs for physicals for athletes should be reinstated.

Additionally, staff concludes that the Controller incorrectly reduced costs incurred that were attributable to physicals for employees by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

The above community college districts' reimbursement claims are hereby remanded back to the Controller to determine the portion of the total costs claimed that are attributable to physicals for employees. The costs for physicals for employees should be reinstated.

Staff also concludes that the Controller correctly reduced all other costs incurred during all other fiscal years claimed by Citrus Community College District, Cerritos Community College District, Los Rios Community College District, Redwoods Community College District, Allan Hancock Joint Community College District, Rancho Santiago Community College District, and Pasadena Area Community College District for the *Health Fee Elimination* program by the amount of health service fees that the districts were authorized to charge.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to partially approve the incorrect reduction claim. Minor changes, including those to reflect the hearing testimony and the vote count will be included when issuing the final statement of decision.

However, if the Commission's vote on this item modifies the proposed statement of decision, staff recommends that the motion to adopt the proposed statement of decision reflect those changes, which would be made before issuing the final statement of decision. In the alternative, if the changes are significant, staff recommends that the Commission postpone this item to the next Commission hearing.

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.) (AB 1)

Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years 2002-2003, 2003-2004,
2004-2005, 2005-2006, 2006-2007,
2007-2008, 2008-2009

Citrus Community College District,
Cerritos Community College District,
Los Rios Community College District,
Redwoods Community College District,
Allan Hancock Joint Community College
District, Rancho Santiago Community College
District, and Pasadena Area Community
College District, Claimants.

Case Nos.: 09-4206-I-19, 09-4206-I-20,
09-4206-I-23, 09-4206-I-26, 09-4206-I-27,
09-4206-I-28, 09-4206-I-30

Health Fee Elimination

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

(Proposed for Adoption: October 27, 2011)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this consolidated incorrect reduction claim during a regularly scheduled hearing on October 27, 2011. [Witness list will be included in the final statement of 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 staff analysis to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This analysis looks at seven consolidated incorrect reduction claims filed by seven community college districts (Districts) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2002-2003 through 2008-2009 for providing health services to all community college students under the *Health Fee Elimination* program.

Health Fee Elimination Program

Prior to 1984, community college districts were authorized to charge almost all students a general fee (health service fee) for the purpose of providing health services. In 1984, the Legislature enacted legislation eliminating community college districts' fee authority for health services. The 1984 legislation also required any district which provided health services during the 1983-1984 fiscal year, for which it was previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988. The result was that community college districts, which previously had fee authority to provide health services, had to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose.

In 1987, the Legislature required the maintenance of effort requirement to continue after January 1, 1988. As a result, all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain those services every subsequent fiscal year. In addition, on January 1, 1988, the community college district fee authority for health services was reestablished.

At the November 20, 1986 Commission hearing, the Commission determined that the 1984 legislation, which required community college districts to maintain health services while repealing the districts' fee authority for those services, 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.

At the May 25, 1989 Commission hearing, the Commission adopted amendments to the parameters and guidelines for the *Health Fee Elimination* program to reflect amendments made by the 1987 legislation. The 1987 legislation reestablished community college districts' fee authority for the provision of health services and extended the maintenance of service provision such that all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain that level of service each fiscal year thereafter. As a result, the 1989 parameters and guidelines reflected a change in eligible claimants, and the reestablishment of community college districts' fee authority for the *Health Fee Elimination* program.

The Commission concludes that the Controller incorrectly reduced costs incurred that are attributable to physicals for athletes by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008 (CSM 09-4206-I-23).
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

The above community college districts' reimbursement claims are hereby remanded back to the Controller to determine the portion of the total costs claimed that are attributable to physicals for athletes. The costs for physicals for athletes should be reinstated.

Additionally, the Commission concludes that the Controller incorrectly reduced costs incurred that were attributable to physicals for employees by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

The above community college districts' reimbursement claims are hereby remanded back to the Controller to determine the portion of the total costs claimed that are attributable to physicals for employees. The costs for physicals for employees should be reinstated.

The Commission also concludes that the Controller correctly reduced all other costs incurred during all other fiscal years claimed by Citrus Community College District, Cerritos Community College District, Los Rios Community College District, Redwoods Community College District, Allan Hancock Joint Community College District, Rancho Santiago Community College District, and Pasadena Area Community College District for the *Health Fee Elimination* program by the amount of health service fees that the districts were authorized to charge.

Health Fee Elimination Program

The *Health Fee Elimination* program required community college districts that provided health services during fiscal year 1983-1984 to maintain the health services at the level provided in fiscal year 1983-1984 for every subsequent fiscal year until January 1, 1988. This requirement was imposed while also eliminating the fee authority that the districts had for the health services provided.

In 1987, the Legislature required the maintenance of effort requirement to continue after January 1, 1988. As a result, all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain those services every subsequent fiscal year. In addition, on January 1, 1988, the community college district fee authority for health services was reestablished.

COMMISSION FINDINGS

Chronology

- | | |
|----------|---|
| 01/22/87 | Commission adopts statement of decision for <i>Health Fee Elimination</i> test claim (CSM 4206) |
| 08/27/87 | Commission adopts parameters and guidelines for the <i>Health Fee Elimination</i> program |
| 05/25/89 | Commission adopts amendments to parameters and guidelines for the <i>Health Fee Elimination</i> program |

01/07/04 Citrus Community College District files reimbursement claim for fiscal year 2002-2003

01/12/04 Cerritos Community College District files reimbursement claim for fiscal year 2002-2003

01/13/04 Redwoods Community College District files reimbursement claim for fiscal year 2002-2003

01/13/04 Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2002-2003

12/13/04 Citrus Community College District files reimbursement claim for fiscal year 2003-2004

12/13/04 Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2003-2004

01/07/05 Cerritos Community College District files reimbursement claim for fiscal year 2003-2004

12/20/05 Citrus Community College District files reimbursement claim for fiscal year 2004-2005

12/30/05 Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2004-2005

01/12/06 Redwoods Community College District files reimbursement claim for fiscal year 2003-2004

01/12/06 Redwoods Community College District files reimbursement claim for fiscal year 2004-2005

01/12/06 Pasadena Area Community College District files reimbursement claim for fiscal year 2004-2005

01/17/06 Cerritos Community College District files reimbursement claim for fiscal year 2004-2005

01/04/07 Los Rios Community College District files reimbursement claim for fiscal year 2005-2006

01/09/07 Citrus Community College District files reimbursement claim for fiscal year 2005-2006

01/16/07 Redwoods Community College District files reimbursement claim for fiscal year 2005-2006

01/16/07 Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2005-2006

01/16/07 Pasadena Area Community College District files reimbursement claim for fiscal year 2005-2006

12/21/07 Rancho Santiago Community College District files reimbursement claim for fiscal year 2005-2006

01/11/08 Cerritos Community College District files reimbursement claim for fiscal year 2005-2006

01/11/08 Allan Hancock Joint Community College District files reimbursement claim for fiscal year 2006-2007

01/18/08 Redwoods Community College District files reimbursement claim for fiscal year 2006-2007

02/05/08 Los Rios Community College District files reimbursement claim for fiscal year 2006-2007

02/08/08 Rancho Santiago Community College District files reimbursement claim for fiscal year 2006-2007

01/29/09 Cerritos Community College District files reimbursement claim for fiscal year 2006-2007

01/30/09 Citrus Community College District files reimbursement claim for fiscal year 2006-2007

02/03/09 Los Rios Community College District files reimbursement claim for fiscal year 2007-2008

02/06/09 Rancho Santiago Community College District files reimbursement claim for fiscal year 2007-2008

07/01/09 Controller issues claim adjustment letters to Cerritos Community College District for fiscal years 2003-2004 through 2006-2007

07/01/09 Controller issues claim adjustment letters to Pasadena Area Community College District for fiscal years 2004-2005 and 2005-2006

07/02/09 Controller issues claim adjustment letter to Cerritos Community College District for fiscal year 2002-2003

07/02/09 Controller issues claim adjustment letters to Redwoods Community College District for fiscal years 2002-2003 through 2005-2006

07/05/09 Controller issues claim adjustment letters to Citrus Community College District for fiscal years 2003-2004 through 2005-2006

07/06/09 Controller issues claim adjustment letter to Citrus Community College District for fiscal years 2002-2003 and 2006-2007

07/09/09 Controller issues claim adjustment letter to Redwoods Community College District for fiscal year 2006-2007

07/10/09 Controller issues claim adjustment letters to Allan Hancock Joint Community College District for fiscal years 2002-2003 and 2006-2007

07/12/09 Controller issues claim adjustment letters to Allan Hancock Joint Community College District for fiscal years 2003-2004 through 2005-2006

07/19/09 Controller issues claim adjustment letter to Los Rios Community College District for fiscal years 2005-2006 and 2007-2008

07/22/09 Controller issues claim adjustment letter to Los Rios Community College District for fiscal year 2006-2007

09/24/09 Cerritos Community College District files incorrect reduction claim (09-4206-I-20)

09/24/09 Citrus Community College District files incorrect reduction claim (09-4206-I-19)

10/01/09 Los Rios Community College District files incorrect reduction claim (09-4206-I-23)

10/19/09 Redwoods Community College District files incorrect reduction claim (09-4206-I-26)

10/20/09 Controller issues claim adjustment letter with audit report to Citrus Community College District for fiscal years 2002-2003 through 2006-2007

10/20/09 Controller issues claim adjustment letter with audit report to Cerritos Community College District for fiscal years 2002-2003 through 2006-2007

10/20/09 Controller issues claim adjustment letter with audit report to Redwoods Community College District for fiscal years 2002-2003 through 2006-2007

10/20/09 Controller issues claim adjustment letter with audit report to Pasadena Area Community College District for fiscal years 2004-2005 through 2005-2006

10/21/09 Controller issues claim adjustment letter with audit report to Allan Hancock Joint Community College District for fiscal years 2002-2003 through 2006-2007

10/21/09 Controller issues claim adjustment letter with audit report to Los Rios Community College District for fiscal years 2005-2006 through 2007-2008

01/29/10 Commission adopts amendments to parameters and guidelines for the *Health Fee Elimination* program

02/10/10 Rancho Santiago Community College District files reimbursement claim for fiscal year 2008-2009

04/22/10 Controller issues claim adjustment letter with audit report to Rancho Santiago Community College District for fiscal years 2005-2006 through 2008-2009

05/29/10 Controller issues claim adjustment letters to Rancho Santiago Community College District for fiscal years 2005-2006 through 2008-2009

06/07/10 Allan Hancock Joint Community College District files incorrect reduction claim (09-4206-I-27)

06/15/10 Pasadena Area Community College District files incorrect reduction claim (09-4206-I-30)

06/16/10 Rancho Santiago Community College District files incorrect reduction claim (09-4206-I-28)

09/21/10 Third District Court of Appeal issues decision in *Clovis Unified School Dist. v. Chiang*

- 12/13/10 Commission staff issues notice of proposed consolidation of incorrect reduction claims (09-4206-I-19, 20, 23, 26, 27, 28, and 30) filed by Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, Rancho Santiago, and Pasadena Community College Districts and request for further briefing and information
- 01/11/11 Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts file response to the consolidation of the incorrect reduction claims and request for further briefing and information
- 04/14/11 Controller files response to the consolidation of the incorrect reduction claims and request for further briefing and information
- 07/20/11 Commission staff issues draft staff analysis
- 09/01/11 Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts file response to the draft staff analysis
- 09/02/11 Controller files response to the draft staff analysis

I. Background

This analysis looks at seven consolidated incorrect reduction claims filed by the Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, Rancho Santiago, and Pasadena Area Community College Districts (the Districts) regarding reductions made by the Controller to reimbursement claims for costs incurred by the seven districts during fiscal years 2002-2003 through 2008-2009 for providing health services to all community college students under the *Health Fee Elimination* program.¹ The reductions made by the Controller reduced all or part of each district’s reimbursement claims for costs incurred during fiscal years 2002-2003 through 2008-2009 based on the Controller’s calculation of total health service fees that each district was authorized by law to charge to offset the costs incurred by the Districts.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts to charge almost all students a general fee (health service fee) for the purpose of voluntarily providing health supervision and services, direct and indirect medical and hospitalization

¹ Citrus Community College District claimed costs in the amount of \$513,010 incurred in fiscal years 2002-2003 through 2006-2007. Cerritos Community College District claimed costs in the amount of \$487,933 incurred in fiscal years 2002-2003 through 2006-2007. Los Rios Community College District claimed costs in the amount of approximately \$2.8 million incurred in fiscal years 2005-2006 through 2007-2008. Redwoods Community College District claimed costs in the amount of \$439,666 incurred in fiscal years 2002-2003 through 2006-2007. Allan Hancock Joint Community College District claimed costs in the amount of \$341,318 incurred in fiscal years 2002-2003 through 2006-2007. Rancho Santiago Community College District claimed costs in the amount of approximately \$2.5 million incurred in fiscal years 2005-2006 through 2008-2009. Pasadena Area Community College District claimed costs in the amount of \$398,015 incurred in fiscal years 2004-2005 and 2005-2006.

services, and operation of student health centers.² In 1984, the Legislature enacted legislation to repeal former Education Code section 72246, and thus left community college districts without fee authority for health services.³ However, the legislation included a provision that reenacted the code section, which was to become operative on January 1, 1988.⁴

In addition to repealing community college districts' fee authority, the 1984 legislation required any district which provided health services during the 1983-1984 fiscal year, for which it was previously authorized to charge a fee, to maintain the health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988. The result was that community college districts, which previously had fee authority for the provision of health services, had to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose.

In 1987, the Legislature amended former Education Code section 72246, which was to become operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5.⁵ As a result, in 1988 all community college districts that provided health services in the 1986-1987 fiscal year were required to maintain health services in the 1987-1988 fiscal year and each year thereafter. In addition, the community college districts regained fee authority for the provision of the health services.

In 1993, former Education Code section 72246 was renumbered to Education Code section 76355.⁶

Commission Decisions

At the November 20, 1986 Commission hearing, the Commission determined that the 1984 legislation, which required community college districts to maintain health services while repealing community college districts' fee authority for those services, imposed a reimbursable state-mandated new program upon community college districts.⁷ On August 27, 1987, the Commission adopted parameters and guidelines for the *Health Fee Elimination* program.

At the May 25, 1989 Commission hearing, the Commission adopted amendments to the parameters and guidelines for the *Health Fee Elimination* program to reflect amendments made by the 1987 legislation.⁸ The 1987 legislation reestablished community college districts' fee authority for the provision of health services and extended the maintenance of service provision

² Statutes 1981, chapter 763. Students with low-incomes, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.

³ Statutes 1984, 2nd Extraordinary Session 1984, chapter 1.

⁴ *Ibid.*

⁵ Statutes 1987, chapter 1118.

⁶ Statutes 1993, chapter 8, section 34.

⁷ Statement of decision, *Health Fee Elimination* (CSM 4206, adopted January 22, 1987). Reference to 1984 legislation refers to Statutes 1984, 2nd Extraordinary Session 1984, chapter 1.

⁸ Amendments to parameters and guidelines, *Health Fee Elimination* (CSM 4206, adopted May 25, 1989). Reference to 1987 legislation refers to Statutes 1987, chapter 1118.

such that all community college districts that provided health services during the 1986-1987 fiscal year were required to maintain that level of service each fiscal year thereafter. As a result, the 1989 parameters and guidelines reflected a change in eligible claimants for the *Health Fee Elimination* program, and the reestablishment of community college districts' fee authority for the *Health Fee Elimination* program.

Reductions Made by the Controller

The Controller reduced reimbursement claims filed by the Districts for the *Health Fee Elimination* program based on the determination that the Districts understated the health service fees which are required to be deducted from the costs claimed by failing to account for health service fees that districts were *authorized* to charge. The Districts filed seven individual incorrect reduction claims as a result of the adjustments made to the reimbursement claims. The Districts argue that they were only required to offset costs by health service fees that were *actually* charged and received.

On September 21, 2010, after the filing of the incorrect reduction claims, the Third District Court of Appeal issued its opinion in *Clovis Unified School Dist. v. Chiang (Clovis)*, which specifically addressed this disputed issue. The court found that community college districts were required to offset costs claimed for the *Health Fee Elimination* program by the health service fees that community college districts were *authorized* to charge.⁹

On December 13, 2010, Commission staff consolidated the seven incorrect reduction claims filed by the Districts.

II. Position of the Parties

Claimant's Position

For fiscal years 2002-2003 through 2008-2009, the Districts claimed reimbursement for costs to provide health services to community college students under the *Health Fee Elimination* program. During these fiscal years the Districts accounted only for health service fees actually received as offsetting revenue and subtracted that amount from the costs incurred as a result of providing health services.

The Districts contend that the Controller incorrectly reduced the costs for providing health services to students. Prior to the court's decision in *Clovis* the Districts asserted in their incorrect reduction claims that:

- Community college districts are required to reduce costs only by offsetting revenue received.
- The Controller did not provide the required explanation of the adjustments. "The Controller's actions ... deny the District the opportunity to comprehensively contest the adjustments through this Incorrect Reduction Claim."¹⁰

⁹ *Clovis Community College Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 810-812.

¹⁰ At the time of the Districts' filing of the incorrect reduction claims, the State Controller's Office had yet to provide an explanation for the adjustments made to reimbursement claims made by the Districts.

- No audit was conducted, “Therefore the Controller has no factual basis to make a conclusion that the costs claimed were excessive or unreasonable, as required by Government Code section 17561(d)(2).”
- The second sentence of Government Code section 17558.5(a) provides that if no payment has been made to a claimant for a fiscal year for which a 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. The second sentence is impermissibly vague. As a result, the statute of limitations should commence to run upon filing of a claim by a claimant.

In January 2011, Districts also filed a response to the consolidation of the incorrect reduction claims and request for further briefing and information by the Commission.¹¹ The Districts’ comments generally provide that:

- Increasing the health service fees by the same percentage increase to the Implicit Price Deflator for State and Local Purchases of Goods and Services is within the authority of only community college districts. As a result, without action by a community college district the maximum amount of health service fees that can be charged by the district are the amounts specified in Education Code section 76355 (a)(1). Additionally, the Controller cannot use information provided by the California Community College Districts Chancellor’s Office (Chancellor’s Office) to determine the maximum health service fee authority because only the districts have the authority to increase the health service fee.
- The Controller reduced the claims for reimbursement by too much.
 - Although the Controller excluded students exempt from paying the health service fees from the calculation of the amount of health service fees that a district is authorized to charge, the Controller did not account for the cost of providing services to these exempt students.
 - The Controller’s calculations of the total amount of health service fees that a district is authorized to charge includes all students regardless of whether there is a student health service center at a student’s location of attendance.
 - The scope of health services provided pursuant to the *Health Fee Elimination* program exceeds the scope of authorized uses of the health service fee.
- The Controller improperly utilized enrollment data from the Chancellor’s Office for the calculation of collectible fees.

In addition, the Districts reassert that no audit was conducted. The Districts state that “the [State Controller’s Office] did not audit the districts’ enrollment or program costs. The Controller does not assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard for review.”¹²

¹¹ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011 (Exhibit I).

¹² Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 9 (Exhibit I).

On September 1, 2011, the Districts filed a response disagreeing with the draft staff analysis, and clarifying and reiterating the arguments above.

Position of the Controller

The Controller filed comments disagreeing with the incorrect reduction claims filed by the Districts, and responding to the Commission's request for further briefing and information, focusing on the effect of the *Clovis* decision on the incorrect reduction claims.¹³ The Controller specifically asserts:

- In regard to the Districts' assertion that districts are required to reduce costs only by offsetting revenue received, "the issues surrounding offsetting revenue based on authorized fees have been fully resolved by the court in the [*Clovis*] case. In that case the court concluded that the "Health Fee Rule" implemented by the [State] Controller's Office, which reduced reimbursement by the amount of the health fee authorized, was valid."
- In response to the Districts' assertion that the Controller did not provide the required explanation of the adjustments and in doing so has denied the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims, a detailed analysis of all claim reductions was provided (after the incorrect reductions were filed). In addition, "The [Districts] may file an amended Incorrect Reduction Claim pursuant to Title 2, California Code of Regulations (CCR), section 1185."
- In response to the Districts' assertion that no audit was conducted, and that the Controller does not assert that the costs claimed were excessive or unreasonable, "We disagree. The [Controller] reviewed the [Districts'] claims and concluded that the [Districts] did not properly report authorized health service fees." Additionally, "The [Controller] did in fact conclude that the [Districts'] claim was *excessive*."
- In response to the Districts' assertion that the statute of limitations applicable to audits conducted on reimbursement claims for which no payment has been made is impermissibly vague, "the language of the statute in [*sic*] not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the 'date of initial payment,' in cases where no funds are appropriated or no payment is made. . . . Ultimately, the argument concerning vagueness is moot, as the [Commission] has no authority to determine that statute, or any portion thereof, is unconstitutional."

On September 2, 2011, the Controller submitted comments agreeing with the conclusions regarding issues of law in the draft staff analysis, but pointed out two factual errors: (1) Citrus Community College District did not claim costs for providing physicals to athletes; and (2) Rancho Santiago Community College District is not eligible for reimbursement for providing physicals for athletes because it did not provide that service in fiscal year 1986-1987.

¹³ Comments filed by the State Controller's Office, "Response by the State Controller's Office to the Incorrect Reduction Claim by [the Districts]," dated April 14, 2011 (Exhibit J). The same arguments were made by the State Controller's Office to all incorrect reduction claims filed by the Districts.

III. 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 1185.7 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.

For the reasons provided in the following analysis, the Commission finds that the Controller incorrectly reduced the Districts' reimbursement claims to the extent that the Controller applied health service fees to offset the claimed costs that are attributable to physicals for athletes and employees. The Commission finds that all other costs were correctly reduced by the Controller application of authorized health service fees as offsetting revenue.

The following analysis will address: (1) The effect of the *Clovis* decision on the Districts' incorrect reduction claims; (2) whether the Controller conducted an audit, and whether the Controller met the applicable statute of limitations or procedural notification requirements to conduct an audit; (3) whether the scope of reimbursable services under the *Health Fee Elimination Program* as described in the parameters and guidelines exceeds the permitted uses of health service fees; and (4) whether the Commission has the authority to remand a reimbursement claim to the Controller to correct reductions incorrectly made to the reimbursement claim.

A. What is the effect of the *Clovis* decision on the Districts' incorrect reduction claims?

This section will address the following issues: (1) the court's ruling on the Controller's use of the "Health Fee Rule" which offsets reimbursement claims for the *Health Fee Elimination* program by the maximum amount of health service fees that community college districts are authorized to charge; and (2) the propriety of imposing the health service fee on students that cannot access student health services in a practical manner.

- 1) Pursuant to the *Clovis* decision, the Controller appropriately used Education Code section 76355(a)(2) to determine the maximum health service fee authority of community college districts.

After the Districts filed their incorrect reduction claims, the Third District Court of Appeal issued its opinion in *Clovis*, which specifically addressed the issue of whether the Controller properly reduced reimbursement claims for state-mandated health services provided by community college districts pursuant to the *Health Fee Elimination* program using the "Health Fee Rule." The "Health Fee Rule" is the Controller's practice of reducing district claims by the maximum fee amount that districts are statutorily authorized to charge students, even when a district chooses not to charge its students those fees. As quoted 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] 76355.¹⁴ (Underline in original.)

As shown by the quote above, the Health Fee Rule upheld by the court includes all of 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 calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services.¹⁵ This increase occurs without the need of any legislative action by a community college district or any other entity (state or local).

The court upheld the Controller’s use of the “Health Fee Rule” to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court notes that the basic principle underlying the state mandates process that Government Code section 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.¹⁶

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.’”¹⁷ Additionally, in responding to the community college districts’ argument

¹⁴ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 811.

¹⁵ The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

¹⁶ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

¹⁷ *Ibid.*

that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s.”¹⁸ 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*.¹⁹ (Italics added.)

Thus, pursuant to the court’s decision the Health Fee Rule used by the Controller to adjust reimbursement claims filed by the Districts for the *Health Fee Elimination* program is valid. The Commission is bound by the court’s decision in *Clovis*, and bound to apply the Health Fee Rule set forth by the court.²⁰ The Districts argue that the Commission is not bound to apply the Health Fee Rule in this incorrect reduction claim because there are factual issues here not considered by the *Clovis* court.²¹ The Commission disagrees with this argument. The court was clear that to the extent that a local agency or school district has the authority to charge for the mandated program or increased level of service, by law that charge cannot be recovered as a state-mandated cost.²² The factual issues asserted by the Districts do not affect this underlying rule of law.

The Districts also attempt to separate the automatic increase in the health fee authority pursuant to Education Code section 76355(a)(2) from the “Health Fee Rule,” which the court in *Clovis* found to be valid.²³ In doing so, the Districts assert that the Commission must make an independent finding regarding the use of Education Code section 76355(a)(2) to determine the maximum fee authority granted by Education Code section 76355 for auditing purposes.

To support the Districts’ argument, the Districts make variations of the argument that Education Code section 76355(a)(2) is not self-implementing and requires action by the community college districts, not a state agency, in order to take effect.²⁴ The Districts assert that the Controller cannot use Education Code section 76355(a)(2) to calculate the maximum fee authority that community college districts are required to use as offsets for purposes of claiming reimbursement for the *Health Fee Elimination* program (or information from the Chancellor’s

¹⁸ *Ibid.* (Original italics.)

¹⁹ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

²⁰ *Darsie v. Darsie* (1942) 49 Cal.App.2d 491, 495, in which the court held, “[a] question once deliberately examined and decided should be considered as settled and closed to further arguments.”

²¹ Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, September 1, 2011, p. 5 (Exhibit L).

²² *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

²³ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 11, 2011, pages 4-6 (Exhibit I). See also, response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 5 (Exhibit L).

²⁴ *Ibid.*

Office calculated according to Education Code section 76355(a)(2)).²⁵ The Districts are incorrect.

As discussed above, the court fully resolved the issue of the Controller’s use of the Health Fee Rule, which includes all of section 76355(a). The court held that the Health Fee Rule is valid because community college districts are not entitled to reimbursement for costs for which the districts have the *authority* to charge a fee.²⁶ This rule is applicable regardless of the fee that community college districts decide to actually charge. The Health Fee Rule also includes any automatic increases in fee *authority* resulting from the calculation set forth by the plain language in Education Code section 76355(a)(2). To find that the Controller cannot use Education Code section 76355(a)(2) to determine the maximum health service fee authority for purposes of adjusting reimbursement claims for the *Health Fee Elimination* program would require the Commission to disregard or overrule the court’s decision in *Clovis* and disregard the plain language of the statute. The Commission does not have the authority to do either.²⁷

Thus, the Districts’ “self-implementation” argument is incorrect in light of the court’s decision in *Clovis*. Pursuant to the decision in *Clovis*, the Commission finds that for purposes of auditing reimbursement claims for the *Health Fee Elimination* program it is necessary for the Controller to use Education Code section 76355(a)(2) to identify the maximum health service fees that community college districts had the authority to charge and were required to use as offsetting revenue for claims of reimbursement for the *Health Fee Elimination* program.

- 2) The Controller correctly included students that cannot access student health services in a practical manner in the calculation of the maximum amount of health service fees that a community college district has the authority to charge.

The Districts argue:

Many community colleges have academic “learning centers” located significant distances away from the main campus location of the student health service center and other student services or programs. . . . It would be unreasonable for the district to charge a student at these remote locations for services that will not be provided because they are not practically accessible.

The Controller’s calculation of collectible fees includes all students regardless of whether there is a student health service center at their location of attendance. The result is that the Controller is offsetting the cost of services provided to other students for students from whom the district does not collect a revenue or incur a program cost. The *Clovis* decision has concluded that if a charge can be made, then a cost is not incurred. No charge can reasonably be made for students that cannot access the services, so total program costs should not be reduced by health service fees never collected, perhaps, at the very least as a matter of “common sense.”

²⁵ *Ibid.*

²⁶ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th at page 812.

²⁷ *Darsie v. Darsie, supra*, 49 Cal.App.2d at 495.

This issue is also applicable to other students that either by district governing board determination, or otherwise, cannot access the student health services: non-credit students enrolled in off-campus classes or events, adult education students who are not enrolled in the college, and concurrently enrolled high school students without legal capacity to consent to health care services. Each district may have other factual variations of students without access to health care services.²⁸

The Districts also argue that because the scope of reimbursable services is limited to the student health services provided in fiscal year 1986-1987 (the base year), the scope of nonexempt students to be included in the collectible fees offset should be limited to the base year.²⁹

As discussed above, for purposes of mandate reimbursement the issue as identified by the court in *Clovis* is whether community college districts have the *authority* to charge the health service fee regardless of the decision made by the community college districts to actually impose the fee or not.

Under the plain language of Education Code section 76355 community college districts are authorized to charge all students the health service fee, except: (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; and until January 1, 2006; and (3) low-income students.³⁰ This health fee authority is not limited to the scope of students the Districts decided to charge the fee in the base year. The Districts acknowledge that the Controller has excluded the students exempted from the fee in calculating the maximum amount of health service fees that the Districts had the authority to charge.³¹ Unless the students referenced in the Districts' argument above fall into any of the three categories of exempt students, the Districts have the authority to charge the students the health service fee.

In addition, there is no prohibition in the statutory or regulatory scheme that governs the use of health fees that prohibits the use of fees for the cost of services provided to exempt students. Thus, the Districts' assertion that authorized health fees cannot be used to offset the cost of providing health services to exempt students is incorrect.

The Commission recognizes that charging the health service fee to all non-exempt students, including those that do not use community college health services, may be a difficult policy

²⁸ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 5 (Exhibit I). See also, response to draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 6 (Exhibit L), which reiterates these arguments.

²⁹ Response to draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, pgs. 6-7 (Exhibit L).

³⁰ Statutes 2005, chapter 320, repealed the exemption for low-income students from Education Code section 76355.

³¹ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 6 (Exhibit I).

decision for a community college district's governing board to make. However, non-use of a community college district's health services, whether due to the distance of a student from the services or simply by choice of a student not to use the services, is not an exemption from the fee that community college districts are *authorized by law* to charge. Thus, the Commission finds that the State Controllers' Office properly included all students that do not fall within the three categories of students exempt from the health service fee as students which the Districts have the *authority* to charge the health service fee.

B. Has the Controller failed to properly conduct an audit or to meet the applicable statute of limitations or procedural notification requirements in conducting its audit? If so, what are the effects on the Controller audit and subsequent reduction of the Districts' reimbursement claims?

The following discussion will first address whether the Controller has properly conducted an audit and whether the Controller has met the statute of limitations to initiate and complete the audit. Second, the discussion will address the effect of the Controller's failure to provide an explanation within 30 days of adjustments made to reimbursement claims as required by Government Code section 17558.5(c).

- 1) The Controller has properly conducted an audit and met the statute of limitations to initiate and complete the audit.

The Districts make the following assertions: (a) the Controller has improperly used enrollment data and fee authority calculations provided by the Chancellor's Office to conduct the audits; (b) the Controller has based its adjustments to the Districts' reimbursement claims on the wrong standard of review; and (c) the Controller did not initiate and complete an audit within the applicable statute of limitations.

- a. The Controller has not improperly utilized the health fee calculations and enrollment data provided by the Chancellor's Office to conduct the audits.

Government Code section 17561(d)(2) sets forth the duty of the State Controller to pay reimbursement claims, the authority to audit claims, and the authority to reduce claims determined to be excessive or unreasonable. Specifically, Government Code section 17561(d)(2) provides in relevant part:

The Controller shall pay these claims [for reimbursement] from funds appropriated therefor except as follows:

- (A) The Controller may audit any of the following:
 - (i) Records of any local agency or school district to verify the actual amount of mandated costs.
 - (ii) The application of a reasonable reimbursement methodology.
 - (iii) The application of a legislatively enacted reimbursement methodology under Section 17573.
- (B) The Controller may reduce any claim that the Controller determines is excessive or unreasonable.

In addition, Government Code section 12410 imposes the duty on the Controller to:

[S]uperintend the fiscal concerns of the state. 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 order to carry out the duty to audit all claims against the state, Government Code section 12410 gives the Controller broad discretion in how to perform its duty, providing in relevant part:

Whenever, in [the Controller's] opinion, the audit provided for by [Government Code section 925 et seq.] is not adequate, the Controller *may make such field or other audit* of any claim or disbursement of state money *as may be appropriate to such determination*. (Italics added.)

The Controller exercised its discretion by reducing the amounts claimed by the Districts based on the maximum amount of health service fees that the Districts were authorized to collect during the relevant fiscal years multiplied by all students enrolled in each district that are not exempt from the fee. For purposes of auditing the Districts' reimbursement claims the Controller used health fee authority calculations provided by the Chancellor's Office and enrollment data provided by the Chancellor's Office from its management information system (MIS).

The Districts argue that the Controller cannot rely on fee authority calculations and enrollment data provided by the Chancellor's Office for purposes of conducting an audit of the Districts' reimbursement claims. The Districts assert, without any reference to legal authority, that although the Controller has discretion in conducting audits of claims against the state, the Controller inappropriately used its discretion by using third-party data for the purpose of audit adjustments absent validation of the data.³² The Commission disagrees.

Although the statutory scheme in Government Code section 17500 et seq. does not specify the standard of review by which the Commission examines an audit by the Controller resulting in an incorrect reduction claim, courts have held that an ordinary mandate is used to review decisions made by an agency where the agency was not required to hold an evidentiary hearing.³³ In addition, courts have found:

³² Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 11, 2011, page 8 (Exhibit I). See also, response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, p. 9-11 (Exhibit L).

³³ *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; and *Harris v. Civil Service Com.* (1998) 65 Cal.App.4th 1356, 1363, in which the court finds:

We question, as the [San Francisco civil service commission] does, whether review by administrative mandate is available. Unless (1) a hearing, (2) the taking of evidence and (3) discretion to determine facts are all required "by law" (§1094.5, subd. (a)), review can be had only by traditional mandate [Citation].

To prepare a claim for reimbursement, the *Health Fee Elimination* parameters and guidelines specifically require claimants to:

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.³⁷

Despite the fact that the *Health Fee Elimination* parameters and guidelines specifically require the inclusion of total student enrollment numbers,³⁸ only 8 of the 29 reimbursement claims contained enrollment data for the fiscal years claimed.³⁹ After receiving the reimbursement claims from the Districts, the Controller issued letters to the Districts requesting student enrollment data and fee amounts by semester as originally requested by the claiming forms and instructions.⁴⁰ The claiming forms and instructions requested the maximum fee authorized, total enrollment numbers, and enrollment numbers for students that fall within the health fee exemptions.⁴¹ In response, the Districts stated:

As you may know, when we prepare the annual claim, we utilize actual student health insurance income received by the [Districts] to determine the net reimbursable costs rather than calculate the “amount collectible.” We consider the amount collectible calculation method (total students subject to the student health insurance fee multiplied by the highest authorized student health insurance

³⁷ Amendments to parameters and guidelines, *Health Fee Elimination* (CSM 4206, adopted May 25, 1989), p. 6 (Exhibit N).

³⁸ *Ibid.*

³⁹ Incorrect reduction claims filed by the Districts. Enrollment numbers were identified by Citrus Community College District for fiscal years 2003-2004 through 2005-2006; Los Rios Community College District for fiscal year 2007-2008; Redwoods Community College District for fiscal year 2002-2003; Allan Hancock Joint Community College District for fiscal year 2004-2005; and Rancho Santiago for fiscal years 2007-2008 and 2008-2009 (Exhibits A-G).

⁴⁰ State Controller’s Office letter to Citrus Community College District for information for fiscal year 2006-2007, dated July 1, 2008; State Controller’s Office letter to Cerritos Community College District for information for fiscal years 2004-2005 through 2006-2007, dated July 1, 2008; State Controller’s Office letter to Los Rios Community College District for information for fiscal years 2004-2005 through 2006-2007, dated July 1, 2008; State Controller’s Office letter to Redwoods Community College District for information for fiscal years 2004-2005 through 2006-2007, dated July 1, 2008; State Controller’s Office letter to Allan Hancock Joint Community College District for information for fiscal years 2005-2006 through 2006-2007, dated July 2, 2008; State Controller’s Office letter to Rancho Santiago Community College District for information for fiscal years 2005-2006 through 2006-2007, dated July 1, 2008; State Controller’s Office letter to Pasadena Area Community College District for information for fiscal years 2004-2005 and 2005-2006 (Exhibit J).

⁴¹ Education Code sections 76355(c)(1)-(3), which set forth the exemptions based on religion, enrollment as an apprentice, and income.

fee per student) to be less accurate than actual revenues received. This difference in reporting methods has been the subject of past field audits, pending incorrect reduction claims, and pending litigation. We will continue to utilize the actual income received amount until the dispute is decided by competent authority in order to preserve the [Districts'] rights.

This letter transmits an HFE 1.1 form for each fiscal year which includes the student enrollment data that you requested. The individual student health insurance fee amount is not included since it is the Controller's policy to use the highest authorized rate regardless of the rate charged by the [Districts]. The highest authorized rate is a matter of public record available to the Controller's staff, so is not provided here.⁴²

As quoted above, the Districts did not provide any information regarding the authorized fee authority despite the requirement in the parameters and guidelines that "all costs claimed" be supported by evidence. The Districts base the offsetting revenue for their reimbursement claims on "income received" rather than fee authority, in clear violation of the Health Fee Rule as set forth in *Clovis*.

In addition, it is unclear whether the enrollment data provided by the Districts in response to the Controller's request represents total enrollment of students not exempt from the health service fee or total enrollment of students that the Districts *decided* to charge the health service fee. Specifically, the enrollment data provided by the Districts in response to the Controller's request does not identify any students exempt from the health service fee on the basis of religion (Ed. Code, § 76355(c)(1)). Additionally, the data provided by the Districts identifies only two districts and one fiscal year that had students that were exempt from the health service fee on the basis of students attending the college under an apprenticeship training program (Ed. Code, § 76355(c)(2)).⁴³ No other districts identify students enrolled in an apprenticeship training program.

In regard to students who were exempt from the health service fee based on income (former Ed. Code, § 76355(c)(3)), most of the Districts identified full-time and part-time enrollment "net of BOG [*sic*] waivers," without identifying how many students were actually excluded from the enrollment numbers identified. Also, the income exception was inoperative as of January 1, 2006. It is unclear from the evidence in the record whether the Districts excluded low-income students after January 1, 2006 from the health service fee for reimbursement claims

⁴² Incorrect reduction claims filed by the Districts, "Exhibit C" of Citrus Community College District's incorrect reduction claim; "Exhibit C" of Cerritos Community College District's incorrect reduction claim; "Exhibit C" of Los Rios Community College District's incorrect reduction claim; "Exhibit C" of Redwoods Community College District's incorrect reduction claim; "Exhibit B" of Allan Hancock Joint Community College District's incorrect reduction claim; "Exhibit A" of Rancho Santiago Community College District's incorrect reduction claim; and "Exhibit B" of Pasadena Area Community College District's incorrect reduction claim (Exhibits A-G).

⁴³ Cerritos Community College District and Allan Hancock Joint Community College District identify enrollment numbers of students attending each district under an apprenticeship training program for fiscal year 2006-2007.

made during fiscal year 2005-2006. Viewing the enrollment data described above in conjunction with the Districts' response to the Chancellor's Office request for the enrollment data, it is unclear whether or not the Districts provided the total enrollment of students minus students exempted from the health service fee or if the Districts provided enrollment numbers of students the Districts *actually* charged the health service fee.

In explaining why all of the evidence was not provided, the Districts argue that the information requested by the Controller, by letter and by the claiming instructions, is not required by the parameters and guidelines, and therefore, the Controller's requests did not have the force of law.⁴⁴ In addition, the Districts assert that the information requested "was irrelevant until the *Clovis* decision."⁴⁵ Although the parameters and guidelines do not specifically require *all*⁴⁶ of the information requested by the Controller, the parameters and guidelines do require that all costs claimed be traceable to source documents or worksheets that show evidence of the validity of such costs. In addition, the parameters and guidelines require the Districts to provide such documents or worksheets on the request of the Controller.

Here, pursuant to the Health Fee Rule as described by the court in *Clovis*, in order to show the validity of costs claimed under the Health Fee Elimination program it is necessary to have evidence of the total enrollment of non-exempt students and the maximum health service fee authorized. The Districts' assertion that the information requested was not relevant until the *Clovis* decision implicitly acknowledges that the information requested is relevant in the determination of total authorized health fees. In addition, the Districts' assertion that the information was not relevant *until* the *Clovis* decision is incorrect because the decision on the Health Fee Rule was based on the court's interpretation of existing law and the basic principle underlying the state mandate process as they existed prior to the decision.⁴⁷

Absent the relevant information requested from the Districts and in light of the Districts' response to the Controller's request, the Controller used evidence provided by a third party (the Chancellor's Office) to determine the validity of the Districts' reimbursement claims. The Districts do not assert that the health fee calculations and enrollment data are actually incorrect in light of the *Clovis* decision, nor do they provide evidence that they are incorrect in light of the *Clovis* decision. In addition, the Districts do not provide evidence of what they believe are the correct health fee calculations and enrollment data in light of *Clovis*. In effect, the Districts'

⁴⁴ Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 10 (Exhibit L).

⁴⁵ *Ibid.*

⁴⁶ As noted in the analysis, the *Health Fee Elimination* parameters and guidelines specifically required the inclusion of: (1) the total number of full-time students enrolled per semester/quarter; (2) the total number of full-time students enrolled in the summer program; (3) the total number of part-time students enrolled per semester/quarter; and (4) the total number of part-time students enrolled in the summer program. However, the parameters and guidelines do not specifically require the inclusion of enrollment numbers of students exempt from the health service fee or the maximum health service fees authorized.

⁴⁷ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th at p. 812.

argument attempts to shift the burden of providing evidence of the validity of all costs claimed to the Controller.

The ultimate conclusion of the Districts' argument would have the Commission re-weighing the evidence provided to the Controller by the Districts and the Chancellor's Office, and substituting the Controller's judgment with that of the Commission. As noted above, in reviewing the Controller's exercise of discretion the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. Instead, the Commission must ensure that the Controller has considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purpose of the enabling statute.

Under the Health Fee Rule, it is necessary to have the maximum health service fee authorized during the fiscal years claimed and the total enrollment numbers of students not exempt from the health service fee in order to calculate the total offsets for the *Health Fee Elimination* program. In light of the Districts' refusal to provide the maximum health service fee calculation, the Controller utilized the calculations provided by the Chancellor's Office, which provides advice to community college districts on the specific matter of the maximum health service fee that districts are authorized to charge.⁴⁸ The Controller did not act arbitrarily or capriciously.

As discussed above, pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services.⁴⁹ This increase occurs "[w]henver that calculation produces an increase of one dollar (\$1) above the existing fee"⁵⁰ without the need of any legislative action by a community college district or any other entity (state or local).

The Implicit Price Deflator is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation. The Chancellor's Office has the duty to provide general supervision over community college districts and to advise and assist community college districts on the implementation and interpretation of state laws affecting community colleges.⁵¹ In carrying out its duty, when the percentage increase in the Implicit Price Deflator produces an increase of \$1 in the health service fee the

⁴⁸ Education Code section 70901(b) and (b)(14); and <<http://www.cccco.edu/ChancellorsOffice/Divisions/FinanceFacilities/FiscalServices/FiscalStandardsInformation/StudentHealthFee/tabid/353/Default.aspx>> [September 8, 2011].

⁴⁹ The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

⁵⁰ Education Code section 76355(a)(2) (Italics added).

⁵¹ Education Code section 70901(b) and (b)(14).

Chancellor's Office advises community college districts of this change and the resulting increase in the districts' health service fee authority.⁵²

Similarly, in light of the Districts' response to the Controller's request for information and the enrollment data provided by the Districts, the Controller utilized enrollment data provided by the Chancellor's Office from its MIS. The Chancellor's Office MIS collects and organizes information submitted by community college districts regarding the districts' students, faculty and staff, and courses. This information is collected and maintained by the Chancellor's Office and the Board of Governors to fulfill their role of providing general supervision over the community college districts.⁵³ This supervision includes conducting necessary system-wide research on community colleges and providing appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.⁵⁴ Pursuant to these duties, the Chancellor's Office published the MIS user's manual for district data submission and the MIS Data Element Dictionary. As described by the MIS user's manual for district data submission:

As a condition of receiving the grant funds, districts certified that they would fully implement the collection and reporting requirements of [MIS], pursuant to the standards adopted by the Chancellor's Office as specified in the MIS Data Element Dictionary. Participation is required of all 72 districts (108 colleges).⁵⁵

The data and information *reported by the community college districts* includes student headcount (MIS data element STD7), enrollment in apprenticeship programs (MIS data element SB 23, Code 1), and BOGG recipients (MIS data element SF21, all codes beginning with B or F).⁵⁶ These are the data elements used by the Chancellor's Office to identify total student enrollment and students exempt from the health service fee.

Specifically, the Chancellor's Office identified total enrollment from MIS data element STD7, codes A through G, which identifies total student headcount based on enrollment type.⁵⁷

⁵²See,

<<http://www.cccco.edu/ChancellorsOffice/Divisions/FinanceFacilities/FiscalServices/FiscalStandardsInformation/StudentHealthFee/tabid/353/Default.aspx>> [September 8, 2011].

⁵³ Chancellor's Office Management Information System, Data Element Dictionary, page 1.01. Education Code section 70901(b) (Exhibit N).

⁵⁴ Education Code section 70901(b) (3).

⁵⁵ Chancellor's Office Management Information System, User's Manual: Data Submission (2004). Since the publishing of the user's manual, four colleges have been created within the districts (Exhibit N).

⁵⁶ MIS "Data Element Dictionary – STD Student Characteristics Derived Data Elements, Student Characteristics Data Elements (SB), and Student Financial Aid Data Elements (SF) and (FA)" at <<http://www.cccco.edu/SystemOffice/Divisions/TechResearchInfo/MIS/DED/tabid/266/Default.aspx>> as of July 6, 2011 (Exhibit N).

⁵⁷ Chancellor's Office Data Element Dictionary, page L.015-L.016. Code "A" identifies credit students enrolled in a weekly/daily census section; code "B" identifies students enrolled in a

Duplicate students were eliminated by students' social security numbers.⁵⁸ From the total headcount, the Controller subtracted students enrolled in apprenticeship training programs as identified by the Chancellor's Office with the MIS data element SB23, which identifies students registered as apprentices.⁵⁹ Also, the Controller subtracted from the total enrollment number BOGG recipients (low income students receiving a Board of Governors Grant) identified by the Chancellor's Office with the MIS data element SF21, all codes beginning with B or F, which identifies students in receipt of a BOGG.⁶⁰ In doing the above, the Controller identified the total number of students that the Districts were authorized to charge the health service fee.

Although the enrollment numbers provided by Cerritos Community College District differ from those identified by the Controller, Cerritos Community College District acknowledges that the enrollment data it provided came from the Chancellor's Office's MIS.⁶¹ Thus, the Chancellor's Office MIS is a reasonable and reliable source for enrollment data of community college districts, and the Controller's use of the MIS for enrollment data for auditing the Districts' claims is not arbitrary or capricious.

The Districts' validation argument suggests that there may be issues with the accuracy of the enrollment data received from the Chancellor's Office. Specifically:

The MIS system data output directly depends upon the district input. There is no evidence on the record that the data inputs are satisfactory. For example, it appears that the MIS system relies upon "headcount" which is an enrollment statistic reported by the districts on various dates. The total number of students subject to payment of health fees throughout a semester would be different based on date of enrollment or subsequent departure from college and refund of fees before and after the headcount. The DSA does not consider that the data available

positive attendance section with 8 or more hours or 0.50 or more units earned; code "C" identifies the students enrolled in an independent study section with 0.50 or more units earned; code "D" identifies credit students enrolled in positive attendance section with less than 8 hours and less than 0.50 units earned; code "E" identifies credit students enrolled in an independent study with less than 0.50 units earned; code "F" identifies noncredit students enrolled in a positive attendance section with 8 or more hours; and code "G" identifies noncredit students enrolled in a positive attendance section with less than 8 hours (Exhibit N).

⁵⁸ Comments filed by the State Controller's Office, dated April 14, 2011. Response to Citrus Community College incorrect reduction claim, "Tab 5." Response to Cerritos Community College incorrect reduction claim, "Tab 5." Response to Los Rios Community College incorrect reduction claim, "Tab 5." Response to Redwoods Community College District incorrect reduction claim, "Tab 5." Response to Allan Hancock Joint Community College District, "Exhibit B." Response to Rancho Santiago Community College District, "Exhibit A." Response to Pasadena Area Community College District, "Exhibit B." (Exhibit J.)

⁵⁹ Chancellor's Office Data Element Dictionary (Exhibit N).

⁶⁰ Chancellor's Office Data Element Dictionary (Exhibit N).

⁶¹ Incorrect reduction claim filed by Cerritos Community College District, *supra*, "Exhibit C." (Exhibit B.)

at the time the annual claim is prepared may not be the same data available or used for the MIS input.⁶²

However, the Districts do not provide any evidence to support their assertions, nor do the Districts assert that the enrollment data provided by the Chancellor and used by the Controller is actually incorrect. As noted above, the Districts bear the burden of pleading and proving that the Controller's decisions were arbitrary, capricious, or entirely lacking in evidentiary support. The Commission finds that the Districts have not met the burden of proving the Controller's decisions to use the health fee calculations and enrollment data provided by the Chancellor's Office and subsequent audit determinations to be arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission makes this finding in light of: (1) the Districts' initial burden to provide evidence showing the validity of all costs claimed; (2) the need to calculate total offsetting revenue pursuant to the Health Fee Rule as set forth in *Clovis* in order to determine the validity of all costs claimed; (3) the need to have total enrollment numbers of students not exempt from the health service fee and the maximum health service fee authorized in order to calculate offsetting revenue pursuant to the Health Fee Rule; (4) the enrollment data provided by the Districts, which did not clearly identify the information needed to calculate offsetting revenue pursuant to the Health Fee Rule; (5) the Districts' response to the Controller's request for the information necessary to calculate offsetting revenue; and (6) the source of the health fee calculations and enrollment data used by the Controller. As a result, the Commission finds the Controller has not improperly utilized the health fee calculations and enrollment data provided by the Chancellor's Office and conducted an audit.⁶³

⁶² Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 11 (Exhibit L).

⁶³ As a corollary issue the Districts assert that the Controller's use of the health fee calculations and the enrollment data provided by the Chancellor's Office constitutes a rule of general application. Because the alleged rule was not adopted under the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) it is invalid as an underground regulation. However, the Commission does not have jurisdiction to determine whether the Controller's actions, or any other administrative agency's actions, constitute underground regulations. As a result, the Commission makes no findings on this issue.

Even if the Commission did have jurisdiction over this issue, the Districts make the assertion that the Controller's use of the Chancellor's Office health fee authority calculations and enrollment data constitutes a rule of general application based on the State Controller's Office's use of such information "for audits for several years." However, the fact that the auditors have used the Chancellor's Office health fee calculations and enrollment data for audits for several years does not lead to a conclusion that there was a rule generally applied to reimbursement claim audits. Rather, it could indicate that individual auditors found the Chancellor's Office enrollment data to be more reliable evidence in light of what was provided by the Districts in each reimbursement claim filed. Although the Controller recommends the use of the Chancellor's Office enrollment data for reimbursement claims, there is no indication that if the Districts provided more information from a different source to support its data that the Controller would not have relied upon the Districts' data.

b. The Controller has adjusted the Districts' claims based on the correct standard.

In addition to arguing that the Controller has not conducted an audit pursuant to Government Code section 17561(d)(2), the Districts argue that the Controller does not “assert that the claimed costs were excessive or unreasonable. It would therefore appear that the entire findings are based upon the wrong standard of review.”⁶⁴

In response the State Controllers' Office argues:

The SCO did in fact conclude that the district's claim was excessive. Excessive is defined as “Exceeding what is usual, *proper, necessary*, [emphasis added] or normal.” The [Districts'] mandated cost claims exceeded the proper amount based on the reimbursable costs allowed by statutory language and the program's parameters and guidelines.⁶⁵

The Commission agrees with the Controller that it did find that costs claimed were excessive. The Districts acknowledge offsetting reimbursement claims by the health service fees actually charged and collected, not by the amount that the Districts were authorized to charge.⁶⁶ Pursuant to the court's decision in *Clovis*, the Districts are not entitled to reimbursement for costs of the mandated program to the extent the Districts had the authority to charge a fee for the mandated program. The Commission finds that the Controller adjusted the Districts' claims for reimbursement based on the correct standard.

c. The Controller has met the statute of limitations to initiate and complete the audits.

The Districts assert that Government Code section 17558.5(a) is impermissibly vague, and thus unenforceable. The Districts propose a different statute of limitations and argue that the Controller has failed to meet the statute of limitations to conduct audits for some of the reimbursement claims filed by the Districts during certain fiscal years. As a result, the Districts contend that reductions made to reimbursement claims during these fiscal years are void and should be withdrawn.

The Districts make this assertion for claims made by the following districts during the following fiscal years:

- Citrus Community College District claims made for fiscal years 2002-2003 and 2003-2004, filed on January 4, 2004 and December 13, 2004.

⁶⁴ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, page 9 (Exhibit I). See also, response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 4 (Exhibit L), in which the Districts reiterate this argument.

⁶⁵ Comments filed by the State Controller's Office, “Response by the State Controller's Office to the Incorrect Reduction Claims by [the Districts].” (Exhibit J.)

⁶⁶ Incorrect reduction claims filed by the Districts, “Letters in response to the State Controller's Office request for enrollment information and health fee data.” (Exhibits A-G.)

- Cerritos Community College District claims made for fiscal years 2002-2003 and 2003-2004, filed on January 12, 2004 and January 7, 2005.
- Redwoods Community College District claims made for fiscal years 2002-2003 and 2003-2004, filed January 13, 2004 and January 12, 2006.
- Allan Hancock Joint Community College District claims made for fiscal years 2002-2003 through 2004-2005, filed January 13, 2004, December 13, 2004, and December 30, 2005.

The statute of limitations for the Controller to initiate an audit is set forth in Government Code section 17558.5(a). As applicable to reimbursement claims filed before January 1, 2005, Government Code section 17558.5(a) provided in relevant part:

(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.⁶⁷

For reimbursement claims filed on and after January 1, 2005, section 17558.5(a) requires the Controller to complete any audit not later than two years after commencement of the audit.⁶⁸

The Controller states, and has included evidence in the record to support, that it has only made payments on the claims made by Citrus, Cerritos, Redwoods, and Allan Hancock Joint Community College Districts for fiscal year 2002-2003, and that payment for these claims were made on October 25, 2006.⁶⁹ Based on the plain language of Government Code section 17558.5(a), the second sentence of subdivision (a) applies because no payment was made for the claims for fiscal year 2002-2003 until October 25, 2006. The audits for the claims made for fiscal year 2002-2003 were required to be initiated by October 25, 2009 (three years from the date of initial payment). The Controller states, and has included evidence in the record to support, that these audits were initiated by May 8, 2009. Thus, the Controller has met the statute of limitations set forth in the second sentence of subdivision (a).

In the incorrect reduction claims for Citrus, Cerritos, Redwoods, and Allan Hancock Joint Community College Districts, the Districts do not dispute that the Controller has met the statute of limitations set forth in the second sentence of Government Code section 17558.5(a). However, the Districts assert that the second sentence of Government Code section 17558.5(a) is impermissibly vague, and therefore unenforceable. As a result, the Districts contend that the running of the three-year statute of limitations begins when the reimbursement claim is filed or last amended, as provided in the first sentence of section 17558.5(a).

⁶⁷ Government Code section 17558.5(a), as amended by Statutes 2002, chapter 1128.

⁶⁸ Government Code section 17558.5(a), as amended by Statutes 2004, chapter 890.

⁶⁹ Comments filed by the State Controller's Office, Response by the State Controller's Office to the Incorrect Reduction Claims filed by Citrus, Cerritos, Redwoods, and Allan Hancock Joint Community College Districts, *supra* (Exhibit J).

In response, the Controller argues:

[T]he language of the statute in [*sic*] not vague, the Claimants simply prefer a different outcome. The statute clearly predicates the running of the statute of limitations on the “date of initial payment,” in cases where no funds are appropriated or no payment is made. . . . Ultimately, the argument concerning vagueness is moot, as the [Commission] has no authority to determine that a statute, or any portion thereof, is unconstitutional. [Citation omitted] This power is reserved to the Judiciary. For this reason, the Commission should reject the Claimants’ vagueness argument and hold that the statute of limitations begins to run on the date of initial payment.⁷⁰

The Controller is correct in stating that the Commission lacks the authority to determine that a statute is unconstitutional and therefore unenforceable.⁷¹ As a result, the Commission makes no findings on the constitutionality of Government Code section 17558.5(a), and must treat all of subdivision (a) as enforceable.

In response to the draft staff analysis, the Districts assert:

[T]he second sentence of Government Code section 17558.5, subdivision (a) references two actions: the appropriation of funds and the payment to claimants from that appropriation. An appropriation of funds for payment of the mandate program by the Legislature and the date of payment of that appropriation by the Controller to the claimants are independent acts. The DSA makes no provision for those fiscal years in which there is an appropriation from which the Controller does not make a payment to the claimant. . . .

The issue still to be addressed is the legal effect to the commencement date of the statute of limitations based on a date of *appropriation* without subsequently *timely* or *any* payment action by the Controller.⁷² [Italics in original.]

⁷⁰ The State Controller’s Office cites to article III, section 3.5 of the California Constitution (Exhibit J).

⁷¹ Article III, section 3.5 of the California Constitution provides:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To 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;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

⁷² Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 3 (Exhibit L).

The Districts use this interpretation to argue that the audit was conducted too late. The Districts incorrectly interpret the plain language of the second sentence of Government Code section 17558.5(a). The language provides:

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.⁷³

The above language indicates that even if an appropriation has been made, but there has been no payment is made to the claimant, the time to initiate an audit commences to run “from the date of *initial payment of the claim.*” Absent a payment to the claimant the time to initiate an audit does not begin to run. Thus, applying the plain language of Government Code section 17558.5(a) to the evidence presented to the Commission, the Commission finds that the Controller has initiated and completed the audits within the statute of limitations.⁷⁴

- 2) Although the Controller did not provide an explanation of the adjustments made to reimbursement claims within the 30-day time limit of Government Code section 17558.5(c), the Controller has not denied the Districts the opportunity to comprehensively contest the adjustments.

Government Code section 17558.5(c) requires the Controller to notify why an adjustment of a claim for reimbursement was made to claimants in writing within 30 days of issuing a remittance advice for the adjustment made. In regard to Citrus, Cerritos, Los Rios, and Redwoods Community College Districts, the Districts noted in their incorrect reduction claims that the Controller had not provided an explanation of adjustments made to the reimbursement claims filed as required by Government Code section 17558.5(c). After the Districts filed their incorrect

⁷³ Government Code section 17558.5(a), as amended by Statutes 2002, chapter 1128.

⁷⁴ In the claimants’ response to the draft staff analysis (see Exhibit L, p. 3), the claimants assert:

There is a related issue not addressed by the DSA. The Controller later added additional fiscal years to the findings of some of the District’s reviews that were not included in the original notice, or never noticed. Since the date of notice of the review is integral to determining the start and expiration of the time period for audit, the staff analysis needs to address the legal effect of the fiscal years added later to the findings, but never or not timely noticed to the Districts.

The claimants do not identify which districts they are referring to. However, pursuant to the discussion above, the statute of limitations issue is *only* relevant to Citrus, Cerritos, Redwoods, and Allan Hancock Joint Community College Districts because these are the *only* districts which received payment from the State Controller’s Office, triggering the statute of limitations upon initial payment of the claims made by these districts. Thus, a discussion regarding districts which have not received any payment is unnecessary. To the extent that the claimants are referring to Citrus, Cerritos, Redwoods, and Allan Hancock Joint Community College Districts, the evidence provided by the State Controller’s Office, which is discussed in the body of this analysis, indicates that the claimants’ assertion is incorrect.

reduction claims and well after 30 days from issuing remittance advices to the Districts, the Controller provided the explanations of the adjustments, missing the 30-day time limit.⁷⁵

Prior to receiving the Controller's explanations, the Districts made the assertion that the Controller's actions deny the Districts the opportunity to comprehensively contest the adjustments through the incorrect reduction claims filed with the Commission. After receiving the Controller's explanations, and in response to the draft staff analysis, the Districts argue that the Commission should treat the Controller's failure to meet the time limit to provide an explanation "as a default."⁷⁶ The Commission disagrees.

The Districts seek to imply the penalty or consequence of invalidating *all* of the Controller's actions for failing to meet the time limit in section 17558.5(c) where the Legislature has not provided *any* consequence or penalty. Because the plain language of section 17558.5(c) does not impose a default on the Controller under the circumstances here, the Commission has no authority to impose a default.⁷⁷

Although the Controller did not provide an explanation of adjustments made to the reimbursement claims within the 30-day time limit, the Commission finds that the Districts have not been denied the opportunity to comprehensively contest adjustments made. The Districts do not need to wait to receive the explanation required by Government Code section 17558.5(c) in order to file an incorrect reduction claim. The Districts are authorized to file an incorrect reduction claim with the Commission upon receiving a remittance advice or other notice of adjustment notifying the claimant of a reduction.⁷⁸ This is the *beginning* of a claimant's opportunity to contest adjustments made by the Controller.

After a claimant has filed an incorrect reduction claim, the claimant has the ability to amend its incorrect reduction claim and is provided multiple opportunities to submit comments to respond to comments or issues raised during the Commission's incorrect reduction claims process.⁷⁹ Also, if the Controller fails to provide a needed explanation of adjustments made to a reimbursement claim, the Commission maintains subpoena power. Here, the Controller provided

⁷⁵ Beginning on July 1, 2009 through July 22, 2009, the State Controller's Office issued remittance advices for reimbursement claims for fiscal years 2002-2003 through 2007-2008 to Citrus, Cerritos, Los Rios, and Redwoods Community College Districts. The State Controller's Office issued notifications explaining the adjustments made to these districts' reimbursement claims on October 20, 2009 and October 21, 2009. Thus, in regard to Citrus, Cerritos, Los Rios, Redwoods, Allan Hancock Joint, and Pasadena Area Community College Districts the State Controller's Office failed to meet the 30-day time limit for issuing a notification explaining adjustments made to the reimbursement claims.

⁷⁶ Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 4 (Exhibit L).

⁷⁷ *Struckman v. Board of Trustees of Tracy Union High School* (1940) 38 Cal.App.2d 373, 376.

⁷⁸ Former California Code of Regulations, title 2, section 1185(b) (Register 2003, No. 17); currently 1185(c) (Register 2010, No. 44).

⁷⁹ Former California Code of Regulations, title 2, sections 1185, 1185.01, and 1185.02 (Register 2003, No. 17); currently sections 1185, 1185.1, and 1185.5.

detailed analyses to all of the claim reductions on October 20, 2009 and October 21, 2009, to which the Districts responded on January 11, 2011. Thus, the actions of the Controller have not denied the Districts the opportunity to comprehensively contest adjustments made to the reimbursement claims.

C. Has the Controller improperly reduced reimbursement for the cost of reimbursable services?

This section will address the following issues: (1) whether the Controller properly accounted for the students that fall within the health service fee exemptions; and (2) whether the scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of health service fees.

1) The Controller properly accounted for students exempt from the Health Service Fee.

In conducting audits on the Districts' claims for reimbursement, the Controller calculated the offsetting revenue from health service fees for each term for each fiscal year claimed by multiplying the maximum fee authority for the term during the fiscal year claimed by the total enrollment minus exempted students for each term.⁸⁰ The Controller then subtracted the offsetting revenue for each fiscal year from the total reimbursable claim amounts submitted by the Districts for each fiscal year. Other than the Districts' understating the offsetting revenue generated by the health service fee authorized for each fiscal year, the Controller did not find any other issue with the costs claimed by the Districts.

The Districts argue:

Education Code section 76355, subdivision (c), *requires* the districts to adopt local rules, that is, to utilize its legislative power, to exempt certain students from payment of the health service fee. To the contrary, Section 76355 merely *authorizes* districts to charge the fee to any other class of student. Subdivision (c) states that the districts cannot charge a fee to apprenticeship students or students that request a religion-based exemption. Until January 1, 2006, students receiving BOGG [Board of Governors Grant] fee waivers (perhaps as much as 30% of the enrollment) were also exempted from paying the fee. Note that these exemptions do not automatically mean that the district can exclude these students from student health services, rather, the district just cannot collect a fee. Thus, to the extent that these students utilize the student health services, the district is incurring an unfunded program cost.

The Controller's collectible fee calculation excludes these exempted students from the calculation of the offsetting revenue, but does not determine the costs of the services to these exempt students. The *Clovis* decision has concluded that if a charge can be made, then a cost is not incurred. Since no charge can be made for exempted students, these costs should be reimbursed without regard to the offsetting savings applied to all other student program costs. The Controller has the burden of going forward on this issue of properly reimbursing the cost of services provided to the exempt students. In these seven "desk" audits, the Controller did not audit any of the program costs, so the Controller

⁸⁰ Fee authority x (total enrollment – exempted students) = offsetting revenue for the term.

inappropriately reduced the health service costs for the exempt students.⁸¹
(Original italics.)

The Districts also argue:

To properly implement the Health Fee Rule would require the Controller to prorate the total program costs between exempt and nonexempt students based on enrollment or similar data, and then apply the calculated authorized fees as a reduction only to the portion of the total costs of services applicable to the nonexempt students. The Controller has performed similar revenue matching calculations in other audits. See the Enrollment Fee Collection and Waivers audit reports for Contra Costa CCD and Gavilan CCD posted on the Controller's website. The Health Fee Elimination audits that are the subject of this consolidated incorrect reduction claim did not match the revenue, so the collectible fees reduction adjustments are incorrect.⁸²

The Districts' arguments are based on an incorrect interpretation and application of the *Clovis* decision. The court in *Clovis* found that if 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."⁸³ Here, the Districts have the authority to charge a fee for the "mandated program" of providing student health services to all students, the program is *not* simply the provision of services to students who pay. Absent a limitation stating otherwise, the authorized fee can be used to pay for the program as a whole.

Additionally, the Enrollment Fee Collection and Waivers audit reports for Contra Costa and Gavilan Community College Districts referenced by the Districts are dissimilar to the Health Fee Elimination program. The Enrollment Fee Collection and Waivers program requires community college districts to perform specific activities related to the enrollment fee collection (EFC) and specific activities related to granting enrollment fee waivers (EFW). The districts received revenue from two separate sources. One source is to be used only for activities associated with EFC and the other source only for activities associated with EFW. In the audit reports the Controller agreed with Contra Costa and Gavilan Community College Districts that "the revenue offsets should only be offset to the relevant mandated activity costs, rather than to the total costs claimed for both the EFC and EFW program activities."⁸⁴ As stated by Gavilan Community College District, "The revenue sources are for *specific purposes*. The EFC 2% offset does not apply to EFW program costs. The EFW 2% and \$.91 per waived unit do not apply to EFC

⁸¹ Comments filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, dated January 1, 2011, pgs. 6-7 (Exhibit I).

⁸² Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 8 (Exhibit L).

⁸³ *Clovis Unified School Dist. v. Chiang, supra*, 188 Cal.App.4th 794, 812.

⁸⁴ Audit report of Enrollment Fee Collection and Waivers Program for Contra Costa Community College District (July 1, 1998, through June 30, 2006) by the State Controller's Office, dated March 2011, p. 17-18. See also, audit report of Enrollment Fee Collection and Waivers Program for Gavilan Community College District (July 1, 1998, through June 30 2008) by the State Controller's Office, dated April 2011, p. 33 (Exhibit N).

programs costs.”⁸⁵ In contrast, the use of the authorized health service fee is not limited for the purpose of health service costs associated with nonexempt students.⁸⁶ Instead, the authorized health service fee is to be used for the purpose of providing student health services to all students.

Thus, the cost of health services provided to students exempt from the health service fee is irrelevant for purposes of the consolidated incorrect reduction claims because the Controller did not make any reduction to the reimbursement claims on the basis of the Districts including the cost of providing health services to students exempt from the health service fee. The *only* basis upon which the Controller reduced the Districts’ reimbursement claims, was for understating offsetting revenue resulting from the health service fees that the Districts’ had the *authority* to charge. Thus, the Commission finds that the Controller properly accounted for students exempt from the health service fee.

- 2) The scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of the health service fees.⁸⁷

The Districts argue:

The scope of reimbursable services described in the parameters and guidelines exceed the program regulations. Therefore, districts are eligible for reimbursement for some parameters and guidelines services that are outside the scope of the Title 5 constraints for use of the fees.

The Commission agrees with the Districts’ argument that the scope of reimbursable services described in the parameters and guidelines exceeds the permissible uses of the health service fee paid by students to the extent that it pertains to: (a) physicals for athletes; and (b) physicals for employees.

The question of whether the scope of reimbursable services under the *Health Fee Elimination* program as described in the parameters and guidelines exceeds the permitted uses of the health service fee is a question of law. As a result, the Commission reviews this issue independent of the Controller’s legal conclusions.⁸⁸

⁸⁵ Audit report of Enrollment Fee Collection and Waivers Program for Gavilan Community College District (July 1, 1998, through June 30 2008) by the State Controller’s Office, *supra*, p. 33 (Exhibit N).

⁸⁶ California Code of Regulations, title 5, section 54702.

⁸⁷ The Districts’ response to the draft staff analysis (see Exhibit L, p. 9) includes a request to direct the Controller to amend its claiming instructions. This request has not been properly filed according to California Code of Regulations, title 2, section 1186, and as a result, will not be addressed in this analysis.

⁸⁸ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810.

a. Physicals for athletes.

The plain language of Education Code section 76355(d)(2) provides:

Authorized expenditures [of health service fees] 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. (Italics added.)

Additionally, Education Code section 76355(g) requires the Board of Governors to adopt regulations that generally describe the types of health services included in the health service program. These regulations are found in California Code of Regulations, title 5, section 54700 et seq. Title 5 section 54706, which sets forth prohibited uses of the health service fee, provides:

Student health fees shall not be expended for the following expenses:

- (a) Salaries of personnel not directly involved in the delivery of student health services;
- (b) Administrative salaries (assistant dean level or its equivalent and above);
- (c) Athletic trainers' salaries;
- (d) Athletic insurance for the intercollegiate athletic team;
- (e) Medical supplies for athletics;
- (f) *Physical examinations for intercollegiate athletics*;
- (g) Ambulance services and salaries of health professionals for athletic events;
- (h) Any deductible expenses for accident claims filed for athletic team members;
- (i) Sabbatical expenses for health service personnel.

Nothing within these provisions should deny a student participating in athletic programs a service which is properly supported by student health fees. (Italics added.)

The parameters and guidelines for the *Health Fee Elimination* program list physicals for athletes as a reimbursable cost to the extent that the service was provided in fiscal year 1986-1987. However, Education Code section 76355 and its implementing regulations prohibit community college districts from using health service fees charged to students for physicals for athletes. Thus, the health service fees cannot be used to offset the costs of providing physicals for athletes for purposes of mandate reimbursement.

Only the following community college districts claimed reimbursable costs associated with providing physicals for athletes:^{89 90}

⁸⁹ Response to the draft staff analysis filed by the State Controller's Office, *supra*, Tab 1 and 3. The Controller indicates that a document for a non-claimant district was mistakenly included as

- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007.
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008.
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007.

In the audits of these community college districts, the Controller used the health service fees as offsets for all costs claimed by the districts without delineating the costs claimed by the districts associated with providing physicals for athletes. From the evidence in the record it is not possible for the Commission to determine the costs associated with providing physicals for athletes for each district for each fiscal year claimed. As a result, the Commission finds that the Controller incorrectly reduced reimbursable costs associated with providing physicals for athletes by applying health service fees as offsetting revenue for the community college districts listed above, during the fiscal years listed above.

b. Physicals for employees.

Like physicals for athletes, community college districts are not authorized to use health service fees paid by *students* for physicals for *employees*. California Code of Regulations, title 5, section 54702, which sets forth the proper uses of health service fees paid by students, provides in relevant part:

The [health service fee] which the governing board of a district may require students to pay shall be expended *only* to cover the direct and indirect costs necessary to provide any, all of, or a portion of the *student* health programs and services approved by the governing board for offering within the district
(Italics added.)

The parameters and guidelines for the *Health Fee Elimination* program list physicals for employees as a reimbursable cost to the extent that the service was provided in fiscal year 1986-1987. However, as shown above, the language of title 5 section 54702, which implements Education Code section 76355, the health service fees paid by students shall be expended only to cover the *student* health programs and services. As a result, the health service fees cannot be used to offset the costs of providing physicals for employees for purposes of mandate reimbursement.

Only the following community college districts claimed reimbursable costs associated with providing physicals for employees:

evidence that Citrus Community College District provided physicals for athletes during fiscal year 2002-2003. The Controller has provided evidence that Citrus Community College did not provide that service (Exhibit M).

⁹⁰ Rancho Santiago Community College District identified costs for physicals for athletes for fiscal years 2007-2008 and 2008-2009. However, Rancho Santiago Community College District did not provide this service in fiscal year 1986-1987, and as a result, these costs are not reimbursable.

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007.
- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007.

In the audits of these community college districts, the Controller used the health service fees as offsets for all costs claimed by the districts without delineating the costs claimed by the districts associated with providing physicals for employees. From the evidence in the record it is not possible for the Commission to determine the costs associated with providing physicals for employees for each district for each fiscal year claimed. As a result, the Commission finds that the Controller incorrectly reduced reimbursable costs associated with providing physicals for employees by applying health service fees as offsetting revenue for the community college districts listed above, during the fiscal years listed above.

D. Does the Commission have authority to remand a matter to the Controller in order to reinstate costs incorrectly reduced?

In the Districts’ response to the draft staff analysis the Districts assert:

The DSA (42) recommends that the Commission remand to the Controller certain adjustments to determine the portion of total program cost attributable to athlete and employee physicals and reinstate those costs. The DSA does not establish the statutory authority for the Commission to remand adjustments for the purpose of correction. The statutory subject matter jurisdiction (Government Code section 17551, subdivision (d)) is to determine whether “the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subsection (d) of Section 17561.” If there is no authority to remand, the scope of the Commission authority may be only to declare the entire relevant adjustment incorrect and not just a portion thereof. Also, even if the Commission determines that it can remand a portion of an adjustment for correction, there is the related issue of whether the Controller can correct adjustments for fiscal periods that are now past the statute of limitations for an audit due to the passage of time since the audit report was issued. Claimants have no statutory standing to correct expired annual claims.⁹¹

Government Code section 17551(d) imposes the duty on the Commission to hear and decide claims by local agencies and school districts that the Controller incorrectly reduced payments to the agency or district. Government Code section 17527 gives the Commission the authority to adopt rules and regulations in order to carry out its duties, and to “do any and all other actions necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted to it.”⁹² Pursuant to the authority granted by Government Code section 17527 and in light of the duty imposed by Government Code section 17551(d), the Commission adopted California Code of Regulations, title 2, 1185.7, which provides:

⁹¹ Response to the draft staff analysis filed by Citrus, Cerritos, Los Rios, Redwoods, Rancho Santiago, and Pasadena Area Community College Districts, *supra*, p. 2 (Exhibit L).

⁹² Government Code section 17527(g) and (h) (Stats. 1984, ch. 1459).

If the commission determines that a reimbursement claim was incorrectly reduced, the commission shall send the statement of decision to the Office of State Controller and request that the Office of State Controller reinstate the costs that were incorrectly reduced.⁹³

It is under this authority that the Commission remands the reimbursement claims back to the Controller to adjust payments to correct for the costs that were incorrectly reduced.

The Districts also question the Controller's authority to correct adjustments for fiscal periods that are now past the statute of limitations period. The Districts combine two separate issues, and mistake the authority from which the Controller corrects incorrectly adjusted claims. Whether the Controller has met the statute of limitations to initiate an audit is a separate issue from whether the Controller has the authority to correct incorrectly adjusted claims. As discussed above, the Controller has met the statute of limitations to initiate an audit. The correction of an incorrect adjustment is not conducted pursuant to the authority to initiate an audit under Government Code section 17558.5(a), which sets forth a statute of limitations to initiate an audit. Rather, the correction is made at the request of the Commission pursuant to California Code of Regulations, title 2, section 1185.7 and under the authority granted to the Controller by the Legislature pursuant to Government Code section 17561(d)(2)(C), which provides:

The Controller shall adjust the payment to correct for any underpayments or overpayments that occurred in previous fiscal years.

Thus, the Commission has the authority to remand incorrectly reduced reimbursement claims to the Controller, who then has the authority to adjust payments to correct for any underpayments.

IV. Conclusion

The Commission concludes that the Controller incorrectly reduced costs incurred that are attributable to physicals for athletes by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Los Rios Community College District claimed costs associated with providing physicals for athletes during fiscal years 2005-2006 through 2007-2008 (CSM 09-4206-I-23).
- Redwoods Community College District claimed costs associated with providing physicals for athletes during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

The above community college districts' reimbursement claims are hereby remanded back to the Controller to determine the portion of the total costs claimed that are attributable to physicals for athletes. The costs for physicals for athletes should be reinstated.

⁹³ California Code of Regulations, title 2, 1185.7 (Register 2007, No. 19), former section 1185.1 (Register 2003, No. 17).

Additionally, the Commission concludes that the Controller incorrectly reduced costs incurred that were attributable to physicals for employees by using the health service fee community college districts were authorized to charge as offsetting revenue for reimbursement claims made by the following community college districts, for the following fiscal years, and at issue in the following incorrect reduction claims:

- Cerritos Community College District claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-20).
- Redwoods Community College district claimed costs associated with providing physicals for employees during fiscal years 2002-2003 through 2006-2007 (CSM 09-4206-I-26).

The above community college districts' reimbursement claims are hereby remanded back to the Controller to determine the portion of the total costs claimed that are attributable to physicals for employees. The costs for physicals for employees should be reinstated.

The Commission also concludes that the Controller correctly reduced all other costs incurred during all other fiscal years claimed by Citrus Community College District, Cerritos Community College District, Los Rios Community College District, Redwoods Community College District, Allan Hancock Joint Community College District, Rancho Santiago Community College District, and Pasadena Area Community College District for the *Health Fee Elimination* program by the amount of health service fees that the districts were authorized to charge.

Commission on State Mandates

Original List Date: 12/13/2010
Last Updated: 10/12/2011
List Print Date: 10/12/2011
Claim Number: 09-4206-I-19, et al.
Issue: Health Fee Elimination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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